

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1724 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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For hearing of CMA No.4017/2021 (U/O VII R-11 CPC).

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Dated 12.10.2022

Mr/s Muhammad Mushtaq Qadri and Muhammad Ovais Malano, Advocates for the plaintiffs.

Mr. Muhammad Umer Lakhani, Advocate for defendant No.1.

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Heard the learned counsel.

In this suit for compensation and damages an application under Order VII Rule 11 CPC was filed by defendant No.1 i.e Delhi Co-operative Housing Society Limited. The predecessor of the plaintiff once claimed to have been allotted a plot, possession of which was not handed over to them, as claimed. The dispute was then resolved by an arbitration Award and ultimately the matter went up to Hon'ble Supreme Court. The suit plot since was no longer available, in lieu thereof three alternate plots were offered before Hon'ble Supreme Court when on 28.12.2016 petitioner's predecessor's case was disposed of.

Mr. Muhammad Umer Lakhani, learned counsel for defendant No.1 now seeks rejection of the plaint on the count that the plots which were accepted by the plaintiffs cannot be said to be of any lesser value, however, without prejudice it is argued that they might be of a lesser value but when they were accepted, the cause perished and consumed. He has further relied upon the review order and the memo of review before Hon'ble Supreme Court, wherein identical grounds were raised, as raised here, and review of the original order dated 28.12.2016 was sought and consequently review was

dismissed and so also a cause to claim damages even if the value of plots later found out to be lesser than the plot of Arbitration Award.

The case of the plaintiffs, however, is on the footings that at the time when this offer was made before Hon'ble Supreme Court, they did not know the value of the property and it was believed by the predecessor of the plaintiffs as suggested by defendant and cause developed later. However, the crucial part of that compromise in the shape of consent order is that the scheme, where such plots are situated was required to be “developed” by the Delhi Co-operative Housing Society; in terms of the orders of the Hon'ble Supreme Court referred above.

The ratio of the earlier litigation was an Award in respect of a plot, which plot was found to be in possession of some other third party and not available for its possession to plaintiffs' predecessor; hence before Hon'ble Supreme Court alternate plots were offered on the same day when the matter was taken up i.e. 28.12.2016 and the Hon'ble Supreme Court observed that “*it is expected that Delhi Co-operative Housing Society shall develop the scheme at the earliest, so that the petitioners who have been denied plots inordinately should be compensated*”. It is now successor of earlier litigant (plaintiffs) have approached this Court that neither the plots worth enough at the relevant time of compensation when the plots were denied to them nor have they been developed in a way that these three plots could fetch enough value, hence this suit is for compensation and damages.

There is no cavil that a review petition was filed on the ground that these three plots are not worth enough but then the ratio of the judgment of Hon'ble Supreme Court is not what the subject matter of this suit is. This suit claims compensation in respect of three plots which did not have enough value at the relevant time, as per counsel

and more importantly the society has not developed the scheme and that cause cannot be equated with the cause that triggered earlier when arbitration Award was passed and the parties went upto Hon'ble Supreme Court. It cannot thus be said that a cause to claim compensation/damages in view of above, is not available with the plaintiffs. Whether defendant No.1 has done enough to develop land is also a triable issue, therefore, I am not inclined, at this point of time to reject the plaint of the suit out rightly on account of involvement of triable issues and existence of the cause of action. The application [CMA No.4017/2021] as such is dismissed.

JUDGE

Ayaz Gul