

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.632 of 2005

Mrs. Thirty K. Bank Wala

Versus

M/s Shell Pakistan Ltd & others

Date	Order with signature of Judge
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1. For hearing of CMA 1283/16
2. For examination of parties/settlement of issues.

19.09.2018

Mr. R.F. Virjee for plaintiff

Mr. Haq Dad Khoso, Advocate holds brief for Mr. Muhammad Ehsan, Advocate for defendant No.1

Mr. Imran, Advocate for defendants No.2 and 3

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Zulfiqar Ahmad Khan, J:- Learned counsel for defendants No.2 and 3 files a statement along with copy of an agreement entered into between predecessor of defendant No.1 and those of defendant No.2 for the supply of Motor Spirit (petrol), the same is taken on record. Mr. Virjee has already received copy thereof and preferred to proceed with the instant application bearing CMA No.12831 of 2016 for the appointment of Administrator, however pointing out that the said agreement does not even specify address of the suit plot, thus poses questions as to its very applicability to the controversy at hand.

By way of background, the Court has been informed that the plaintiff being the owner of the land via Deed of Transfer dated 26.07.1965 registered with Sub-Registrar, Karachi in respect of commercial plot admeasuring 1329 sq. yards or thereabout bearing Plot No.CL-5, Survey 16, Civil Lines, Karachi, for a portion carved out therefrom admeasuring 70 X 65 feet therefrom (“the carved out portion”), entered into a lease agreement with Burmah Shell Oil, predecessor of the defendant No.1 on 25.11.1969 for the purposes of letting the said tenant setup/operate a petrol filling/service station thereon at the rent of Rs.2,000/- per month for a term of ten years. Per

counsel, after the expiry of the said lease, parties agreed to extend the rental arrangement for a further term of ten years through agreement dated 23.10.1979 in respect of the same portion of land, however this time at the rent of Rs.2,800/- per month. Furthermore, after expiry of the second term, the parties further entered into an agreement dated 19.01.1989 which extended the lease period for a further term of ten years. However this time, monthly rent was fixed at the rate of Rs.3,400/-. Admittedly, this was the last rental arrangement between the plaintiff and the defendant No.1.

When the last term was inching towards its expiry on 30.09.1998, the plaintiff communicated with defendant No.1 through letter (attached at page 89) calling upon it to handover of the carved out portion on which the petrol pump was operating back to the plaintiff. Another communication was made on 24.11.1997 (Page 91-93). Similar communications could also be seen on pages 95, 97, 99, 101, 103, 107, 109 and 111.

Upon receiving no reply from the defendant No.1, who ought to have handed over peaceful vacant possession of the said carved out plot to the plaintiff, the instant suit was filed on 05.05.2005, where similar prayers have been made. The learned counsel further states that the defendant No.2 in fact also filed a suit against the defendant No.1 for declaration and permanent injunction since defendant No.1, which had appointed the defendant No.2 as its agent to sell its petroleum products at the subject petrol pump did not extend its agreement with the defendant No.2. In the said suit, a prayer was made that the defendant No.2 be provided with regular and uninterrupted supply of petrol and other petroleum products by the defendant No.1.

Mr. Virjee next states that infact on the complaints that the defendant No.2 was adulterating fuel, defendant No.1 chose to cancel its relationship with the defendant No.2. He in this regard, pointed out

to the Written Statement filed by the defendant No.1, which is produced between pages Nos.141 to 151 where defendant No.1 has stated reasons of parting ways with the defendant No.2 which *inter alia* include that the defendant No.2 failed to show that it was even a duly registered partnership firm.

Learned counsel for the plaintiff next states that while the plaintiff is admittedly lawful owner of the entire land including the carved out portion without any challenge, thus upon its relationship with defendant No.1 having come to end at the conclusion of the third lease on 30.09.1998, the defendant No.1 ought to have handed over vacant peaceful possession of the carved out portion to the plaintiff as stipulated in the lease, however since there was some dispute between defendants No.1 and 2 in Suit No.29 of 2000, the defendant No.1 chose to simply walk away from the demise premises without handing over its possession to the plaintiff, and since that day, the defendants No.2 and 3 without any title are forcibly occupying the said carved out portion, at which no petrol pump is even in operation. Also, that a hefty amount of utility bills has also accumulated in respect of the said portion, which the defendants No.2 and 3 have not paid, and since bills/connections are in the name of the plaintiff, she is indebted for the payment of those bills too.

