

## ORDER SHEET

**IN THE HIGH COURT OF SINDH AT KARACHI****High Court Appeal No. 303 of 2021**

Date	Order with signature of Judge
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PRESENT:

**Mr. Justice Aqeel Ahmed Abbasi**  
**Justice Mrs. Rashida Asad**

**FRESH CASE**

1. For orders on CMA No. 2423/2021.
2. For orders on office objection a/w. reply at "A".
3. For orders on CMA No. 2424/2021.
4. For hearing of Main Case.
5. For orders on CMA No. 2425/2021.

**13.12.2021:**

Mr. Abid S. Zuberi, Advocate for the appellant  
a/w. M/s. Ayan Mustafa Memon  
& Ms. Minhal Malik, advocates.

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1. Granted.
- 2-5. Instant High Court Appeal has been filed by the appellant against the order dated 01.12.2021 passed by the learned Single Judge of this Court in Suit No. 2316 of 2021, whereby, according to learned counsel for the appellant, the report of the Official Assignee, which has been seriously disputed, has been taken on record, whereas, further directions have been issued to the appellant i.e. Defence Housing Authority (DHA) and to Civil Aviation Authority (CAA) and Port Qasim Authority (PQA) to submit compliance of the prayers made by the Official Assignee in his report. According to learned counsel for the appellant, appellant intends to file objections on such report as the same has been prepared in violation of the mandate given by the Court. It has been further contended by the learned Counsel for the appellant that through impugned order, the report of the Official Assignee, which has been based on the assistance given by one Ms. Marvi Mazhar, who was never directed by the Court to be associated with such exercise, whereas, the Official Assignee was not given such mandate by the Court. According to learned

counsel for the appellant, the report prepared by the Official Assignee has taken into consideration, various aspects, including reclamation of land by the different authorities, including DHA, which is not even subject matter of the suit. It has been further submitted by the learned counsel for the appellant that an application under Order 7 Rule 11 CPC has been filed by the appellant, wherein, serious objections have been raised with regard to maintainability of suit, however, without deciding the issue relating to maintainability of the suit itself, directions have been issued to the appellant (DHA) and to other authorities i.e. CAA and PQA to submit documents pursuant to prayers as made by the Official Assignee in his report. According to learned counsel for the appellant, further proceedings in the suit, without first deciding the legal issue as to maintainability of the suit, would render the application filed under Order 7 Rule 11 CPC as redundant, on the one hand and would change the complexion of the suit on the other hand. According to learned counsel, Notices of the contempt application have also been issued, therefore, the impugned order has prejudiced the rights and interest of the appellant in the suit, and would adversely affect the merits of the application filed under Order 7 Rule 11 CPC.

Mr. Khawaja Shams-ul-Islam, Advocate present in Court, submits that though, no notice under Rule 43 Rule 1 CPC has not been served upon respondents, however, he waives notice of instant High Court Appeal, claims copy of instant High Court Appeal, undertakes to file vakalatnama on behalf of respondents No. 1 to 6 and requests for time to file reply/objections. However, without prejudice to his right to file reply/objections to instant High Court Appeal, learned counsel for the respondents has submitted that no cause of grievance is available to the appellant to impugned the aforesaid order, as according to learned counsel, no final adverse order has been passed, and the appellant has only been directed to submit the relevant documents, which according

to learned counsel, may be needed for the purposes of examination by Court and be used for decision in the suit in accordance with law. It has been further contended by the learned counsel for the respondents that since the alleged contemnors have violated the Court's order, therefore, contempt application was filed on which, only notices have been issued, wherein, they are at liberty to file reply/objections and also to file objections on the report submitted by the Official Assignee, including the act of associating of Ms. Marvi Mazhar by the Official Assignee and her appointment as Amicus Curiae by the Court.

Mr. Ahmed Ali Hussain, advocate present, waives notice of instant High Court Appeal, undertakes to file vakalatnama on behalf of respondents No. 8, claims copy of instant High Court Appeal and requests for time to file reply/objections.

After hearing the learned counsel for the parties at some length and from perusal of the impugned order, it appears that through impugned order, no final decision has been made either on any application nor any final adverse order has been passed, which may affect either the merits of the application filed by the appellant under Order 7 Rule 11 CPC or the legal issues involved in the subject suit. The appellant is at liberty to file objections on the Official Assignee's Report, including associating Ms. Marvi Mazhar, while preparing such report as well as her appointment as Amicus Curiae in the instant matter.

In view of hereinabove facts and circumstances of the case, we are disposing of instant High Court Appeal with the directions to the learned counsel for the parties to appear before the learned Single Judge, when the matter is reportedly fixed on 15.12.2021, and to file objections to all the pending applications, as well as objections to Official Assignee's Report, with advance copy to learned counsel for the other side. It is expected that on the aforesaid date, if the application is ripe for hearing, by consent of the learned counsel present, the hearing of application under

Order 7 Rule 11 CPC shall be made first. In the meanwhile, unless, listed applications are finally decided after hearing the learned counsel for the parties in accordance with law, directions issued in the impugned order on the report of the Official Assignee, shall not be implemented and no adverse inference be drawn.

Instant High Court Appeal stands disposed of in the above terms alongwith listed applications.

**JUDGE**

**JUDGE**

**A.S.**