

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.247 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
Plaintiff:	Arshad Ali Khan through Mr. Qazi Umair Ali, Advocate.
Defendant No.1:	Anwar Adil Through Mr. Khawaja Shamsul Islam, Advocate.
Defendant No.4:	Salman Ashgar Through Mr. Muhammad Altaf, Advocate.
Defendant No.6:	Irtiza Ali Khan Rehan Sherwani Through Mr. Manzar Bashir, Advocate.
Defendant No.7:	PAF Base Faisal Karachi Through Dr. Farogh Naseem, Ms. Pooja Kalpana & Mr. Ahmed Hussain, Advocates.
	Official Defendant Through Ms. Mehmooda Suelaman, Asstt. A.G.

- 1) For Orders on CMA No.12735/2017
- 2) For hearing of CMA No. 5764/2013
- 3) For hearing of CMA No. 3336/2013
- 4) For hearing of CMA No. 11879/2013
- 5) For hearing of CMA No. 3337/2013
- 6) For hearing of CMA No. 2412/2013
- 7) For hearing of CMA No. 8465/2013
- 8) For hearing of CMA No. 9063/2013
- 9) For hearing of CMA No. 5167/2013
- 10) For hearing of CMA No. 3338/2013
- 11) For hearing of CMA No. 3339/2013
- 12) For hearing of CMA No. 3803/2013
- 13) For hearing of CMA No. 11640/2013
- 14) For hearing of CMA No. 11880/2013
- 15) For hearing of CMA No. 7039/2015
- 16) For hearing of CMA No. 11191/2015
- 17) For hearing of CMA No. 1417/2015
- 18) For hearing of CMA No. 14274/2016

Dates of Hearing: 05.04.2018, 17.05.2018, 05.09.2018 &
25.10.2018.

Date of Order: 07.12.2018

ORDER

Muhammad Junaid Ghaffar J. This is a Suit which is though titled as Cancellation of Partnership, Sale Agreement and Accounts as well as Injunction; however, in essence, the prayer is for a Declaration in respect of Suit property and cancellation of an Agreement. Initially the Plaintiff filed this Suit only against

Defendant No.1 but thereafter pursuant to Order(s) dated 12.3.2014 and 10.10.2017, various other Defendants have also been joined as parties to this Suit and this aspect of the matter is of paramount importance as to cancellation of Partnership and rendition of Accounts and Agreement, as well as passing of any Preliminary Decree. All listed applications have been filed by Plaintiff as well as various Defendants and due to the peculiar facts of this case, they all are being decided through this common order.

2. The precise facts appear to be that Plaintiff entered into a Sale Agreement dated 07.10.2010 with Defendant No.1, wherein, 50% share in respect of Dalmia Filling Station, Plot No.177/PF/01, near HQ-HAD PAF adjacent Pakistan Pipe Factory, Stadium Road, Karachi ("**Petrol Pump**") was sold for a total sale consideration of Rs.3,80,00,000/- in periodical part payment(s), and on each part payment, the share of Defendant No.1 was to increase gradually in the Partnership business. It is the case of the Plaintiff that Defendant No.1 with malafide intention also executed a Partnership Deed dated 01.12.2010 after execution of the Sale Agreement; whereas, the Defendant No.1 failed to perform his part of the obligation as per the Agreement and took over the entire operations of the Petrol Pump without payment of the total sale consideration. Since a dispute arose, the Plaintiff and Defendant No.1 mutually agreed to appoint Arbitrators to resolve the dispute, but allegedly, Defendant No.1 failed to produce the audited accounts and other relevant papers, and instead stopped the operations of the Petrol Pump; whereas, the Arbitration failed, hence instant Suit seeking following Prayers:-

- i) To declare that the plaintiff is lawful owner and retail outlet / pump and CNG Station i.e. Dalmia Filling Station, Plot No. 177/PF/01, Near HQ SAC, PAF, situated adjacent to Pakistan Pipe Factory, Stadium Road, Karachi and no one has any share in the said filling station and the defendant No. 1 has no right to interfere in the affairs of the said filling station / pump.
- ii) To cancel the sale agreement dated 7th October, 2010 and partnership deed dated 01.12.2010 as the Defendant No. 1 failed to fulfill his obligations and committed fraud and cheating with the Plaintiff and misappropriated the account as such necessary direction maybe issued to the defendant No. 2 for cancellation of said documents in the record.
- iii) A decree of permanent injunction thereby restrain the defendant No. 1, his men, agents, staff and subordinates

from interfering in the smooth running affairs of the plaintiff in respect of Dalmia Filling Station, Plot No. 177/PF/01, Near HQ SAC, PAF, situated adjacent to Pakistan Pipe Factory, Stadium Road, Karachi and / or dispossess the plaintiff from the said filling station, without due course of law.