Learned counsel for the plaintiff prayed that since there is no dispute as to the ownership of the said carved out portion against the plaintiff, the interest of justice will be served by appointing a Receiver/Administrator to take over the possession of the said carved out portion, as the defendants No.1/2 are continuously occupying and misusing it.

Learned counsel for defendants No.2 and 3 repudiated these assertions of the learned counsel for the plaintiff. He stated that infact these parties were in dispute via Suit No.71 of 1958 before I-Senior Civil

Judge at Karachi, where predecessors of the defendant No.3 and those of the plaintiff entered into a compromise agreement which was allowed by the said Court through its order dated 27.02.1960 according to which father of the defendant No.3 was declared a tenant of Edulji Thrity Marker Trust for the entire ground floor of the adjoining building known as "Victoria Mansion" built on a portion of Plot No.16, Civil Lines, Karachi, except for the Barber Shop situated on the ground floor of the said Mansion. A copy of the compromise application under order XXIII rule 3 and order passed thereon are attached between pages 17 to 25 of Suit No.811 of 2001.

As admittedly possessory rights of the defendant No.3 (claiming to be a legal heir of late Muhammad Idrees) in the property did accrue out of the said compromise, contents of the entire compromise application were readout in the Court, which are reproduced hereunder:-

"APPLICATION UNDER ORDER 23 RULE 3 C.P.C.

In the above suit it is submitted that the plaintiff and the defendants No.1 who are the owners of the property in question have settled all their disputes on the following terms:

- 1. That the defendants No.1 accept the plaintiff as their tenant of the entire ground floor of the building, namely Victoria Mansion, situated on a portion of plot bearing survey No.16, C.L.5, Civil Lines Quarters, Victoria Road, Karachi, with the compound, except the barber shop under the stair case, at a monthly rent of Rs.350/- from 1.12.57.*
- 2. That all the tenants of the ground floor will remain the sub-tenants of the plaintiff and liable to pay rent to him (the plaintiff from 1.12.57, except the barber shop under the staircase and the other occupants mentioned in para 4 below, who shall pay rents direct to the defendants No.1 (landlords).*
- 3. That the defendants No.1 accepts the sub-tenancy of Rashid Nizami and the other tenants of ground floor, in favour of the plaintiff, except the barber shop under the staircase.*
- 4. That (1) The barber's shop known as "SMART HAIRDRESSERS" under the staircase, (2) A room on the staircase landing in the occupation of Mrs. Ikshanden and used partly as a Ladies Hair Dressing Saloon, (3) A room built at the back and occupied by Mr. Ghalo and (4) Servants quarters on the upper story already in the possession of the defendants No.1 shall remain in their possession with the right to collect rents and to rent them out to whomsoever they wish, and the plaintiff shall have no concern with them.*
- 5. The plaintiff shall allow all the tenants of defendants No.1 the use of all amenities of the premises and the use of common passage and staircase to their premises without let or hindrance subject to the reasonable use and parking of motor cars by plaintiffs.*

was filed defendant No.3's father would have been freely allowed to park his cars at that carved out portion? The learned counsel had no satisfactory answers.

Heard the learned counsel for the parties and reviewed the material available on record.

Evidently there is no challenge to the very title of the plaintiff in the entire chunk of land admeasuring 1329 sq. yards. Also it is admitted that defendant No.3's father was tenant of the plaintiff's predecessors in respect of ground floor (except Barber shop) of the neighbouring building known as Victoria Mension constructed on Plot No.16, CL 5 on which plot, the instant carved out portion was leased out to defendant No.1. The moot point brought to the Court is that whether the compromise agreement in Suit No.71 of 1958, where the entire ground floor of the neighbouring Victoria Mension Building (except Barber Shop) was admittedly given in the tenancy of the father of defendant No.3, did that arrangement entitle the later to occupy the carved out portion (where a petrol pump was in operation for the last thirty years at least) for parking of his cars or not.

