

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1112 of 2013

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA Nos:-

1. 8125/17 (U/O 39 Rule 4)
2. 4200/14 (U/O 1 Rule 10 CPC)
3. 9408/13 (U/O 39 Rule 1 & 2 CPC)
4. 9600/13 (U/A 204)
5. For orders on Nazir's Reports dated 12.9.2013 & 19.9.2013.

14.12.2017.

Mr. Ali Mehdi, Advocate for Plaintiffs.
 Mr. Khalid Javed, Advocate for Interveners .
 Ms. Saba Siddiqui, Advocate for SBICA.

1,2 & 3. Application bearing CMA No.4200/2014 has been filed under Order 1 Rule 10 CPC on behalf of Interveners, whereas, CMA No.8125/2017 has also been filed on behalf of the Interveners under Order 39 Rule 4 CPC for recalling and/or modifying the Order dated 06.09.2013, whereas, CMA No.9408/2013 is an Application under Order 39 Rule 1 & 2 CPC on which interim orders dated 9.6.2013 were passed.

Learned Counsel for the Interveners submits that instant Suit has been filed by the Builder of the property in which the Interveners are owners of Offices bearing No.204, at Second Floor measuring 1160 Sq. Ft or thereabout in the building known as "Clifton Broadway". Counsel has referred to the Sale Deed / Sub-Lease of the Interveners and the predecessor-in-interest and submits that after having obtained interim orders, the Plaintiffs are violating the same inasmuch as the entry to the building for parking has been blocked, which is causing great inconvenience to the Interveners as well as

other owners and occupiers of the building. He further submits that according to the original plan, in the basement, parking was to be provided but under the garb of this Suit such parking has been converted into shops and showrooms and part of it has been allotted to a bank for lockers. Per learned Counsel the Interveners are directly affected by the Plaintiff's Suit as the Interveners earlier approached Sindh Building Control Authority ("SBCA"), who initiated certain actions, but an order has been obtained in this Suit and SBCA has been restrained. He submits that Interveners be joined as defendants, whereas, interim order be recalled.

On the other hand, learned Counsel for the Plaintiffs has referred to the covenants of the Sale Deed and the Sub Lease of the predecessor-in-interest of the Interveners and submits that parking was never sold or allotted to the first owners from whom the Interveners derive their title. Per learned Counsel though originally it was provided in the Building Plan that parking would be carved out in the basement; but subsequently, the Plan was altered and duly approved upon payment of necessary charges and thereafter it stands converted, whereas, instant Suit has been filed against harassment and unlawful actions of SBCA. He has also referred to the Nazir's Reports as well as the Complaint and submits that the Interveners have no locus-standi insofar as parking is concerned. He further submits that without prejudice, the plaintiffs have already proposed a fresh revised plan by making provision of parking in another suitable place within the building, and therefore, SBCA may be directed to process the same so as to resolve the controversy. Counsel for SBCA has submitted that no revised plan was ever approved, whereas, the action was initiated for violating the approved plan, however a restraining order has been passed which may be recalled.

I have heard both the learned Counsel and perused the record. Insofar as the Application under Order 1 Rule 10 CPC is concerned admittedly the Applicants/Intervenors are owners of office in the Suit Property and same is not under dispute. The only dispute, which has been raised, is regarding non-entitlement of the parking space according to the sub-lease. However, this is not a moot question presently for deciding this application as apparently the grievance of the Intervenors is to the extent that they were aggrieved by the plaintiff's actions and on their complaints, SBCA took some action, which has been impugned through instant Suit and restraining orders have been obtained. It is their further case that thereafter a wall has been erected and entrance of the parking has been demolished and access has been denied. This, in and of itself is enough to implead them as party in this Suit as all along the Intervenors have been agitating their case before SBCA. Apparently to protect the interest of all inhabitants of the building in question, they are at least a proper party, if not a necessary party. Therefore by means of a short order in the earlier part of the day, this application (**CMA No.4200/2014**) was allowed and the Counsel for Plaintiffs was directed to file amended title within two weeks and these are the reasons thereof.

Insofar as other two applications bearing CMA Nos.8125/2017 and 9408/13 are concerned, the Plaintiffs' case is that the Building Plan was though initially provided for parking in the basement, however, subsequently an amended plan was furnished and according to the Plaintiffs necessary fee was deposited and they were permitted to convert the parking space to showrooms and shops. However, the said revised plan has not been placed on record and it is the Plaintiffs' case that the same has been lost, but necessary fee has been deposited. In

contrast SBCA has denied that any revised plan was ever approved. It is case of the SBCA that time and again the Plaintiffs were cautioned from conversion of the parking area into any other use; but the Plaintiffs did not abide by any such notices. It is further case of SBCA that they made several efforts for restraining the Plaintiffs as time and again complaints were received from the Interveners but the Plaintiffs filed instant Suit and the exercise of restraining the Plaintiffs from any such conversion has gone into vain. The Counsel for the Plaintiffs though made an effort by arguing that there was, and is, a revised plan but copy is not available as it has been lost, but this has been vehemently controverted and denied in the counter affidavit by SBCA. It resultantly and impliedly, as of today, means that there is no revised plan in field. If for any reason there was a revised plan, which has been lost, the appropriate course available for the Plaintiffs was to approach SBCA for issuance of a certified copy of the Plan, which according to them has been lost. However, this is not case, whereas, on the contrary the Plaintiffs have admittedly handed over the possession of the basement to the bank for using it as lockers. This in view of absence of a revised plan is impermissible under the law. At the same time the plaintiffs have sought directions to SBCA to consider their fresh revised plan for providing parking space at another alternate place within the building. This within itself is contradictory and an admission that there exists no revised plan as contended and it is only a receipt which they claim to have in possession. It belies their argument, whereas, for that matter, a mere receipt does not creates a prima facie right as to grant of permission to alter any original lay out / building plan, until the same has been duly approved in accordance with law. Even otherwise, a parking space as provided in an original Plan under Chapter 24-9(ix) of the Karachi Building and Town Planning Regulations, 2002, cannot be

altered and converted for any other use except for parking, whereas the builder has to submit an undertaking to that effect.

In view of hereinabove facts and circumstances, of the case, the Plaintiffs have failed to make out any prima-facie case, whereas, neither the balance of convenience lies in their favour nor any irreparable loss would be caused, if the injunction is refused as the Plaintiffs have acted without lawful authority and in violation of Rules and Regulations by converting and selling the parking space. Accordingly, both these applications were dismissed in the earlier part of the day by directing SBCA to act accordingly and restore the parking space according to original approved plan at the cost of plaintiffs and these are the reasons thereof.

J U D G E

Ayaz P.S.