- iv) Grant any other and further or better relief to the Plaintiffs that this Hon'ble Court deems fit and proper in the circumstances of the case.
- v) Cost of the Suit."

3. Learned Counsel for the Plaintiff in support of applications filed on behalf of the Plaintiff under Order 39 Rule 1 & 2 CPC and so also the other applications, has contended that Defendant No.1 by maneuvering the Partnership Agreement, has virtually taken over the entire operations of the Petrol Pump, without making payment of the total sale consideration, and therefore, the Plaintiff was compelled to file this Suit. Learned Counsel has referred to Clauses 2.2.2 and 2.2.4 of the Agreement and has contended that the periodical payments, firstly, were not paid to the Plaintiff, and secondly, whatever amount has been paid, it was done from the income of the Petrol Pump, which is in violation of the Agreement, and by doing so, the Plaintiff has been deprived from his property as well as the money, which was supposed to be paid within certain period of time. According to him there are several orders of this Court as well as Audit Reports which confirm that remaining payments have not been paid, hence the Plaintiff is entitled for the relief being sought through this Suit as well as the applications. He has contended that initially Official Assignee was appointed as Receiver, which was thereafter handed over to the Nazir of this Court, and subsequently the Petrol Pump has stopped functioning and is lying closed, which is causing losses on a recurring basis, and therefore, Plaintiff is entitled for an injunctive relief. According to him this is creating liabilities and in the alternative, it would be in the interest of all that the Petrol Pump is handed over to the lessor, who has subsequently been impleaded as a Defendant No.7 i.e. PAF Base, Shahrah-e-Faisal, Karachi. In view of the above he has contended that all applications of the Plaintiff be allowed as prayed; whereas, the applications of Defendant No.1 be dismissed.

4. Learned Counsel for Defendant No.1 has contended that all payments were made timely and the Petrol Pump was being run in

profit, whereas, the Defendant No.1 was forcefully dispossessed on 18.12.2012 and suddenly plaintiff filed instant Suit and got a Receiver appointed, which has closed the entire operations; whereas, no case is made out on behalf of the Plaintiff. He submits that heavy investment was made by Defendant No.1 for running the business of petrol pump and subsequently the Chartered Accountant appointed by this Court has given its reports in favour of Defendant No.1; therefore, the possession of the Petrol Pump is to be handed over to Defendant No.1. Learned Counsel has referred to Clause 5.1, 10, 14 & 15 of the Agreement and the Partnership Deed in question and submits that till filing of this Suit, more than 38.0 Million Rupees were paid to the Plaintiff and the allegations so leveled are false. Insofar as the joining of Defendant No.7 i.e. PAF Base is concerned, he has contended that the said Defendant ought not to have been joined in these proceedings, which were initially filed between Plaintiff and Defendant No.1 for dissolution of the Partnership; whereas, the said Defendant has no locus-standi to claim possession of Petrol Pump. According to him due to this conduct on the part of the Plaintiff and Defendant No.7, who are in connivance with each other, Defendant No.1, is out of any business despite making heavy investments. Learned Counsel has also referred to various reports of Nazir to justify the stance of Defendant No.1. He further submits that various other parties have also been joined as Defendants with whom at one point of time the Plaintiff also entered into some arrangement for which the Defendant No.1 is neither liable nor concerned; hence they are not proper and necessary parties. In view of these submissions he has contended that the possession of the Petrol Pump be handed over to Defendant No.1 so that no further losses are incurred.

