

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.988 of 2022

Date	Order with Signature of Judge(s)
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1. For hearing of CMA No.10216/2022.
2. For hearing of CMA No.11756/2022.
3. For hearing of CMA No.11757/2022.
4. For hearing of CMA No.12192/2022.
5. For hearing of CMA No.12570/2022.

**02.12.2022**

Mr. Imran Taj, Advocate for the plaintiff.  
Mr. Makhdoom Ali Khan, advocate alongwith Mr. Sami-ur-Rehman Khan, advocate, Khwaja Aizaz Ahsan, advocate and Mr. Fahad Khan, advocate for the defendant No.7.  
Mr. Saif Suhail, advocate for the defendant No.5/CBC.  
Malik Waseem Iqbal, advocate for the defendant No.2.

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2, 4 & 5. Per joint request of learned counsel, deferred.

1&3. It is submitted that this suit was filed on the plaintiff's grievance that the amount deposited by him towards installments, for a particular flat in the project, ought to be refunded as his economic circumstances have changed. Upon denial of the said request by the defendant No.7, he filed the present suit and it is stated in paragraph No. 7 of the plaint that the total consideration paid by him amounts to Rs.5,418,380/-. The aforesaid quantum is pleaded and no cavil in respect thereof has been articulated by the plaintiff's counsel. The respective requests for refund are particularized in paragraph 9 of the plaint and prayer clause G seeks refund of the said amount, commensurate to the grievance expressed in the pleadings.

The matter first came up before this court on 30.06.2022, and while issuing notice, this court was pleased to render the following restraining order, which subsisted till date:

“Issue notice to the defendants as well as DAG for 21.07.2022. In the meanwhile, defendant No.7 is restrained from advertising, promoting or offering any further apartments or projects in the reclaimed lands, or create and third party interest, till the next date of hearing.”

The learned counsel for the defendant No. 7 articulated that the *ad interim* order exceeds the remit of the suit and is *prima facie* disproportionate, manifestly unjust, contrary to public interest and precipitates a paralysis of the entire project; jeopardizing the unrelated interests of thousands of people, not exclusive to merely those resident therein. Whereas, per learned counsel for the plaintiff, the order is entirely commensurate with the relief claimed, hence, ought to be sustained / confirmed. Plaintiff's counsel also sought a continuance, which was opposed by the defendant's counsel upon

the grounds that irreparable harm is being caused each day that the interim order is maintained in its present state.

The first application, being CMA 10216/2022, is the plaintiff's application for interim relief, whereas the second application, CMA 11757/2022, has been filed by the defendant No. 7 seeking to have the subsisting interim order varied/modified/set aside. Per learned counsel, the applications and counter affidavits, in respect of the applications under consideration, have been exchanged.

This court has perused the pleadings and heard the respective learned counsel. The primary objective of an interim order is to preserve the *lis* during pendency of the proceedings<sup>1</sup>, however, the exercise of such discretion is fettered by settled principles of law.

It is observed, per the memorandum of plaint, that the interest of the plaintiff is squarely in respect of refund and the same has been quantified by the plaintiff himself, in paragraph No.7 of the plaint, to be Rs.5,418,380/-. Neither counsel has raised any cavil in such regard. In view hereof, these applications are hereby determined and disposed of with directions to the defendant No.7 to provide security to the extent of Rs.5,418,380/- before the Nazir of this court, via pay order or bank guarantee. If the security is provided via a pay order then the amount may be invested per the Rules.

In the aforesaid terms these two applications stand disposed of and all earlier order/s stand recalled / modified / varied to such effect. Adjourned.

JUDGE

Khuhro/PA

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<sup>1</sup> *Islamic Republic of Pakistan & Others vs. Zaman Khan & Others* reported as 1997 SCMR 1508 and *Rahat Khan vs. Tahir Naveed* reported as 2009 CLC 433.