

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
**Suit NoS.2662, 2663, 2664, 2665, 2666, 2667
2668 & 2669 OF 2017 AND 04 & 05 OF 2018**

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

1. For orders on CMA No.13051/2018 (U/o VII Rule 11)
2. For hearing of CMA No.17778/2018 (U/o XXXIX Rule 1 & 2)

26.09.2018

Mr. Anand P. Kumar, Advocate for the Plaintiffs
Mr. Rizwan Ahmed Siddiqui, Advocate and Barrister Furqan Ahmed Siddiqui for Defendant No.1
Mr. Pervez Ahmed Mastoi, AAG alongwith Ms. Nazia State Counsel.

1. Counsel for the plaintiff waives notice and receives copy of instant application. He, however, draws Court's attention to the fact that this Court's order dated 13.08.2018 was appealed in HCA No.252 of 2018 whereby, vide consent order dated 07.09.2018, this Court was directed to decide injunction application and all pending applications filed upto 07.09.2018 within a period of 30 days. It is stated by the learned counsel that by mere filing of the instant Order VII Rule 11 application, where the learned counsel for defendant is seeking adjournment to file a rejoinder, an obvious attempt is made calculated to delay these proceedings. Per counsel, at the time of passing of the order by the Appellate Court, only injunction application was pending, whereas the instant order VII Rule 11 application was filed on 15.09.2018, i.e. subsequent to the Appellate Court's order, and while he waives his right to file a counter affidavit, counsel requests that as mandated by the Appellate Court's order dated 07.09.2018, this Court should

proceed with Order XXXIX Rule 1 and 2 application which is fixed for hearing at serial No.2. In the circumstances, and in the light of the order passed in HCA No.252/2018, there is no doubt in my mind that the only application which was pending at the time when the Hon'ble Appellate Bench of this Court passed orders was CMA No.17778 of 2017, thus the said application ought to be heard and decided.

2. Learned counsel for the plaintiff by way of background states that the plaintiffs, who are 11 in numbers, upon having been offered apartments in the building promoted by the Defendant No.1 in the name and style of "Burj-ul-Baloch", promised to be constructed on the plot of land bearing No.45 (PROIA) Sheet No.FT-3, Frere Town, Karachi, booked respective apartments and made payments as detailed in the body of plaint. Learned counsel submits that payment of about 30% of the total sale consideration in respect of each of the flat was initially made and these apartments were to be built by the Defendant No.1 within 36 months. However, when construction on the said plot did not commence, the plaintiffs approached the Defendant No.1, who through Memorandum of Understanding sought an additional sum of Rs.1 Million each, out of which the plaintiffs paid Rs.500,000 each on various dates. Per counsel, even after paying these additional sums, since no progress was witnessed at the site and the plaintiffs felt that a fraud is being played with them, in particular when they gathered that the Defendant No.1 was on the way to sell, transfer and convey the said plot of land to a third party, they approached NAB Authorities through application dated 21.05.2015 (Annexure 'C') by filing a complaint against the

Defendant No.1 Mohammad Sadiq Baloch. In the said complaint, after giving brief facts, it was prayed that legal action be taken against the said Defendant who was committing fraud and cheating applicants, for his personal illegal gains and depriving the applicants from their hard earned savings to the tune of Rs.52.1 million, it was thus requested that an inquiry/investigation be conducted against the said individual.

Counsel next states that in furtherance of that complaint, the plaintiffs were never called by NAB Authorities, however it later transpired that the Defendant No.1 entered into a Voluntary Return option with the NAB authorities and promised to deposit the sums of Rs.56.25 million under Section 25(a) of NAO 1999, to the NAB Authorities in satisfaction of his criminal liabilities under NAO 1999.

Counsel for the plaintiffs further contends that the very contention of the plaintiffs, upon having been offered an apartment, and thereafter they having accepted the same and having made payments in consideration thereof, was to acquire fully constructed apartments, and it was neither the intention nor the purpose of filing a complaint to the NAB Authorities that NAB should let the Defendant No.1 enter into a VR, as such an outcome was of no material benefit to the plaintiffs as they did not want their money back, rather the plaintiffs wanted NAB to exert its judicial authority compelling the builder to construct the project and handover apartments therein to the plaintiffs. In the instant application it is prayed that to safeguard plaintiffs' interest no third party interest in respect of subject property be permitted as this will result in multiplicity of litigation, as well as, rights of plaintiff in respect of

the apartment promised to be built on the said plot, would also be jeopardized if the project land is let to be transferred in the hand of third parties.