5. Learned Counsel for Defendant No.6 has contended that the Plaintiff owes and has acknowledged that certain amount of money was paid in respect of the business in question, therefore, the objection that this Defendant cannot be joined in this Suit is misconceived. He has further contended that though a separate Suit for Recovery has been filed on the basis of such acknowledgement; however, the Defendant No.6 has come before this Court to oppose passing of any Preliminary Decree as the

same would seriously prejudice the interests of Defendant No.6. He has contended that the facts of this case are peculiar in nature, and therefore, matter be posted for recording of evidence as these applications cannot be decided without leading evidence. He has further contended that Defendant No.1 ought to have filed its own independent Suit against the Plaintiff for the amount invested, which has not been done, therefore, no relief can be claimed by Defendant No.1 in this Suit.

6. Initially on behalf of Defendant No.7 Dr. Farogh Naseem had argued the matter; however after his indisposition, Ms. Pooja Kalpana has assisted the Court, and it has been contended on behalf of Defendant No.7 that the Application under Order 1 Rule 10 CPC has been allowed vide Order dated 10.10.2017, and therefore, the Order dated 17.04.2013 be recalled and possession be handed over to Defendant No.7, who is the actual owner of the property in question. It has been further contended that the Agreement entered into between the Plaintiff and Defendant No.1 is only in respect of the business operations, and does not transfer the rights in the property, therefore, Defendant No.7 is entitled for its Re-possession from the Nazir of this Court. Learned Counsel has referred to Clause-7 & 10 of the Agreement License dated 02.08.2001 given to Plaintiff and has contended that all these terms have been violated, hence Defendant No.7 is within its right to take over the possession of the property. According to the learned Counsel the Plaintiff and Defendant No.1, before entering into any sale purchase agreement, ought to have sought permission from the land owner, which has not been done; hence the possession cannot be retained on their behalf by the Nazir of this Court. It was lastly contended that huge amount is outstanding against the Petrol Pump in respect of rental payments and therefore, Nazir may also be directed to make such payments to Defendant No.7 from the available funds. In support reliance has been placed on the cases reported as **Malik Muhammad Khaqan V. Trustees of the Port of Karachi (KPT) and another (2008 S C M R 428)**, **Eldho Vs. Manual (2014(3) KLJ 1858)**, **Sikandar Ali and others V. Muhammad Sharif and others (2003 Y L R 2686)**, **Messrs Zaidi's Enterprises and others V. Civil Aviation Authority and others (P L D 1999 Karachi 181)**,

Messrs Noorani Traders, Karachi V. Pakistan Civil Aviation Authority (P L D 2002 Karachi 83), Syed Ali Asghar Shah V. Pakistan International Airlines Corporation and others (2016 C L C 189), Matloob Hussain and others V. Ahmad Khan (2004 S C M R 1542), Aftab Hussain V. Government of Sindh and 2 others (2015 M L D 1688), St. John Ambulance Association Pakistan V. Pakistan Red Cross-Society and another (1988 C L C 186) and Abdul Rashid Khan and 8 others V. President, Services Institute P.A.F. Base, Lahore, and 2 others (1999 M L D 1870).

7. Learned Counsel for the Plaintiff while making his Rebuttal has contended that all payments, which the Defendant No.1 has paid, were done subsequently from the business income of the Petrol Pump; whereas, as per Agreement, these payments were to be made prior to taking over the business operations, therefore, no case is made out by Defendant No.1. According to him it would be in the interest of all that since losses are being incurred, the possession be handed over to Defendant No.7.

8. I have heard all the learned Counsel and perused the record. The precise facts have already been stated hereinabove, which reflects that initially the Suit was filed by the Plaintiff against Defendant No.1 in respect of Sale and a Partnership Agreement dated 07.10.2010 & 01.12.2010, respectively. The terms of the Agreement were briefly to the effect that 50% share in the petrol pump was sold for a total sale consideration of Rs.3,80,00,000/-, and at the time of signing of the Agreement a total of Rs.9.50 Million was paid through cheque and cash, whereas, further payments were to be made by Defendant No.1 periodically in that the 1st payment of Rs.95,00,000/- was to be made on or before 10.12.2010 (for 25% share in the partnership), 2nd payment of Rs.38,00,000/- on or before 10.01.2011 (for 30% share), 3rd payment of Rs.76,00,000/- on or before 10.02.2011 (for 40% share) and the last and 4th payment on or before 10.03.2011 (for 50% share), whereas, upon certain payments, the possession and operations of the Petrol Pump was handed over to Defendant No.1. There is no dispute at least to this effect. The case of the Plaintiff is that the balance amounts were not paid within the agreed time; whereas,

