

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
*High Court Appeal No. 319 of 2021*

<i>Date</i>	<i>Order with signature of Judge</i>
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**FRESH CASE**

1. For orders on CMA No. 2464/2021.
2. For orders on CMA No. 2465/2021.
3. For hearing of Main Case.
4. For orders on CMA No. 2466/2021.

**16.12.2021:**

Mr. Arshad Tayebaly, advocate for the appellants.  
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1. Granted.
2. Granted subject to all just exceptions.
- 3-4. Instant High Court Appeal has been filed by the appellants against the impugned order dated 14.12.2021 passed by the learned Single Judge of this Court in Suit No.1062 of 2020, whereby, according to learned counsel for the appellants, on an urgent application CMA No.21806/2021 filed by the respondent along with another application CMA No.21807/2021 under Order XXXIX Rule 1 & 2, the learned Single Judge while issuing notices on such application for 18.01.2022, appellants have been restrained from creating any 3<sup>rd</sup> party interest in the 24 three bedroom apartments in the subject project and has been further pleased to attach an amount of Rs.1,01,19,81,000/- lying in the accounts of the appellant No.2 till next date of hearing. It has been contended by the learned counsel for the appellant that subject summary suit under Order XXXVII Rule 1 & 2 CPC has been filed by the respondent against the appellants for recovery of an amount of Rs.1,01,19,81,000/- in respect of dishonoured post-dated cheques issued by the defendant No.3 (appellant No.3), whereas, admittedly, the appellant No.2 is not the signatory of such cheques, however, inspite of such fact, through impugned order the accounts of appellant No.2, which is being operated as escrow account for meeting the expenses relating to construction work of apartments in the Creek Marina

Project has been attached and the relief claimed through CMA No.21807/2021 has been granted without providing opportunity of being heard to the appellants. According to learned counsel for the appellants, the impugned order has been obtained through mis-representation of the facts and the various orders have already been passed in Suit No.805/2020 filed by the respondents against the appellants, whereas, vide consent order dated 28.07.2020, the appellants were directed to maintain status quo only with regard to 24 allotment letters being the security for the respondents' claim during the pendency of the suit. However, through impugned order accounts of the appellants have been attached in a suit filed under Order XXXVII Rule 1 & 2 CPC, which provisions are attracted in respect of negotiable instrument only, whereas, in the instant case, admittedly, the cheques have not been issued by the appellant No.2. According to learned counsel for the appellant, no such application was filed by the respondents along with suit, which is pending before the learned Single Judge for more than one year, however, by filing an urgent application along with application under Order XXXIX Rule 1 & 2 CPC, the impugned order has been obtained through mis-representation, which is seriously cause injury and adverse effect on the business activity of the appellant No.2, who is under legal obligation to carry out the construction work pursuant to various orders passed in the above mentioned suit as well as the order dated 12.09.2019 passed by the Divisional Bench of this Court In C.P.No.D-4698/2014, in the following terms:-

*“11. In view of hereinabove facts and circumstances of the case, instant petition is disposed of with directions to petitioners to ensure that the subject project shall be completed within the time schedule agreed between the contracting parties, whereas, it is expected that DHA will not create any hindrance towards the construction of the subject project unless there is violation of building laws and all the parties shall cooperate with the petitioners in this regard. The NAB Authorities may submit report to the Chairman*

*NAB for closure of the investigation against the petitioners, however, keeping in view of judgment of the Hon'ble Supreme Court as referred to hereinabove, whereas, NAB may not take any further action against the petitioners in relation to subject construction project, without permission of the Court. However, it is clarified that disposal of instant petition is subject to further progress towards completion of the Creek Marina project, and in case it is found that petitioners have violated the terms of agreement and have not honoured their commitment towards completion of project, and there is some element of fraud and cheating to public at large, then the aggrieved parties/complainants will be at liberty to seek appropriate remedy by approaching the relevant forum(s) in accordance with law."*

It has been submitted by the learned counsel for the appellants that the impugned ex-parte order does not contain the reasons for granting injunctive relief to the respondents on the first date without hearing the appellants in the subject suit, which is pending before the learned Single Judge for more than one year, whereas, no such application was filed by the respondents at the time of filing aforesaid suit, whereas, the claim of the respondents is yet to be determined after recording evidence. Per learned counsel, unless the impugned order is set-aside the appellants will face serious financial injury, whereas, the cheques issued to various parties from the bank accounts of the appellant No.2 may be dishonoured, which may result in multiplicity of litigation including registration of criminal cases against the appellant No.2 on the one hand, whereas, development of the subject project in which public money is involved would come to a halt. It has been prayed that the impugned order may be set-aside.