A review of paragraph 5 of the Compromise Agreement relied upon by the counsel for defendants clearly shows that the contention that defendant No.3's father was given permission to park his cars at the carved out portion is utterly misconceived. While the parties clearly agreed that the defendant No.3's father be admitted as a tenant in respect of entire ground floor of Victoria Mension Building except the barber shop, he was also permitted to use all the amenities, common passage without any let or hindrance in respect of that portion of the building rented out to him, notion that he would be permitted to park his cars in a space, which was a separate carved out area on which a petrol pump had been operating, and that too by the same defendant who was acting as a licensee of Shell Pakistan Limited, holds no ground.

Neither it appeals to logic or makes any sense that such a prime property would be left out permitting a tenant of an adjoining building's ground floor to park his cars, and that too in 1960s when there were a small number of cars in the city anyway. The permission, at best would have been given for the tenant of the ground floor of the Vitoria Mension Building to park his cars (if any) in front of the Victoria Mension Building. It also is illogical that a tenant of a portion of an adjoining building would be permitted to park his cars in a neighbouring main road property, larger in size of the tented portion of the property.

It is pertinent to note that the defendants No.2 & 3 have not filed any counter affidavit to the instant application despite lapse of about 6 years. In their Written Statement the defendants have claimed that they were in occupation of the carved out portion and challenged the lease given in respect thereof to the defendant No.1 through Suit No.811 of 2001. A review of the plaint of the said suit, where these defendants have claimed possessory rights, shows that those defendants have admitted that their rights in the property emanate from the compromise reached between the parties in Suit No.71 of 1958 (which already has been discussed hereinabove), no document showing title of these defendants in the carved out portion has been brought to record.

Admittedly, the first lease deed dated 26.07.1965 was signed between the plaintiff and the defendant No.1 and similar was the case in the two subsequent leases. Defendants No.2 and 3 do not appear anywhere in those leases, notwithstanding that an admission is available from the defendant No.1 that it entered into a Master Supplier Agreement with the defendant No.2. Defendant No.1 has filed documents to show that neither the defendants No.2 (nor the defendant No.3) were tenant of the carved out portion where a petrol pump was erected by the predecessors of the defendant No.1. It is stated that Shell Pakistan (defendant No.1) under a lease from owners of the said plot i.e. plaintiff, set up the said petrol pump, however a license was

given to the defendants No.2 under Dispensing Pump and Selling Agreement dated 01.12.1960. It is also clear that the compromise in Suit No.71 of 1958 was made between Muhammad Idrees, father of the defendant No.3 with the trustees of Edulji Thrity Marker Trust related to entire ground floor of the building known as Victoria Mension situated on a portion of the plot bearing Survey No.16, CL-5, Civil lines Quarters, Vitoria Road Karachi and that compromise did not include the carved out portion, which was leased out to the predecessors of the defendant No.1 through registered lease deeds by the plaintiff three times. It is also noted that Burmah Shell, predecessor-in-interest of Shell Pakistan was enjoying these tenancy rights in respect of the carved out portion where it was operating its petrol pump since many years and the compromise did not affect rights, entitlements and privileges of Shell Pakistan in any manner whatsoever, particularly when Burmah Shell was not even a party to that suit. It is a matter of record that the defendant No.3's predecessor had knowledge about the status and rights of Burmah Shell over the aforementioned carved out portion which he admitted in Suit No.29 of 2000 filed by Universal Autos Supplies (present defendant No.2), against Shell Pakistan in the High Court of Sindh at Karachi. Mr. Naseem Ahmed, father of the defendant No.3, who was partner of the Universal Autos Supplies, defendant No.2 never claimed leasehold or tenancy rights in the carved out portion of the land on which he was given a license to act as a dealer of Burmah Shell/Shell Pakistan, selling petroleum products of the said entity. Defendant No.1 has also stated that it always paid rent to the plaintiff in these years, which fact was in the knowledge of defendant No.2 to 3 and admittedly the petroleum company never paid rent of the carved out portion to the defendants No.2 or predecessor of the defendant No.3.

