

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
HCA No. 252 of 2023

Dated: Order with signature of Judge(s)

1. For orders on office objection.
2. For hearing of Main Case.
3. For hearing of CMA No.2680/2023.
4. For hearing of CMA No.2684/2023.

Yousuf Ali Sayeed, J
Mohammad Abdur Rahman, J

Date of hearing : 19.06.2023:

Appellants : Shaikh Anjum Rehmat & Others through
Mr. Muhammad Ali Lakhani, Advocate.

Respondent No.2 : Muhammad Bilal through Mr. Rehan Kiyani,
Advocate.

Respondents No.1,
3 & 4. : None present.

J U D G E M E N T

Mohammad Abdur Rahman, J. This is an Appeal that has been maintained under Section 15 of the Code of Civil Procedure (Amendment) Ordinance, 1980 read with Rule 3 of the Law Reforms Ordinance, 1972 against the Order dated 7 June 2023 passed by a learned Single Judge of this Court in Suit No. 325 of 2023 whereby the learned Single Judge while interpreting an Order dated 11 April 2023 passed in Suit No. 325 of 2023 in respect of various interim rights inter se the parties in respect of Pent House No.2, 31st Floor, 70 Rivera, Block No.4, KDA Scheme No. 5, Clifton, Karachi, admeasuring 4000 sq. feet.

2. The Appellants are the owners of a Plot bearing Plot No.F-70, Block No.4, KDA Scheme No.5, Clifton, Karachi. The Appellants had, in or around in the year 2012, entered into an agreement with Burj Builders &

Developers to construct a project known as “70 Rivera” on Plot No.F-70, Block No.4, KDA Scheme No.5, Clifton, Karachi. Pursuant to an understanding as between the Appellants and the Burj Builders & Developers, the Respondent No. 2, an agreement of same nature was made where 4 penthouses were to be transferred into the name of the Respondent No. 2 and which right the Appellants allege was contingent to the settlement of accounts. There were disagreements to this end which led to Suit No. 325 of 2023 being instituted by the Respondent No. 2, *inter alia*, as against the Appellants for Specific Performance in respect of Pent House No. 4, located at 31st Floor, of the project known as “70 Rivera” situated on Plot No.F-70, Block No.4, KDA Scheme No.5, Clifton, Karachi, admeasuring 4000 sq. feet (hereinafter referred to as the “Said Property”). The Appellants have in retaliation maintained Suit No. 786 of 2023, *inter alia*, as against the Respondent No. 2 for Declaration, Rendition of Accounts and Recovery of Damages, Recovery of Amount, Permanent and Mandatory Injunction.

3. On 11 April 2023 in Suit No. 325 of 2023, the Respondent No. 2 maintained CMA No. 5942 of 2023 being an application under Rule 110 of the Sindh Chief Court Rules and CMA No. 5943 of 2023 being an application under Order XVIII Rule 18 read with Order XL Rule 1 and Sections 94 and 151 of the Code of Civil Procedure, 1908, with the following prayers:

“ ... It is most respectfully and most humbly submitted that for the detailed reasons stated in the accompanying Affidavit, this Honourable Court may graciously direct the Nazir of this Honourable Court to inspect the Project, situated at Plot No.F-70, Block No.4, KDA Scheme No.5, Kehkashan Clifton, Karachi, admeasuring 2705.55 square yards and submit a detailed report, including photographs, as to the state/stage of the illegal construction, misuse of recreational space, misuse of parking space, including any other deviation/violation of the approved building plan by the Defendants No. 4 to 8 and their nominees.

Furthermore, it is requested that this Honourable Court may graciously direct the Nazir of this Honourable Court

to inspect the Suit Property and submit a detailed report, including photographs, as to the state of possession including utility meter readings of the Suit Property to assess whether the Plaintiff has been illegally removed from possession of the same. It is humbly requested that if the Nazir/Commissioner is of the opinion that the Plaintiff has been illegally dispossessed of the Suit Property, then the same shall be sealed and Nazir to take possession of the Suit Property to protect/restrict the Defendants No. 4 to 8 from creating further third-party interest in the Suit Property. It is further prayed that the inspection exercise may be conducted without issuing notice to the Defendants.

