

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No. 2569 of 2017**

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Order with signature of Judge(s)

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1. For hearing of CMA No.4227/2018
2. For hearing of CMA No.17009/2017

**29.08.2018**

Mr. Waqar Muhammad Khan, Advocate for Plaintiff  
Mr. Abdul Qadir Khan, Advocate for Defendant No.1  
Mr. Akhtar Saeed, Advocate for Defendant No.3  
Mr. Masood Hussain Khan, Assistant Attorney General

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1. Counsel for Defendant No.1 has chosen not to press this application, which is dismissed as not pressed.

2. Through this application filed under Order VII Rule 11 CPC Court is moved to restrain Defendant No.1, his agents, employees or any other person(s) acting under him from creating any third party interest in any manner and/or to encumber, mortgage the suit property until the disposal of the suit.

Learned counsel for the Plaintiff by way of background stated that the Plaintiff entered into an Agreement to Sell with Mrs. Razia Sultana wife of Mr. Anis-ur-Rahman in respect of the property bearing Apartment No.28-A, Ground Floor, Askari-IV, Main Rashid Minhas Road, Gulistan-e-Jauhar, Karachi in the total sum of Rs.27.5 million on 28.09.2016 and in compliance of Clause-3 paid the token payment of 10% (Rs.2.75 million) on the same day. Per Clause-9 of the Agreement, the balance of Rs.24.75 million was to be paid *after obtaining NOC for Sale from Quartering/PS Directorate GHQ in favour of the Vendee, NOC for Sale from HQ 5 Corps, from Security Point of View, Board Proceeding & Photo session before ADH (AC) Askari Colonies Karachi, for obtaining GHQ NOC for sale, MEO NOC for Sale and finally registering the Sale Deed in favour of the Vendee before the concerned Registrar, and handing over vacant peaceful possession of the said Apartment.* As considerable time was consumed in achieving Clause-9, on the request of the Defendant No.1 a second Agreement was entered into

between the parties on 16.02.2017, through which the Plaintiff paid additional sum of Rs.2.5 million to the Defendant No.1. Other terms of the agreement remained unchanged, of particular attention is Clause-10 which in verbatim replaces Clause-9 of the earlier Agreement. As there were delays from Defendant's side to execute the final lease in favour of the Plaintiff, she moved to this Court on 06.12.2017 and alongwith the suit filed this application. Counsel for the Plaintiff states that the Plaintiff has been ready and willing to have the Agreement performed and at the motion of the Defendant's counsel deposited a sum of Rs.22.05 million with the Nazir of this Court on 13.02.2018 and since he feared that the said property may change hands or encumbered or mortgaged, he presses this application for confirmation of the interim relief already granted.

Learned counsel for Defendant No.1 as part of his arguments submitted that in cases of specific performance on the first date the Plaintiff is to deposit the balance sale consideration to show his bonafide and since the same was not done therefore the discretionary relief of the injunction cannot be granted to him. With regard to the merit of the application, he stated that the Plaintiff has yet not deposited Rs.200,000/- (Rupees Two Lac) with the Nazir of this Court, however, he graciously stated that his client would not create third party rights or interest, neither encumber or mortgage the property.

In the above congenial and mitigating circumstances while confirming the earlier interim stay order dated 15.12.2017, I allow the instant application subject to the Plaintiff depositing Rs. 200,000/- (Rupees Two Lac) with the Nazir of this Court in a week's time. Resultantly the Defendant No.1 or his/her attorney, agent(s) etc. not to create third party interest or encumber or mortgage the suit property.

JUDGE