

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 SUIT NO. 13 / 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 11694/2009
- 2) For hearing of CMA No. 718/2012
- 3) For hearing of CMA No. 5196/2013
- 4) For hearing of CMA No. 7037/2016
- 5) For hearing of CMA No. 7038/2016
- 6) For hearing of CMA No. 7039/2016
- 7) For hearing of CMA No. 12313/2016
- 8) For hearing of CMA No. 12314/2016
- 9) For hearing of CMA No. 13149/2016
- 10) For hearing of CMA No. 13471/2016
- 11) For hearing of CMA No. 13472/2016
- 12) For examination of parties / settlement of issues.

17.03.2017.

Mr. Khawaja Shamsul Islam, Advocate for Plaintiff.
 Mr. Khadim Hussain Thahim, Advocate for Defendant.
 Mr. Umair Nisar, Advocate for Contemnors alongwith
 Contemnors Dr. Khawar Jamil, Chairman EOZA, Nasir
 Hadayat, G.M. Engg. EPZA.
 Mr. Khalid Javed, Advocate for Intervenors.

3. Through this application under Order VII Rule 11 CPC, the defendant seeks rejection of the Plaint on the ground that there is no cause of action for this Suit, whereas, the plaintiff has no locus-standi as well. Learned Counsel for the defendant submits that instant Suit has been filed by a registered Partnership Firm, whereas, the documents including the deed of partnership and other relevant papers do not reflect so, therefore, the Suit is hit by Section 69 of the Partnership Act. He further submits that the defendant is governed by EPZA Ordinance, 1980 and by virtue of Section 11 all property of the defendant vest in the Federal Government, whereas, in terms of Section 10 of the Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965, the jurisdiction of the Civil Court is barred, therefore, the plaint is liable to be rejected. He further submits that even otherwise the Suit is barred under Section 56 of the Specific

Relief Act as the plaintiff is merely a Licensee. In support of his contention he has relied upon **1992 CLC 1122** (*Imtiaz Hussain v. Government of Pakistan through Secretary, Ministry of Works, Estate, Islamabad and 2 others*), **1996 CLC 1205** (*Province of Sindh through Secretary, Public Works Department, Government of Sindh, Karachi and 6 others*) and **1997 CLC 187** (*The Chef v. Union Cooperative Club Limited and another*).

On the other hand, learned Counsel for the plaintiff submits that the objections regarding the plaintiff's firm being unregistered is misconceived, inasmuch as it is a registered Partnership Firm. In support he has referred to the Registration of the Firms filed alongwith the counter affidavit to the listed application. He further submits that the Ordinance, 1965 is not applicable, whereas, even otherwise the jurisdiction of this Court cannot be taken away through a barring clause in the Ordinance as the matter has been settled in the judgments reported as **PLD 1997 SC 3** (*Abbasia Cooperative Bank (now Punjab Provincial Cooperative Bank Ltd., through Manager and another)*), **PLD 1997 Karachi 541** (*Messrs K.G. Traders and another v. Deputy Collector of Customs and 4 others*) as well as **PLD 1997 Karachi 579** (*Samir Oosman and 2 others v. Rex Talkies (Pvt.) Ltd and another*). Insofar as the applicability of Section 56 of the Specific Relief Act is concerned, learned Counsel submits that after having accepted the lease money, the plaintiff was never given possession of the plots in question, and therefore, the Suit is maintainable.

I have heard both the learned Counsel and perused the record. Insofar as the first objection regarding the Suit being filed by an unregistered Firm in the name of the Firm is concerned, the same appears to be wholly misconceived inasmuch as the Extract of the Registration of Firms has been annexed with the counter affidavit to the listed application, which reflects that the Firm is registered vide Firm No.2006/07/0135, whereas, the Suit has been filed in the name of Partnership Firm and hence competent.

Insofar as, the objection with regard to the barring clause under Section 10 of the 1965 Ordinance is concerned, same also

appears to be misconceived inasmuch as the Ordinance has no relevance to the facts of this case, whereas, even otherwise, the jurisdiction of the Civil Court cannot be taken away through a barring clause as held by the Hon'ble Supreme Court in the case of **Abbasia Cooperative Bank** (Supra), by holding that "where the authority or tribunal had acted in violation of provisions of Statutes which conferred jurisdiction on them or such action or order was made in excess or in absence of jurisdiction or mala fide or was passed in violation of principles of natural justice, such order could be challenged before Civil Court in spite of provision in Statute barring jurisdiction of Civil Court".

Lastly, in respect of the objection regarding Section 56 of the Specific Relief Act, it may be appreciated that instant Suit has been filed for Declaration and Injunction as well as for recovery of US \$ 78,000/-, and therefore, notwithstanding, even if the Suit is not maintainable as contended by the defendant on the basis of a license issued to the plaintiff, the plaintiff cannot be non-suited merely on this ground as this Suit has also claim of recovery of money.

In view of hereinabove facts and circumstances of the case, the listed application (CMA No.5196/2013) being misconceived and frivolous in nature was dismissed by means of a short order dated 16.03.2017 by imposing cost of Rs.5000/- to be deposited in the account of Sindh High Court Clinic and above are the reasons thereof.

J U D G E

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