The abovementioned prayer is made in the interest of justice and my graciously be granted.”

CMA No. 5943 of 2023 was heard on 11 April 2023 and on which date the following order was passed:

“ ... 11.04.2023

M/s. Muhammad Ahmed Masood & Muhammad Altaf, Advocates for the Plaintiff.

1. Urgent application is granted.
2. Through listed application, counsel for the plaintiff seeks inspection of the suit property i.e. Plot No.70, Block-4, KDA Scheme No.5, Kehkashan Clifton, Karachi, admeasuring 2705.55 squared yards, with regard to state/stage of illegal construction, misuse of recreational space, misuse of parking space, including any other deviation/violation of approved building plan by defendants No.4 to 8 and with regard to state of possession of plaintiff.

Accordingly, the listed application is allowed as prayed. Nazir is directed to make surprise visit, inspect the subject property by taking all necessary measures and submit comprehensive report to this Court. The fee of Nazir is fixed at Rs.50,000/-, to be paid by the plaintiff in advance.

To come up on 30.05.2023.”

(Emphasis is added)

4. Being aggrieved by the order dated 11 April 2023 passed on CMA No. 5943 of 2023 in Suit No. 325 of 2023 on various grounds, including a

ground that the application was granted as prayed without notice to them, the Appellants had maintained an Appeal bearing HCA No. 225 of 2023 before a Division Bench of this Court and which was dismissed on 4 May 2023 on which date following order was passed:

"04.05.2023

Mr. M. Jaffer Raza, Advocate for the appellants.

1. Urgency granted.

2-4. This High Court Appeal (**HCA**) has been filed impugning the order dated 11.04.2023 whereby the learned Single Judge, by looking to the factual aspects of the Suit bearing No.325 of 2023, directed the Nazir of the Court to make surprise visit, inspect the subject property by taking all necessary measures and submit comprehensive report to the Court. At the very outset, the counsel for the appellants was directed to satisfy the Court with regard to the maintainability of this HCA and to point out that what is wrong with this order, since it is an admitted position that there was a dispute between the plaintiff and the defendants in the suit with regard to the property i.e. Plot No.70, Block-4, KDA Scheme No.5, Kehkashan Clifton, Karachi. To which the counsel replied that the appellants apprehend that the plaintiff in the suit (who is respondent No.2 in the present HCA) might misinterpret the order of the learned Single Judge. In our view the above argument of the learned counsel is not only fallacious but also misconceived, as how could directions for conducting inspection and submitting comprehensive report by the Nazir be misinterpreted by the plaintiff in the said suit and how a lease in this behalf could be given to the present appellants? No plausible explanation with regard to this query was available with the appellants' counsel. During the course of arguments, the counsel also stated that he has no objection for the inspection which, according to him, has already been carried out. If such is the position, the appellants, in our view, would be at liberty to raise objections, if any, against the report of the Nazir, if furnished before the learned Single Judge, in accordance with law. Under these circumstances, the present HCA is found to be wholly misconceived and not maintainable, the same, therefore, stands dismissed in limine along with the listed applications."

That as can be seen while finding there to be no infirmity or illegality in the order dated 11 April 2023 passed by the learned Single Judge on CMA No. 5943 of 2023, the Division Bench of this Court on 4 May 2023 dismissed HCA No. 225 of 2023 and noted that if and when the Nazir's

Report was filed, the Appellants would have a right to file their objections to the Nazir's report.