the payments made, if any, were from the income of the Petrol Pump and through various adjustments from the account of the Plaintiff and precisely this was not as per Agreement. It further appears that subsequently, various other intervenors have been joined as Defendants No.2 to 7, and now the case no more remains to be between two partners or for dissolution of the Partnership and Rendition of Accounts as claimed by the learned Counsel for Defendant No.1. In fact the case as set up on behalf of the Plaintiff is not even premised on this; rather it is for a Declaration, and in fact it is the Defendant No.1 who has come with an application under Order 20 rule 18 CPC for passing of a preliminary decree. However, it is to be seen by the Court that in the given facts, more so, after joining of other Defendants, most of whom claim that they were also partners at one point of time in the Petrol Pump, could such an application be entertained by the Court. The first set of applicant came before this Court by filing applications under Order 1 Rule 10 CPC, which were allowed vide order dated 12.3.2014, and the precise case of these applicants was that prior to the partnership and agreement covered by this Suit, the Plaintiff had earlier entered into registered partnerships with them in respect of the same petrol pump. This argument was not denied by the Plaintiff; however, it was contended that notwithstanding these partnership(s), they were not required to be joined as Defendants in this Suit, whereas, though, such application(s) was opposed on behalf of Defendant No.1, however, after grant of the same, it was never appealed and has attained finality. Resultantly, the cause or lis, even otherwise no more remains within the ambit of Order 20 Rule 18 CPC, as the same is only relevant when a Suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree, declaring the proportionate shares of the parties, and order and date of dissolution of the firm and so on and so forth. As noted earlier, this was never a case of dissolution by the Plaintiff, and even if it was, thereafter and as of today, it no more remains a dispute exclusively of the partnership firm. At least not to the exclusion of Defendants No.2 to 6 / other partner(s), who claim that they were and are partners in the firm until the said firm is dissolved finally. And to this extent they appear to be justified as Section 46 of the Partnership Act, 1932, supports their stance,

prima facie. It is also a matter of record that on 23.09.2015 an order was passed, to the effect that for settlement of the dispute in respect of making of full and final payment by Defendant No.1, irrespective of the fact that accounts have been audited by a Chartered Accountant, evidence is required to be led without which there is no possibility of concluding the case. And to this Counsel for Plaintiff and Defendant No.1 had agreed to file proposed issues for leading evidence; however, to the utter dismay and anguish of this Court, this aspect was never brought to the notice of the Court while arguing listed applications, and a lot of time was consumed by all learned Counsel in arguing their respective cases. This reflects very badly on the part of all learned Counsel, as instead of going further with the evidence, they have once again pressed upon their applications, which according to their own knowledge and conduct could not be decided in absence of any evidence in support thereof. This may also be kept in mind that the at very initial stage of these proceedings on 17.4.2013, the Plaintiff and Defendant No.1 gave consent for appointment of Official Assignee (later on Nazir) to take over the entire business etc. of the Petrol Pump. Such order remains in field even today; therefore, any further relief in the form and through an application in this mannaer is even otherwise unwarranted. And therefore, having left with no other option, all listed applications have been dealt with and decided keeping in view these facts in mind separately one by one in this Order, in the following manner.

Application at Serial No.(1): CMA No.12735/2017.

1. This is an application under Section 151 CPC filed on behalf of the Plaintiff through which the Plaintiff seeks directions to the Nazir to run the Petrol Pump in a proper manner or in the alternative; handover the control and possession of the Petrol Pump to the Plaintiff. It appears that this application has served its purpose, as similar application was also filed earlier and stand dismissed, whereas, the Petrol Pump is now presently closed under the custody of the Nazir of this Court, and therefore, no useful purposes would be served if this application for handing over the Petrol Pump to the Plaintiff is allowed. Accordingly, this application being misconceived is hereby dismissed.

Application at Serial No.2: CMA No.5764/2013.

