

IN THE HIGH COURT OF SINDH AT KARACHI

J. M. NO. 25 / 2016

Applicant: The Trustees of the Port of Karachi, Karachi Port Trust through Mr. Khalid Javed Advocate.

Respondent: Dawat-e-Hadiyah (Pakistan) through Mr. Arshad Tayyabaly Advocate

Date of hearing: 13.04.2018, 20.04.2018 & 04.05.2018

Date of order: 31.05.2018

- 1) For hearing of main application.
- 2) For hearing of CMA No. 9634/2016.

ORDER

Muhammad Junaid Ghaffar, J. Through this J.M. under Section 12(2) CPC, the Applicant has impugned order dated 06.01.2016 whereby, Suit No. 1603/2014 was Decreed by way of a compromise.

2. Learned Counsel for the Applicant has contended that the compromise application as well as the order passed thereon was by way of fraud and misrepresentation as the Applicant had never consented to any such compromise. According the learned Counsel, the then Manager Legal Affairs had no lawful authority to enter into a compromise in this matter and therefore, the order impugned through this JM may be set aside. He has further contended that the terms as contained in one of the letters being relied upon was subject to approval by the Board of Trustees of the Applicant and the Board Resolution No. 222 dated 5.11.2015 never accorded any such approval of compromise; rather the decision was for withdrawal of instant Suit and not compromise. Learned Counsel has read out letter dated 12.3.2016 issued to the Applicant by their previous Counsel who was appearing in

the Suit and has contended that as per the contents of the letter itself, it reflects that the Counsel was also kept in dark by the then Manager Legal Affairs and never provided the appropriate Board Resolution to that effect. According to the learned Counsel, the Applicant has already initiated departmental proceedings against the said persons who has in turn filed a Constitutional Petition and has sought interim relief. According to the learned Counsel, the impugned order has been obtained by way of fraud and mis-representation, therefore, the same is liable to be set aside. In support he has relied upon ***Mrs. Anis Haider and others V. S. Amir Haider and others (2008 SCMR 236)***, ***Lahore Development Authority V. Arif Manzoor Qureshi and others (2006 SCMR 1530)***, ***Abdul Razzaq V. Muhammad Islam and 3 others (1999 SCMR 1714)***, ***Muhammad Nawaz Khan V. Muhammad Khan and 2 others (2002 SCMR 2003)***.

3. On the other hand, learned Counsel for the Respondent contends that the person who had come before the Court was a duly authorized person, whereas, it has not been denied that he was their authorized representative to appear before the Court in the Suit. Per learned Counsel, the authority given to the Manager Legal was wide enough in respect of legal proceedings and it contained an implied authority to do all acts including withdrawal and or compromise. Learned Counsel has further contended that this is not a case of any fraud or misrepresentation with the Court, whereas, the Court in this matter cannot go into the correctness of the Board Resolution or otherwise. Per learned Counsel, the only remedy available to the Applicant is to initiate proceedings, if any, against the officer and or their Counsel, as at the relevant time of compromise both were present in Court. Learned Counsel has also submitted and this is without prejudice that even

otherwise, the Applicant had all along knowledge of the compromise as early as in January 2016 whereas, instant JM was filed on 2.6.2016 notwithstanding the fact that the Execution Application has already been granted on the basis of compromise decree and orders for execution of Supplementary Deed have been passed with directions to the Nazir of this Court. Learned Counsel has further contended that even otherwise, the entire terms of the Agreement have already been acted upon by the Applicant as contained in their letter dated 14.12.2015, payments have been received, draft have been exchanged and it is only a matter of dispute that whether the Suit was to be compromised or withdrawn which according to the learned Counsel has no material bearing on the outcome of the final proceedings. In view of such position learned Counsel has prayed for dismissal of the instant JM and directions to the Executing Court to finally execute the Judgment and Decree.

4. I have heard both the learned Counsel and perused the record. Suit No. 1603/2014 was filed by the Plaintiff seeking the following prayers:-

- "I) Declare that the impugned Letter i.e. letter No. E/L/EA-III/135/56/25-Misc/373 dated 12.08.2014 issued by the Defendant (Annexure J to the Plaintiff) is illegal / void/ arbitrary and of no legal effect of consequence whatsoever.
- II) Declare that the Plaintiff is entitled to the renewal rights of the lease in terms of letter No. E/L/EA-III/135/56/Pt.VIII/2956 dated 19.04.1994 issued by the Defendant and also confirmed in its letter No. E/L/EA-III/1446 dated 19.03.2014.
- III) Direct the Defendant to execute the Supplemental Deed with the Plaintiff, which was duly approved by the Defendant in terms of letter No. E/L/EA-III/2705 dated 26.05.2014.
- IV) Permanently restrain the Defendant, its agent, servants, employees, or any persons acting on its behalf, from interfering with the peaceful possession of the plaintiff, and / or alienating or creating third party interest over the Suit property and / or creating any hindrances or obstacles in the leasehold rights, occupation, use and right of construction by the Plaintiff in the Suit property.