5. Pursuant to the order passed on CMA No. 5943 of 2023 Nazir had inspected the Said Property on 12 April 2023 and submitted his report on 28 April 2023 in Suit No. 325 of 2023 *inter alia* in the following terms:

- “ ... 4. Penthouse No.02: The Penthouse was found locked. Mr. Hanif bearing CNIC No.45103-0389823-3 arrived after 40 minutes introduced himself as an employee of Mr. Nadeem and opened the door with key. He had no ownership or rental documents to show legal possession. Inspection of such Penthouse has carried out and found out that no family was residing there however Mr. Hanif was verbally stating before opening the Penthouse that he is residing with his family. Penthouse was found ready-to-move including all structural work, bathroom, tiling and other things (unused conditions). One double-bed, one table and a few chairs were found.
5. Penthouse No. 04: Upon knocking, Mr. Niaz Hussian (CNIC was not available) opened the door from inside and claimed that his family is residing but when the inspection team checked, no family was residing there. He had no ownership or rental documents to show legal possession. He stated that Mr. Anjum posted him and he came into his penthouse this morning. Inspection of such Penthouse had carried out and found out that Penthouse was found ready-to-move including all structural work, bathroom, tiling but no furniture was found.
6. Electric meters readings of both Penthouses were checked and compared with the current bills proved that the electricity was not being consumed.
7. While inspecting the parking floors, Mr. Raheel who claimed to be the person responsible for maintenance of the building came forward and informed that the both Penthouses were handed over to the Plaintiffs and the Plaintiffs have gotten the work done in the penthouses. He claimed that plaintiffs were recently dispossessed.
8. It may further be noted that since the application for sealing of the penthouses filed by the Plaintiffs which were granted as prayed by the Hon'ble Court, in view of that, the inspection team attempted to seal the Penthouses as they were

empty. However, Mr. Yahya Advocate for the Defendants physically stopped the inspection team from doing the same. Fearing law and order situation, the penthouses were not sealed.”

6. The Appellants have also maintained CMA No. 6074 of 2023 being an application under Section 151 of the Code of Civil Procedure, 1908 for seeking clarification, recall and modification of the order and which is still pending adjudication.

7. On 7 June 2023 the matter was listed before the learned Single judge and on which date no less than 7 applications were listed before the learned Single Judge one of which CMA No. 4453 of 2023 being an “Application for Contempt of Court under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Order 39 (2) (ii) and section 3 and 4 of the Contempt of Court Ordinance, 2003” and on which date an order was passed by the learned Single Judge in the following terms:

- (i) That the order dated 11 April 2023 on CMA No. 5943 of 2023 having been allowed “as prayed” and which had not been set aside in HCA No. 225 of 2023 meant that a Receiver had been appointed pursuant to the order dated 11 April 2023 of the Court;
- (ii) That Nazir’s report while noting that one Mr. Yahya Advocate physically stopped the Nazir from sealing and taking possession of the Said Property prima facie amounted to obstructing the implementation of the order dated 11 April 2023 and on account of which a Show Cause Notice was issued to Mr. Yahya Advocate, for Contempt of Court.

- (iii) The objections of the Appellants to the Nazir's report dated 28 April 2023 were taken on record.

8. Mr. Muhammad Ali Lakhani, Advocate appeared for the Appellants and argued that the Order dated 7 June 2023 passed on CMA No. 4453 of 2023 has contended that the learned Single Judge has:

- (i) keeping in mind the observations of the Division Bench in HCA No. 225 of 2023 clearly misinterpreted the Order dated 11 April 2023, and
- (ii) failed to consider the objections filed by the Appellants on the report of the Nazir as prior to order the sealing of the Said Property and its possession being taken over by the Nazir as he contends that there had to be a factual basis for the Nazir to come to the conclusion that the Plaintiff had been dispossessed from the Said Property which was not apparent in the Nazir Report and which had to be specifically confirmed by the Nazir before sealing the Said Property and/or possession of the Said Property being taken by the Nazir;