10. This is an application under Section 151 CPC on behalf of the Plaintiff with the prayer to direct the Nazir that prior to taking over possession of the Petrol Pump, the Accounts of the Partnership be audited in terms of Order dated 17.04.2013 to ascertain the capital of both the Partners. Though this application is pending from 2013, however, thereafter Chartered Accountant was appointed and his reports are on record; whereas, now as observed hereinabove, this Suit no more remain merely between Plaintiff and Defendant No.1, as other Defendants have been joined in this matter, this application has become meaningless, and is therefore, dismissed.

Application at Serial No.3 & 4: CMA Nos.3336/2013 & 11879/2013.

11. These are applications under Order 20 Rule 18 CPC filed on behalf of Defendant No.1 on 28.03.2013 through which the Defendant No.1 seek passing of a Preliminary Decree for taking over accounts of the Partnership Firm and for appointment of the Chartered Accountant for such purposes to determine the proportionate share of the parties in order to safeguard the interest of the Plaintiff and Defendant No.1. As discussed hereinabove that this Suit no more remains between Plaintiff and Defendant No.1, as subsequently various other Defendants have been joined in this matter; hence it no more *stricto sensu* remains a Suit for dissolution of the Partnership Firm and Rendition of Accounts; therefore, an application of this nature cannot be entertained at this stage of the proceedings. Moreover, as already observed, the Plaintiff has never come before this Court for dissolution of Partnership and Rendition of Accounts, but for a Declaration, whereas, the joining of other Defendants in this matter has attained finality as no Appeal has been preferred. In these circumstances, this application has become infructuous and is therefore, dismissed accordingly.

Application at Serial No.5: CMA No.3337/2013.

12. This application has been filed on behalf of Defendant No.1 under Order 39 Rule 1 & 2 CPC, wherein, it has been prayed that Plaintiff be restrained from running the Petrol Pump and selling any product in absence and without signatures of Defendant No.1 as it would be in violation of the Partnership Agreement between the parties. Since vide Order dated 17.04.2013, the operations of the Petrol Pump has been taken over by the Nazir of this Court, this application has become infructuous and is therefore dismissed accordingly.

Application at Serial No.6: CMA No.2412/2013.

13. This is an application filed by the Plaintiff under Order 39 Rules 1 & 2 CPC seeking a restraining order against Defendant No.1 from interfering in the smooth running of the Petrol Pump in question. Since subsequently the Petrol Pump has been taken over by the Nazir of this Court with consent of the parties vide order dated 17.4.2013 and thereafter; hence, for all legal purposes this application has become infructuous as it has served its purpose. Same is accordingly dismissed as infructuous.

Applications at Serial No.7, 12 & 14: CMA Nos. 8465/2013, 3803/2013, & 11880/2013.

14. These are applications under Sections 3 & 4 of the Contempt of Court Ordinance, 2203, filed by Defendant No.1 for initiating contempt proceedings and registration of the FIR against the Plaintiff as well as alleged contemnors for threatening the Commissioner of this Court in implementation of Order dated 02.04.2013 and subsequent order(s); whereby, the Petrol Pump in question was required to be inspected. I am of the view that these applications require evidence and are, therefore, deferred for the time being and shall be taken up along with hearing of arguments after evidence.

Application at Serial No.8: CMA No.9063/2013.

15. This is an application under Order 1 Rule 10 CPC filed on behalf of Intervenors with the prayer to join them as Defendants in

this matter. This is pending since 2013, whereas, while hearing arguments on all listed applications, no assistance was provided on behalf of these applicants which reflects that the applicant / interveners are not interested in proceeding with this application. Therefore, the same is dismissed for non-prosecution.

Application at Serial No.9: CMA No.5167/2013.

16. This is an application filed under Section 151 CPC by the Plaintiff with a request to recall Order dated 17.04.2013 in respect of taking over the control of the Petrol Pump from the Official Assignee as it has been alleged that learned Official Assignee is acting partially in favour of Defendant No.1. Since subsequently, the Nazir has already been appointed as a Receiver instead of Official Assignee, therefore, this application has become infructuous and is accordingly dismissed as infructuous.

Application at Serial No.10: CMA No.3338/2013.