It is also incomprehensible that the defendants No.2 (or 3), who was licensee of defendant No.1 had no knowledge of defendant No.1 having entered into agreement with the plaintiff for over 30 years in

respect of the carved out portion, where the petrol pump was operating, for which the defendants No.2 and 3 infact were acting as dealers of defendant No.1. It could be seen that even after filing of written statement dated 07.02.2000 and counter affidavit dated 04.02.2000, by Shell Pakistan limited in Suit No.29 of 2000 the lease in favour of Shell Pakistan in respect of the land on which their petrol pump was situated had not been contravened nor challenged by the defendant No.2/3 either by way of rejoinder affidavit or application for amendment of plaint. In their statement Shell Pakistan also stated that the defendants No.2 and 3 had the knowledge of the aforesaid lease in favour of Shell Pakistan (defendant No.1) in respect of the land over which the petrol pump was situated right from the beginning. In Suit No.29 of 2000 defendant No.1 has also affirmed that the reasons for its parting ways with defendant No.2 were numerous, including that the said defendant was not even a registered partnership firm. Defendant No.1 has admitted that defendant No.2 was appointed as dealer and licensee for selling petroleum products under the license agreement dated 01.12.1960 giving defendant No.2 the status of dealer/licensee but not that of an agent. Defendant No.1 has denied that the license was coupled with transfer of property or any interest in the subject petrol pump site (erected on the carved out portion) in favour of the defendant No.2, nor the defendant No.2 acquired any right or interest or entitlement beyond the terms of the license agreement between defendant No.1 and defendants No.2. It also on record that the defendant No.1 received complaint on 28.12.1999 about the fuel quantity sold at the petrol pump by the defendant No.2 and on getting samples checked from a customer's car, petrol was found to be off-specification. Additionally, it was also reported that a fire broke out on the petrol pump site, which incident was reported by the defendant No.2 to defendant No.1 on 05.01.2000, which resulted in the stoppage of supplies.

As could be logically drawn from the foregoing facts that the defendants No.2 nor 3 who have brought on record no document(s) to substantiate their title to the carved out portion except what emanates from the compromise agreement in Suit No.71 of 1958 wherein the status of the predecessor of defendant No.3 was admitted to be a tenant of the ground floor (except barber shop) of the adjoining Victoria Mension Building, I do not see any rights or interests of the defendants being prejudiced by appointing an administrator in respect of the carved out portion.

Now coming to the maintainability challenge on the instant application, it is an established principle of law that Courts have sufficient powers for the appointment of administrator for safeguarding the interest of all the parties as well as that of the property itself. Reliance is placed on PLD 2013 Sindh 555 [Media Max (Pvt), through Chief Executive v. ARY Communication Pvt. Ltd, through Chief Executive and another, 2009 CLC 42 [Sikandar Abdul Karim v. Mst. Qamar Jahan and 11 others], 2008 CLC 741 [Karachi] [Zafrain Iqbal v. the State], 2001 MLD 1905 [Karachi] [Abdul Karim v. Abdul Karim], PLD 1975 Lahore 492 [Sardar Walt Muhammad v. Sardar Muhammad Iqbal Khan Mokal and 7 others], in particular, when there is an apprehension that the property would be dissipated. Reference is also made to 2000 MLD 729 [Lahore] [Sahib Khan v. Muhammad Ramzan and another], 1997 CLC 243 [Sh. Muhammad Fazil v. Sh. Abdul Qadir and 7 others], 1997 MLD 181 [Muhammad Siddiqui and another v. Muhammad Latif and 3 others], 1993 CLC 1606 [Moinuddin Paracha and 6 others v. Sirajuddin Paracha and 23 others], AIR 1928 PC 49 [Benoy Krishna Mukherjee and others v. Satish Chandra Giri and others], AIR 1933 Sindh 231 [Firm, Manghanmal Tarachand v. Mikanbai and others].

In the circumstances at hand, the application is allowed. The Official Assignee is appointed as Administrator at the management cost of Rs.5,000/- per month for monthly inspection and upkeep and for

submitting a monthly report thereto, as well as, with powers to appoint guards/chowkidars at the cost of the plaintiff. The official Assignee to ensure that the carved out portion admeasuring 70 X 65 feet is kept clean and does not become eyesore or a garbage dump. The Official Assignee may also fix a properly worded signboard at the cost of fabrication and placement of that signboard borne by the plaintiff, to inform the public that he is being appointed as an Administrator in respect of the said carved out potion.

Judge