Mr. Haider Waheed, Advocate, present in Court, submits that notice under Order XL CPC has not been served upon the respondents, however, waives notice, claims copy along with annexures and requests for time to

file his vakalatnama and reply/objections on behalf of the respondents. It has however, been submitted by the learned counsel for the respondents that the impugned order is an ad-interim order, therefore, instant High Court Appeal is not maintainable, whereas, according to learned counsel for the respondents, pursuant to settlement agreement between the parties, the subject cheques were issued by appellant No.1, however, the appellant No.2 is also the signatory of such settlement agreement. According to learned counsel for the respondents, the appellants are at liberty to file reply/objections to the CMA No.21807/2021 by raising all such objection, which will be decided by the learned Single Judge after hearing both the parties, therefore, instant High Court Appeal being premature and has been filed against an ad-interim order is liable to be dismissed.

We have heard the learned counsel for the parties, perused the record as well as the impugned order passed by the learned Single Judge in this case with their assistance. Admittedly, subject suit has been filed by the respondents against the appellants under Order XXXVII Rule 1 & 2 CPC for recovery of Rs.1,01,19,81,000/- in respect of four dishonoured post-dated cheques bearing Nos.A-22436723 & A-22436724 dated 02.03.2020 and No.A-22436725 and A-22436726 dated 15.04.2020 from Meezan Bank Limited, issued by the appellant No.1, whereas, there is reference to a settlement agreement dated 24.11.2019, which appears to have been executed between M/s Creek Marina Singapore (Pte) Ltd. and M/s. Syed Hehsum Raza Zaidi (Sponsors) AND M/s. Siddiq Sons (Pvt) Limited, Mr. M. Tariq Rafi and Mr. M. Abdul Rahim Rafi (Investors), which appears to have been signed by the appellant No.1 and 2 and the respondents No.1 & 2. In terms of clause 3.1 of the said settlement agreement as security for payment of 24 three bedroom apartments against the investment amount, which required to be transferred into the names of the investors, whereas, through impugned order such protection has been provided, whereby, the appellants have been restrained from creating any 3<sup>rd</sup> party interest in respect of 24 three bedroom apartments

in the subject project. However, while passing an ex-parte ad-interim order in favour of the respondents further adverse order has also been passed for attachment of bank accounts of the appellant No.2 in a summary suit filed under Order XXXVII Rule 1 & 2 CPC relating to negotiable instrument against the appellant No.2, who is not the signatory of such negotiable instrument (cheques). We are mindful of the fact that an appeal would not be entertained against an ad-interim order unless there is final decision or determination by the Court, however, if the ex-parte ad-interim order adversely affects the right or interest of an aggrieved party and have been assailed for being perverse and illegal this Court while hearing appeal is of the opinion that the said order suffers from some jurisdictional defect or patent illegality and has caused serious injury to any aggrieved party, who has been condemned unheard, the same can be examined and modified by this Court in order to avoid abuse of process of law.

Keeping in view the hereinabove facts and circumstances of the case, we deem it appropriate to dispose of instant High Court Appeal with the directions to the appellant to file reply/objections to the injunction application by raising all such objections, whereas, the learned Single Judge may pass appropriate order on injunction application after hearing the learned counsel for the parties in accordance with law. However, till decision on injunction application, the operation of the impugned order to the extent whereby, an amount of Rs.01,01,19,81,000/- lying in the bank accounts of the appellant No.2 has been attached, shall remain suspended. It is however, clarified that the appellant shall operate the aforesaid accounts only in connection with the routine business activity i.e. construction work of the subject project, and shall not make withdrawals for personal use of appellant No.3 in any manner.

Instant High Court Appeal stands disposed of in the above terms along with listed application.

**JUDGE**

Nadeem.

**JUDGE**