- V) Suspend the operation of letter No. E/L/EA-III/135/56/25-Misc./373 dated 12.08.2014 issued by the Defendant (Annexure J to the Plaintiff), till the final dispose of the present Suit."

5. It appears that written statement was filed, perusal whereof reflects that contents of various paragraphs of the plaintiff were partially admitted but nevertheless in Para 3 of the written statement, it was stated "that Karachi Port Trust did undertake to renew the lease of subject property for further period of 50 years but on terms and conditions as may be applicable at the prevailing time". It further appears that in response to Para 9 of the plaintiff in the written statement at Para 5, it is stated that the contents of Para 9 are admitted to the extent of issuance of letter dated 19.3.2014 by the Applicant; however, the letter annexed with the plaintiff is forged as according to the Applicant's case the said letter was only subject to the terms and conditions so stated and if approved by the KPT Board of Trustees. Therefore, it appears that insofar as the main dispute is concerned, the Applicant was agreeable to the renewal of Lease; but it is only the modalities of its execution and implementation for which dispute remains. It is in this context that this JM is to be considered and decided.

6. As to the objection regarding compromise in this matter without any lawful authority, it may firstly be observed that insofar as the person himself is concerned it is not in dispute that he was working as their Manager Legal Affairs at the relevant time. What is being disputed is that though he had the authority in terms of Board Resolution No. 52 dated 20.08.2003 to do various acts in respect of legal proceedings but he could not compromise. It would be advantageous to reproduce the said Board Resolution which reads as under:-

“52 Resolution: The Board considered Agenda Item No. 8 and in supersession to its Resolution No. 128 dated 26.09.2001 authorized Manager (Legal Affairs) and in his absence the next senior most officer in Legal Cell to sign all pleadings, Vakalatnama, to engage Advocates, applications, affidavits, and to swear the same before the concerned authorities, Reply Statements, Plaints and Written Statements, Applications, filed by or against the “The Trustees of the Port of Karachi”, in all Courts i.e. District Court, Sessions Court, High Court, Supreme Court, Tribunal, Authority, NIRC or department etc. as he considers fit to safeguard the interest of KPT.”

7. Perusal of the aforesaid resolution reflects that the authority is to sign all pleadings, Vakalatnama to engage Advocates, applications, affidavits and to swear the same before the concerned authority, reply statements, plaints and written statements, application filed by or against the Trustees, Chairman KPT etc. etc. in all Courts as he considers fit to safeguard the interest of KPT. Firstly, it may be observed that on perusal of the Vakalatnama of Applicant’s Counsel in the Suit as well as JM there is no enclosure either in the form of a Board Resolution or Power of attorney or otherwise. This would impliedly mean that person who is before the Court on behalf of the Defendant in the Suit is impliedly vested with all powers including powers to withdraw and or compromise. It may again be observed that it is not in dispute that the said person was their Manager (Legal Affairs). Therefore, when this officer appeared before the Court along with Counsel and admittedly signed the compromise application together with the Counsel, the same afterwards cannot be retracted on the ground that the officer and even the Counsel had no power to compromise. This objection could only have been valid if either a Board Resolution to that or for that matter a power of attorney qualifying such authority or any other qualification was annexed with the Vakalatnama or was placed before the Court. Once it is not done, then impliedly the authorized representative before the Court has all the powers to act on

behalf of a party to the Suit, including withdrawal or compromise. In such matters Court would not go into details that as to whether any delegated authority was there or not. Even otherwise, the Board Resolution No. 52 now placed on record through statement gives ample powers and delegation to the Manager Legal Affairs which also authorizes him to sign any application which he considers fit to safeguard the interest of KPT. Therefore, in such circumstances, the argument that he didn't had the authority to compromise is superfluous and meaningless.

8. Even otherwise, overall perusal of the record, the written statement as well as letters reflects that the only dispute which is now being raised is that the Chairman KPT as well as the Board of Trustees had approved the terms for renewal of Lease with the condition that the Suit shall be withdrawn. In fact in the entire JM the other conditions as contained in their letter dated 19.03.2014 as well as letter dated 14.12.2015 have not been objected. It would be advantageous in this regard to refer to letter dated 14.12.2015 issued by the applicant and reads as under:-

"KARACHI PORT TRUST
ESTATE DEPARTMENT

BY REGISTERED A/D NO. E/L/EA-III/135/56/25-Misc/4832
Dated 14 Dec 2015

M/s. B.R. Herman & Mohatta (Pvt.) Limited
Ocean Center 40-Talpur Road,
Karachi.

SUB: TRANSFER/ASSIGNMENT LEASE HOLD RIGHTS OF PLOT NO.25-MISC
AREA AT OLD QUEENS
ROAD OFF M.T KHAN ROAD, KARACHI.

Ref: A. Your letter No.BRH/458/2013 dated 29-06-2013.
B. This department letter No.E/L/EA-III/1446 dated 19-03-2014.