17. This is an application filed on behalf of Defendant No.1 under Order 40 Rule 1 CPC requesting appointment of Defendant No.1; or in the alternative, the Official Assignee or any other Officer as Receiver. Since a Receiver has already been appointed by consent vide Order dated 17.4.2013, therefore, this application has served its purposes and is accordingly disposed of.

Application at Serial No.11: CMA No.3339/2013.

18. This application has been filed under Order 26 Rule 28 CPC on 28.03.2013 for appointment of Commissioner to visit the Petrol Pump in question and to prepare inventory. Again this application has also become infructuous due to appointment of Receiver, who has already filed his various reports in respect of the Inventory and the operations of the Petrol Pump; therefore, the same is dismissed as infructuous accordingly.

Application at Serial No.13: CMA No.11640/2013

19. This is an application under Section 151 CPC filed on behalf of the Plaintiff through which the Plaintiff has prayed that management of the Petrol Pump be handed over to the Plaintiff as it was under the control of the Plaintiff before taking over of the same by Nazir of this Court. In the given facts, this application at this stage of the proceedings cannot be granted as the Petrol Pump is already under Receivership of the Nazir with consent; whereas, the grant of this application would seriously prejudice the interest of other Defendants. Even otherwise, no such case is made out. Accordingly, this application is dismissed.

Application at Serial No.15: CMA No.7039/2015.

20. This is an application filed on behalf of Defendant No.7/Intervenor through which directions have been sought to the Nazir of this Court to release the rental amount to the Applicant/Intervenor, who claims to be owner and Licensor of the premises in question. It is the case of Defendant No.7 that huge amount is outstanding against the Plaintiff as a fresh Contract Agreement for the next term was entered into with effect from 01.05.2013 to 30.04.2023 at the rate of Rs.600,000/- per month and subsequently increase of 10% annually. Learned Counsel has contended that due to dispute between Plaintiff and Defendant No.1, the Applicant has been deprived of its lawful dues, and therefore, Nazir be directed to release amount of Rent from the funds available with him. It has been further contended that Nazir was approached for making such payments; but he has refused on the ground that the original Agreement be provided; however, the same is with the Directorate of Air Force Islamabad; hence could not be surrendered to the Nazir of this Court. Though the applicant in this application has subsequently been joined as Defendant No.7 on 10.10.2017, and therefore, a proper application as a Defendant ought to have been filed but nonetheless, I have gone through this application and due to the present facts of this case, I am of the view that such an application cannot be granted at this stage of the proceedings. This Suit was filed in 2013; whereas, the Defendant No.7 has come before this Court in the year 2015 with

this application and claims that rent of the Petrol Pump was increased pursuant to some new arrangement from May, 2013. It is not understandable as to what was done from 2013 to 2015 when this application was filed for the first time. The Defendant No.7 ought to have come before the Court immediately upon default; but this is not the case. Even otherwise, I have already observed that due to peculiar facts of this case, grant of any such application would seriously prejudice the rights of the contesting parties, therefore, this application cannot be granted until evidence is led in support thereof, and therefore, this application being premature is hereby dismissed.

Application at Serial No.16: CMA No.11191/2015.

21. This is an application on behalf of the Plaintiff under Section 151 CPC seeking directions to the Nazir to pump out the rain water from the Suit Premises. Admittedly, this application has become infructuous and is accordingly dismissed.

Application at Serial No.17: CMA No.1417/2015.

22. This is an application under Section 151 CPC seeking directions of this Court to the Nazir to manage the affairs of the Petrol Pump in a proper manner without interference from any of the Defendants, or in the alternative, handover the control of the Petrol Pump to the Plaintiff. Since Nazir has already taken over the Pump, which is lying closed, therefore, this application cannot be granted at this stage and is accordingly dismissed.

Application at Serial No.18 CMA No.14274/2015.