In this regard he contends that a bare perusal of the report of the Nazir would indicate that the entire finding was based on a statement of one person who purportedly representing himself as being Mr. Raheel had stated that the Said Property had initially been handed over by the Appellants to

the Respondent No. 2 and who had carried out refurbishment work in the Said Property and who have recently been dispossessed. He argues that the status of Mr. Raheel at the time of the inspection was suspect and he had no business to interfere with the inspection of the Said Property or to be a witness to such proceeding and on whose statement the Nazir could not have relied on. He maintained that the Nazir could not have relied solely on the contention of Mr. Raheel and had to, on the basis of evidence before him, satisfy himself as to the fact that the Plaintiff had been dispossessed prior to the Nazir exercising the authority to see seal the Said Property and take over possession of it as a Receiver. He finally contented that a Mr. Raheel Khan, who is a member of the association of the building in which the Said Property is located, has sworn an affidavit stated as follows:

- “ ... 1. That I say that I am working in a management team of 70 Rivera located in Clifton Karachi.
2. That I say that I was contacted by Mr. Sajid Ibrahim, the builder requesting a meeting with me at BBQ Tonight at 10.30 p.m. Upon reaching, I was instructed by Mr. Sajid Ibrahim to visit the Subject Property on 12.04.2023 and falsely inform the Learned Nair or any other officer appointed by the Learned Nazir that he Plaintiff was in possession of the Subject Property. It is submitted that I neither visited the Subject Property nor engaged in any correspondence with any officer appointed by the Learned Nazir. Hence, the statement recorded by the officer of the Learned Nazir in the Inspection Report is unequivocally false and fabricated.”

Mr. Muhammad Ali Lakhani, Advocate insisted that this affidavit proves that the person who has come forward before the Nazir was actually a representative of the Respondent No. 2.

He concluded his arguments by stating that the order dated 7 June 2023 was passed in error and in haste and was liable to be set aside.

9. Mr. Rehan Kiyani, Advocate appearing on behalf of the Respondent No. 2 had contended that the order dated 11 April 2023 on CMA No. 5943 of 2023 in Suit 325 of 2023 having been granted "as prayed" would clearly mean that the Nazir, in the event that he had come to the opinion that the Plaintiff had been dispossessed from the Said Property was entitled to seal the Said Property and take possession thereof. To demonstrate his possession of the Said Property he filed a Statement dated 20 June 2023 producing various vouchers to show that he had refurbished the aid Property and which he contends demonstrates the expenses that he had incurred on such refurbishment. He stated that the person indicated in paragraph 4 of the Nazir Report as currently being in possession of the Said Property was the agent of the Appellants and who had been placed in the Said Property at the time of inspection to create the illusion that the Said Property was in the possession of some other persons and not the Respondent No. 2. He concluded by stating that there is no infirmity or illegality in the interpretation made by the learned Single Judge in Order dated 11 April 2023 and which was inconsonance with law. Neither Mr. Muhammad Ali Lakhani, Advocate appearing on behalf of the Appellants nor Mr. Rehan Kiyani, Advocate appearing on behalf of the Respondent No. 2 relied on any case law in support of their contentions.

10. We have heard both the counsel for the Appellants and the Respondent No. 2 and have perused the record of this Appeal and also of Suit No. 325 of 2023. Our findings on the issues that are germane to this *lis* are as under:

- (i) The order dated 7 June 2023 was passed by the learned Single Judge on CMA No. 4453 of 2023 being an “Application for Contempt of Court under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Order 39 (2) (ii) and section 3 and 4 of the Contempt of Court Ordinance, 2003” in Suit No. 325 of 2023 and which while referring to the Nazir Report dated 28 April 2023 has issued a show cause notice for contempt of court to an Advocate of this Court for interfering with the implementation of the order dated 11 April 2023. The Show Cause Notice that was issued pursuant to the order dated 7 June 2023 has since been discharged by the Learned Single Judge on 11 June 2023 on an unconditional apology being submitted by the alleged contemnor to the court. Therefore this Appeal to the extent that the Appellants impugn the issuance of the Show Cause Notice for contempt of court, has been rendered infructuous.
- (ii) Regarding the interpretation of the order dated 11 April 2023, we find ourselves in agreement with the learned single judge who heard the matter on 7 June 2023 and who has correctly stated that as CMA No. 5943 of 2023 in Suit 325 of 2023 had on 11 April 2023 been “granted as prayed”. A regular feature in pleadings, the expression “Prayer for Relief” has been defined to mean:¹

“ ... A request addressed to the court and appearing at the end of pleadings, esp.; a request for specific relief for damages,- often shortened to prayer.