Learned counsel for Defendant No.1 while being cognizant of the fact that the Defendant No.1 in his Written Statement has admitted that payments were made by the plaintiffs to him for the purposes of raising a building, however states that after having entered into a VR with NAB authorities, the said defendant had no liability to perform the contract with the plaintiffs, and the plaintiff could approach NAB authorities for the return of the sum deposited by the defendant with NAB authorities under Section 25(c) of NAO, 1999. He further argued that under Section 56(1) & (f) as well as 21(a) of the Specific Relief Act, 1877 injunction could not be granted in the case at hand as well as Section 73 of the Contract Act, 1877 is also applicable in the matter. He placed reliance on the following citations:-

- i) 2004 SCMR 1092 (Puri Terminal Ltd. v. Government of Pakistan.
- ii) 2007 S.L.J. 658 (M/s. Maxim Advertising Company (Pvt.) Ltd. v. Province of Sindh & 4 others.
- iii) 1996 CLC 1086 (Government of Pakistan v. Kamruddin Valika)
- iv) 1994 CLC 625(Naeemuddin-v-Fed. Of Pakistan & 5 Ors)
- v) 1991 CLC 734 (Haji Abdul Ghaffar v. Haji Rauf)
- vi) 2005 MLD 1651 (Syed Khalid Mauddod Zaidi v. Com. (R) Muhammad Farooq Khan Lodhi).
- vii) 2010 CLC 1843 (PSO Ltd. v. Fed. Of Pakistan & 4 Ors)

In rebuttal, learned counsel for the plaintiff submitted that compensation was not the relief sought by the plaintiffs, and allegation made in the matter that contract pertaining to a building not having a reasonable certainty to be performed, is devoid of law and equity. He further stated that even if a sale agreement has been entered between the Defendant No.1 and some third party,

that instrument is of no legal consequence, as till date land is still in the name of the Defendant No.1, and the plaintiffs will suffer irreparable losses if the intended sale of the project land matures into a registration deed.

Heard learned counsel for the parties, perused the record and considered the case laws.

Admittedly the parties had a contract where the plaintiffs provided valuable consideration in respect of apartments which were promised to be built at the project land. Not only that about 30% of the sale consideration was paid, additional amounts by way of MOU as demanded by the Defendant No.1 were also paid. Assertions of learned counsel that having entered into a VR under Section 25(a) of NAO 1999, the Defendant No.1 has no civil liability towards the plaintiffs, in my humble view is not the true interpretation of the applicable provisions of the NAB Ordinance.

Clearly Section 25 of NAO 1999 provides that while a VR can be entered at any stage, however, this exercise could not be done on the back of the complainants as well as, in my humble view dispute between private parties and monies having been accumulated by VR could neither deprive the plaintiffs from seeking specific performance of their contract with the Defendant No.1, nor the plaintiffs could be left stranded once NAB authorities have settled the matter with the Defendant No.1, as at best, by entering into a VR, only criminal liability under NAO 1999 could be settled, however, the defendant has yet to discharge his civil liability.

In this regard, it would be useful to reproduce full text of Section 25(c) of NAB Ordinance, 1999, which reads as under:-

“The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, company, body corporate, cooperative society, statutory body, or authority concerned within one month from the date of such deposit.”

It clearly shows from a bare reading of the above clause that sum obtained through VR from an accused by NAB authorities have to be deposited with the Federal Government, Provincial Government, Bank, financial institution, company, body corporate, cooperative society, statutory body or authority concerned, within one month from the date of such deposit. The said provision does not, in my humble view create a possibility that NAB could claim private fund and handover the same from one private individual to another as this is neither the intent of NAB Ordinance, nor it is a prudent exercise to foster public policy. In particular when the plaintiffs refused to receive the monies, rather have approached this Court for the specific performance of their contract with the builder. It clearly shows that plaintiffs are not interested in their money, rather they are interested in specific performance of their contract for which they have paid valuable considerations to the Defendant No.1, who had promised to build apartments on the subject land. With regards provision of Specific Relief Act, 1877 embodied in sections 21 and 56, in my humble view there is no impediment to grant injunction therein neither Section 73 of the Contract Act, 1877 restricts this unfettered powers of the Court.

The case laws cited by learned counsel for the defendants is distinct one and is of no relevance with the facts of the present matter.

For the above reasons, application is allowed. Defendants are restrained from creating or recording any third party interest in respect of Plot No.45, (PRO1A) Sheet No.FT-3, Frere Town, Karachi.

JUDGE

MAK/Barkat Ali