

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1252 of 2005

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For Order on CMA No.439/2019 (U/R 110 SCCR)
2. For order on CMA No.438/2019. (application under Article 204)
3. For order on CMA No.440/2019 (Application under Order XXXIX Rule 1 & 2).

14.01.2019

Ms. Benysh Qureshi, Advocate for Applicant / Intervener.

1. Granted.
- 2-3. Both these applications have been filed by the Applicant / Intervener for alleged contempt as well as seeking restraining orders against Sindh Building Control Authority ("SBCA"). Learned Counsel for the Applicant submits that this Suit was compromised between Plaintiffs and Applicant / proposed Intervenor vide Order dated 24.02.2014 and a Decree was also passed, whereas, the compromise clearly accepted that the Applicant / Intervener was the lawful owner of the Suit property and was permitted to raise construction as per compromise, and compromise also binds SBCA to grant NOC and allow construction. She submits that now SBCA has issued the impugned notice in terms of Section 7-A of the SBCA Ordinance, which is in violation of law and is without lawful authority.

However, at the very outset she was confronted that as to how these applications are competent against SBCA in a disposed of Suit wherein some compromise decree has already been passed as it appears that the Decree was between Plaintiffs and Applicant / proposed Intervenor, (who was not even joined as a Defendant), to which she submits that prior to filing of these application she has also filed a Constitution petition, and she has been advised to approach this Court. Be that as it may, it is an admitted fact that SBCA was not a

party to such compromise and in effect, the Suit stands deemed to have been dismissed against remaining Defendants including SBICA. Without prejudice to the above, a learned Division Bench of this Court in the case reported as **PLD 2015 Sindh 336** (*Abdul Hafeez v. Pakistan Defence Housing Officers Housing Authority*), has been pleased to hold that only the parties who were signatory to the contract were bound by the terms and conditions so recorded and agreed upon between them, whereas, the Court could not while enforcing the terms and conditions so agreed, notwithstanding that such contract was superadded with the seal of the Court and turned in a consent decree, would compel a third party to obey the said terms and conditions of the compromise. Admittedly, the compromise in question was never signed or agreed by SBICA; hence no question of enforcing it arises.

In view of such position, both these applications appear to be misconceived and are hereby dismissed in limine. However, if so advised, the Applicant / Intervenor may seek appropriate remedy in accordance with law.

J U D G E

Ayaz P.S.