

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 SUIT NO. 615 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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| 1) | For orders on CMA No. 10982/2017 |
| 2) | For orders on CMA No. 10892/2017 |
| 3) | For hearing of CMA No. 7914/2017 |
| 4) | For hearing of CMA No. 7433/2017 |
| 5) | For hearing of CMA No. 5055/2017 |
| 6) | For hearing of CMA No. 5056/2017 |
| 7) | For hearing of CMA No. 3243/2017 (wrongly typed as 3240/17) |
| 8) | For hearing of CMA No. 4639/2017 |
| 9) | For hearing of CMA No. 5572/2017 |
| 10) | For hearing of CMA No. 1351/2016 |
| 11) | For hearing of CMA No. 14056/2014 |
| 12) | For hearing of CMA No. 5010/2010 |
| 13) | For hearing of CMA No. 9650/2010 |

15.12.2017.

Mr. Yousuf Iqbal Advocate for Plaintiffs in Suit Nos.615 & 616 of 2010.

Mr. M, Zahid Kabir Advocate for Plaintiff in Suit No.2137/2017.

Mr. Sathi M. Ishaque Advocate for Defendant No. 17 in Suit No.615/2010.

Mr. Ghulam Jillani Malik Advocate for Defendants.

Mr. Syed Talat Shah holding brief for Mr. Haider Imam Rizvi, Advocate.

Mr. Shoukat Ali Phull Advocate for Intervener.

1-2. Notice.

7. It appears that this is a Suit for Possession filed by the Plaintiff as the property in question was purchased in auction in Suit No.1069/1999. However, after issuance of Sales Certificate, it came on record that the same was occupied by some trespassers. All Defendants were declared ex-parte and only Defendant No.17 filed its written statement. Thereafter on 03.03.2017, Counsel for Defendant No.11 & 17 requested the Court to grant some time enabling them to vacate the premises. After considering their request the following order was passed on 03.03.2017:-

“1. Representative of plaintiff submits that his counsel is not in attendance as he has gone in some meeting. It is quite surprising that despite moving urgent application the counsel is busy in some meeting, as stated by the plaintiff's representative. As an indulgence, urgent application is granted.

2. Counsel appearing for defendants No.11 and 17 at the very outset requests for some time to enable the defendants to vacate the premises. **Though he requests for two months' time however four weeks' time is granted to defendants No.11 and 17 to vacate the shops in question. In case they fail to hand over possession, Nazir shall break open the locks of the respective shops of defendants No.11 and 17 and shall handover possession to the plaintiff.** Insofar as other defendants are concerned, let notice of this application be issued to them.”

Counsel for the Defendant No.17 submits that thereafter on 30.03.2017 Status-quo Order was passed, which is still continuing and therefore, Status-quo Order to the extent of Defendant No.17 be extended. He further submits that Defendant No.17 has also filed CMA 3243/2017 seeking restraining order, and the said order passed on 30.3.2017 is also applicable to the case of Defendant No.17.

I have heard the learned Counsel and perused the record. It appears that after passing of Order dated 03.03.2017, the Defendant No.11 has vacated the premises and the Counsel for Defendant No.11 present in Court affirms such position. Insofar as the Order dated 30.03.2017 is concerned, the same reads as under:-

“4. Urgency application is granted.
1to3: Notice

Learned Counsel for the plaintiff is unable to explain as to how they are entitled for the possession of the land against **defendants No.1 to 10**. He is unable to point out any order passed in this regard. He seeks time for assistance.

Adjourned. In the meantime, since the plaintiff is unable to explain, parties to maintain status quo.”

The aforesaid Order clearly reflects that status-quo order so passed was in respect of the possession being claimed against Defendants No.1 to 10 and not in respect of Defendant No.17, who had already been granted four weeks' time on 03.03.2017 and therefore, no further time could have been granted to Defendant No.17. Moreover, the Defendant No.17 has though filed an application subsequently on 25.3.2017 by engaging another Counsel, however, on 30.3.2017 it was neither listed nor any order could have been passed on such application. It further appears that in the said application the Defendant No.17 has taken an altogether new stance which was not agitated before the Court when order dated 3.3.2017 was passed. This appears to be a belated thought on the part of the said defendant, notwithstanding the fact that such plea was already available through its written statement which is on record and could have been raised when time was being sought for vacating the premises in question. On perusal of the record it appears that previously the Defendant No.17 was being represented by some other Counsel, and now the stance which has been taken on behalf of the Defendant No.17, is perhaps due to change of Counsel. This cannot be appreciated by the Court. Moreover, the Counsel owes a duty as an Officer of the Court to properly assist for timely dispensation of justice, but, merely for the reason that a Counsel has been engaged subsequently in an ongoing matter, neither the pleadings nor the stance already taken by a party can be allowed to be changed or altered in this manner. What is now being agitated was not argued or contended, (though it was available) and Court had graciously granted sufficient time to two parties, out of which one has already vacated the premises. In the circumstances, application bearing

CMA No.3243/2017 filed by Defendant No.17 is dismissed. Nazir is directed to immediately act upon Order dated 03.03.2017 in respect of Defendant No.17.

3 to 6 & 8 to 13. Adjourned. Orders, if any, passed earlier to continue till the next date.

J U D G E

Ayaz P.S.