When an order specifies that the relief has been granted as prayed, the only obvious conclusion that one can reach from the presence of such words in an order is that the entire relief that has been claimed has been granted as stated in the application or Plaint. This would lead to the conclusion that the order of 11 April 2023 must be interpreted to have granted:

¹ Garner, B.A. Black’s Law Dictionary, 9th Edition, Dallas, 2009 at pg 1294

- (a) the “surprise” inspection of the Plot No. F-70, Block No. 4, Karachi Development Authority Scheme No. 5, Kehkashan, Clifton Karachi admeasuring 2705.55 square yards with directions to the Nazir to submit a report with photographs, as to the state/stage of any illegal construction, misuse of recreational space, misuse of parking space, including any other deviation/violation of the approved building plan;
- (b) to inspect the Suit Property and submit a detailed report, including photographs, as to the state of possession including utility meter readings of the Suit Property to assess whether the Plaintiff has been illegally removed from possession of the Said Property;
- (c) if the Nazir **was of the opinion** that the Respondent No. 2 had been **illegally dispossessed** of the Said Property, then permitting the Nazir to seal and take possession was to be taken of the Said Property by the Nazir from, and
- (d) not permit third party interests from being created in respect of the Said Property.

11. As the order dated 11 April 2023 was unsuccessfully appealed by the Appellants in HCA No. 225 of 2023 and which appeal was dismissed without either modifying or setting aside the order, we are clear that we cannot reinterpret the order in a manner which would tantamount to sitting in appeal over that order and which we are clear that the order dated 11 April 2023 passed on CMA No. 5943 of 2023 in Suit No. 325 of 2023 can only be unsettled by the Supreme Court of Pakistan. As such, we cannot agree with the arguments of Mr. Muhammad Ali Lakhani, Advocate that on

the basis of the observation made by the Division Bench of this Court in HCA No. 225 of 203, the learned Single Judge had misinterpreted the order dated 11 April 2023. The Order dated 4 May 2023 passed in HCA No. 225 of 2023 while making observations regarding the inspection being carried out by the Nazir of this Court, does not in any manner modify or set aside the order dated 11 April 2023 which was granted "as prayed". We therefore hold that such an order would mean that the order passed would be to grant all the relief prayed for in the application and cannot exclude any portion of it. As such to the extent that this Appeal impugns the interpretation of the order dated 11 April 2023 passed on CMA No. 5943 of 2023 in Suit No. 325 of 2023 we are of the opinion that the order dated 7 June 2023 suffers from no infirmity or illegality and to that extent the order is also upheld.

(iii) Nazir Report dated 28 April 2023 and the objections that have been filed against the Nazir Report dated 28 April 2023 have yet to be heard and adjudicated on by the learned Single Judge and who will thereafter have to ascertain as **from the report** if the Nazir **was of the opinion** that the Respondent No. 2 had been **illegally dispossessed** from the Said Property and thereafter to pass an order directing the sealing of the Said Property and as to whether the Nazir should take possession of the Said Property as a receiver the arguments raised by Mr. Muhammad Ali Lakhani, Advocate and by Mr. Rehan Kiyani Advocate as regards this issue are premature.

10. For the reasons as stated above we are of the opinion that this Appeal against the order dated 7 June 2023 is not maintainable as the issues emanating from that order, as has been clarified hereinabove, have either been rendered infructuous, or have correctly been decided by the learned Single Judge, or remain to be decided and cannot at this stage be

agitated in this Appeal. We therefore dismiss the appeal in such terms with no order as to costs.

JUDGE

Dated; _____ July 2023.

JUDGE

Nasir PS.