Dear Sirs,

This is to inform you that KPT Board has ratified the action of the Chairman dated 18-03-2014 for according approval for Transfer / Assignment of Lease Hold rights of Plot No.25 Misc Area old Queens Road off M.T Khan Road, Karachi in the name of M/s Dawat-e-Hadiya (Pakistan) lease hold rights of Plot No.25-Misc measuring 30949 square meters at Misc Area at old Queens Road off M.T Khan Road, Karachi in the name of M/s Dawat-e-Hadiya (Pakistan) subject to withdrawal of suit bearing No.1603/2014 filed in the High Court of Sindh and on the following terms and conditions.

- a. **Rate of Rent:** Rs.6.21/- per square meter (Rs.5.25 per square yards) per annum plus Government, KMC and other usual taxes.
- b. **Period:** For the residue period of lease i.e. upto 08-08-2019.
- c. **Transfer Fee:** You shall pay Rs.30,949,000/- @ Rs.1,000/- per square meter (Rs.1000 X 30949 square meter = Rs.30,949,000) being transfer fees (already paid)
- d. **Purpose:** As per existing lease.
- e. **Public Notice:** You shall publish a public notice in two reputable News Paper inviting objections to the proposed transfer / Assignment of lease after scrutiny of the same by KPT. You shall submit the draft of Public Notice alongwith Pay order of Rs.10,000/- being the Scrutiny Charges (already paid)
- f. **Indemnity Bond:** You shall execute an indemnity Bond indemnifying KPT against any claim lodged or preferred by any retired legal heir of expired partner or anybody else claiming through them to the satisfaction of KPT and pay an amount of Rs.10,000/- with KPT as scrutiny charges of indemnity Bond (already paid)
- g. **Preparation charges of Supplemental / Assignment Deed:** You shall pay preparation charges of Supplemental / Assignment deed amounting to Rs.10,000/- (already paid)
- h. **Other Terms & Conditions:** Other terms and condition as per existing lease.

You are, therefore, requested to give your acceptance to the rate of rent as well as above terms and conditions and fulfill the aforesaid formalities and send four pay orders for Rs.30,949,000 being the Transfer fee (already paid), Rs.10,000/- being the scrutiny charges of Public Notice (already paid), Rs.10,000/- being Scrutiny charges of Indemnity Bond (already paid) and Rs.10,000/- being the Scrutiny charges of supplemental / Assignment Deed (already paid), so that further necessary action may be taken accordingly.

Yours Faithfully,

Sd/-
AG. ESTATE MANAGER"

9. The aforesaid letter has indeed been issued after passing of Board Resolution No. 222 dated 5.11.2015 through which the action of the Chairman for according approval for Transfer / Assignment of Lease Hold rights in respect of the plot in question was approved. When these letters and Board Resolution are read in juxtaposition viz. a viz. the contents of compromise application and the order so passed by the

Court, it even otherwise, appears that there is no substantial argument which could be considered by the Court within the contemplation of Section 12(2) CPC as it neither appears to be a case of fraud or for that matter misrepresentation. The agreement is to the effect that the Applicant agreed for transferring the leasehold rights of the Suit property as per contents of letter dated 19.3.2014 which incorporates the same terms and conditions and even the amount to be paid by the Respondent as are contained in the Board Resolution dated 5.11.2015. The compromise agreement is not in respect of letter dated 19.3.2014. and even if it is so, there is no much difference in the letter relied upon by the Plaintiff and by the Defendant with its written statement except the approval of the Board of Trustees which has been admittedly accorded post facto. Hence, I am of the view that this could not be termed as a case of any fraud or misrepresentation considering the fact that the Applicant has acted further even without passing of the compromise Decree by offering the renewal of the Lease; taking the amount demanded by itself; and therefore, no case is made out even otherwise. It further appears that Execution Application in question has also been proceeded with and despite being served, none has affected appearance on behalf of the Applicant / Judgment Debtors in the said execution and even directions have been issued to the Nazir whereas, order dated 6.3.2017 reflects that Supplementary Deed has also been executed by the Nazir. It is only after such proceedings in the Execution Application that instant JM is being pressed, which otherwise now appears to be practically infructuous in view of such orders.

10. There is one another aspect for not entertaining this J.M. and that is, that if permitted, there would not be an end to litigation. Every affected party would come to Court through an application under

Section 12(2) CPC, after settling and or withdrawing a lis. Even where a claim is false there is a false representation made to a Court but this cannot by itself be a ground for setting aside a decree because if such ground was accepted there would be no end to litigation for every decree which does not proceed on some legal ground alone would be liable to be challenged on the ground that the party has deliberately put forward an untrue case. If it was untrue it would be untrue, at least in most cases, to the knowledge of the party¹.

11. In view of hereinabove facts and circumstances of the case I am of the view that no case of indulgence is made out so as to interfere in the impugned judgment and decree in question, which appears to have been passed and entertained in accordance with law. Accordingly instant J.M is hereby dismissed with pending applications.

Dated: 31.05.2018

J U D G E

ARSHAD/

¹ Mst. Izat v Kadir Bux (PLD 1959(WP) Karachi 221. Note: though this case pertains to an era when s.12(2) was not part of CPC, but principle remains the same.