23. This is an application filed on behalf of the then Intervenor now Defendant No.7, under Section 151 CPC through which modification of the Order dated 17.04.2013 has been sought for seeking permission to transfer the possession and rights of the land of Petrol Pump in question to a new Licensee Mr. Muhammad Khawaja. It is stated in the application that a new licence has though been awarded, but is subject to approval of this Court. It needs to be appreciated that the Agreement dated 7.10.2010 is in

respect of 50% share in the entire business of petrol pump including the rights and interest in the lease of land given by Defendant No.7 to the Plaintiff. Merely by making a statement that this arrangement was not within their knowledge, would not suffice, as this happened in the year 2010, whereas, the objection has been raised belatedly. Secondly, the partnership Agreement dated 1.12.2010, very clearly states that assets of the Firm include Goodwill, and all rights, title, estate and interest of the First Party (Plaintiff) including the rights under the Land Lease and benefits of all other contracts, agreements, deed and documents. It further provides that asset also includes the deposit of Rs.3.6 Million with Defendant No.7. Therefore, these facts cannot be brushed aside on mere contention of Defendant No.7, to the effect that they were not privy to any such arrangement. It is also to be noted that the lease dated 2.8.2001 in favor of the Plaintiff as claimed was for a term of 10 years (which expired on 1.8.2011), and was renewable for further two (2) terms of 5 years each, whereas, now the stance of Defendant No.7 is that they had entered into a new lease with the Plaintiff on 01.05.2013 for 10 years at a new rental. However, it is not clear as to how this lease could be entered into during pendency of this Suit by the Plaintiff, whereas, on further examination of record again very glaring omission and mistakes have come to surface. The first lease dated 2.8.2001 is with M/s Shamsains Marketing Service through Muhammad Iqbal (Director Business Development). It is not clear that whether this is a proprietorship concern, or a partnership concern. Nothing is mentioned in the lease to this effect, whereas, the Suit has been filed by one Arshad Ali Khan and neither it has been stated that there is any relation of the Plaintiff with Shamsains Marketing Service or for that matter with Muhammad Iqbal who is the signatory to the said lease. However, presumably, the first lease dated 2.8.2001 was with the Plaintiff who was doing business in the name and style of M/s Shamsains Marketing Service as there is no denial to that effect by Defendant No.7 Insofar as the 2nd lease dated 1.5.2013 claimed to have been entered into by Defendant No.7 is concerned, the same is with Shamsains Marketing Services (Pvt) Limited. Now again when this proprietorship or partnership concern was converted into a Limited Company is not on record, and further, how the Defendant No.7

has entered into such lease with a new entity, without any continuation of relations between the earlier enterprise and the subsequent company. All these questions are not so simple to be decided while hearing applications but require evidence at trial. Notwithstanding this relationship and the pendency of this Suit, now after a dispute has arisen between the Plaintiff and Defendant No.1, an attempt has been made to grant a fresh lease or licence to another party, which *per-se* is unwarranted. It is yet to be decided by the Court that as to who is the actual owner of the Petrol Pump, after creation of the Partnership. It would indeed be very harsh as well as premature, if this application is allowed for protecting the interest of Defendant No.7, pending final adjudication of the dispute. The Petrol Pump, was being run under the Partnership and all Partners are owner(s) of the entire premises including the land and property in question, irrespective of the fact that it was leased in the name of someone else, who is now a partner of the firm. This partnership was established in the year 2010, and its business was running smoothly until filing of this Suit, whereas, now at this belated stage of the proceedings, an altogether new stance has been taken to take over the property in question on a very flimsy and meritless ground. This appears to be probably an attempt as well as an understanding between the Plaintiff (who has supported this application) and Defendant No.7, to take over the main asset of the Partnership Firm, as without the premises in question, the business of the firm is nothing. In view of the facts discussed hereinabove, such application cannot be granted as the matter can now only be finally decided through evidence; whereas, grant of this application would seriously prejudice the interest of contesting parties. Accordingly, this application is also dismissed.

24. Accordingly, applications at Serial No.1 to 7, 9,10,11, 13 and 15 to 18 are dismissed, whereas, applications as Serial No.8, 12 & 14 are deferred till final arguments. Therefore, in view of such position all parties are directed to file their proposed Issues on the next date along with instructions for appointment of Commissioner to record evidence expeditiously; whereas, the petrol pump shall remain closed under the custody of Nazir of this Court as per orders already in field, and status-quo is to be maintained till final

disposal of this Suit. Office is directed to fix this matter for settlement of Issues on the next date.

Dated: 07.12.2018

Judge

Ayaz