

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
HCA No. 247 of 2023

Dated: _____ Order with signature of Judge(s)

1. For orders on CMA No.2674/2023.
2. For orders on CMA No.2603/2023.
3. For orders on office objection a/w reply as at 'A'.
4. For orders on CMA No.2604/2023.
5. For hearing of Main Case.
6. For orders on CMA No.2605/2023.

Yousuf Ali Sayeed, J
Mohammad Abdur Rahman, J

Date of hearing : 13 June 2023:

Appellant : Mst. Gulzar Huma through Attorney
Noorussabah in person.

Respondents : Zaki Nawab & Others.

ORDER

1. Granted

2 and 3. This Appeal was presented on 14 April 2023 and is barred by 5 days. The reason given in the affidavit supporting the application under Section 5 of the Limitation Act, 1908 is that the Appellant is appearing in person and on account of the fact that she is a widow and is short of money she has been delayed by a period of five days in filing this appeal. The Application is granted and the delay in filing this Appeal is condoned.

4,5 and 6. This Appeal has been preferred under Section 3 of the Law Reforms Ordinance, 1972 read with Section 15 of Code of Civil Procedure (Amendment) Ordinance, 1980 as against an order dated 15 February 2023 passed in Suit No. 1326 of 2012 dismissing two interlocutory applications, bearing CMA No. 4022 of 2022 and CMA No. 5923 of 2022, both being

applications filed by the Appellant under Section 151 of the Code of Civil Procedure, 1908.

2. Suit No. 1326 of 2012 has been filed by the Appellant contending that she is the owner of Plot No.588, J.M. 46/7, Gujrat Colony, Karachi, admeasuring 981.50 square yards (the 'Said Property'). The Appellant has further alleged in the Memo of Appeal that in or around 1974, her late husband had rented out a portion of the Said Property to one Mr. Naqi Nawab. After the demise of Mr. Naqi Nawab, his legal heirs were in possession of the Said Property as statutory tenants causing the Appellant to institute Rent Case No. 193 of 2012 before the VI Rent Controller Karachi (East) seeking their eviction. It is further averred that the Respondents No. 1 to 6 have illegally had an undivided portion of the Said Property transferred into their names and who have thereafter conveyed that undivided share in the Said Property to the Respondents No. 11 to 15 and who are proceeding to construct thereon. The Appellant has therefore instituted Suit No.1326 of 2012 seeking declaratory relief as to her title to the Said Property and injunctive relief as against the Respondents.

3. The Respondent No. 11 has also filed a Suit bearing No. 601 of 2014 before this Court wherein he claimed title to a portion of the Said Property and is apparently constructing a building thereon. The Respondent No. 11 has also filed Suit No. 760 of 2014 seeking damages from the Appellant and is also maintaining a third Suit bearing No. 925 of 2014 which he has filed claiming Specific Performance on an Agreement of Sale in respect of the undivided share that was purportedly held by the Appellant's brothers-in-law and sister-in-law.

4. During the pendency of all this litigation, the Appellant has also maintained a Petition bearing C.P. No. S-249 of 2019 seeking protection against harassment purportedly being caused to her by the Respondents.

While various relief had been granted in this petition in favour of the Appellant, it has since been dismissed for non-prosecution and a restoration application remains pending for adjudication.

5. It is apparent that over the course of the last 11 years various applications have been filed in Suit No. 1326 of 2012 from time to time and on which various orders have been passed and other orders which are subsisting and which are clarified below:

CMA No	Provision under which application was filed	Application Filed By	Original Order Passed	Status of Application	Whether Appeal Preferred
10350 of 2012	Order XXXIX Rule 1 and 2 seeking that the official respondents do not make any changes to entries maintained by them in respect of the Said Property in the record of rights.	Appellant	On 1 October 2012 parties were directed to maintain Status Quo	Disposed of on 5 December 2013 with the consent of all the parties that the Respondents would be permitted to construct on the Said Property at their own risk and cost.	No.
13706 of 2012	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 For Violating order dated 1 October 2012 passed on CMA No. 10350 of 2012	Appellant	Pending adjudication		
13604 of 2013	Under Section 151 of the Code of Civil Procedure, 1908 to recall the order 5 December 2013 passed on CMA	Appellant	On 7 December 2013 parties were directed to maintain Status Quo	Modified on 17 December 2013 with certain directions subject to which the	HCA No. 11 of 2014 was preferred against the Order dated 17 December

	No. 1035 of 2012			Respondents would be permitted to construct on their portion of the Said Property	2013 and which dismissed on 25 November 2014. CPLA No. 419-k of 2014 was preferred as against the order dated 5 November 2014 passed in HCA No. 11 of 2014 and which has also been dismissed on 5 January 2015.
621 of 2014	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 For violating order dated 7 December 2013 passed on CMA No. 13604 of 2013	Appellant	Pending adjudication		
2640 of 2015	Under Section 151 of the Code of Civil Procedure, 1908 for recalling order dated 23 February 2015	Appellant	Pending adjudication		
2641 of 2015	Order XXXIX Rule 1 and 2 not to create any third party interest	Appellant	Pending adjudication	Modified on 29 November 2021 with directions that the parties are to maintain status quo and which is still pending	

5335 of 2015	Under Section 151 of the Code of Civil Procedure, 1908 for discarding the report of the Structural Engineer.	Appellant	Pending adjudication		
17228 of 2021	Order XXXIX Rule 1 and 2 filed by Respondents restraining them from interfering with the construction of the Respondents	Respondents	On 14 October 2021 an order was passed restraining the Appellants from interfering in the construction being carried out by the Respondent s.	Modified on 29 November 2021 with directions that the parties are to maintain status quo and which is still pending	
17229 of 2021	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 filed by Respondents for violating an order dated 23 February 2015	Respondents	Pending adjudication		
19077 of 2021	Under Section 151 of the Code of Civil Procedure, 1908 to restrain the Respondents from constructing on the property.	Appellant	Pending adjudication		
19357 of 2021	Order XXXIX Rule 1 and 2 seeking an injunction to restrain the Respondents from demolishing the construction and from harassing the Appellant	Appellant	Pending adjudication		

19710 of 2021	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 for violating the order dated 14 October 2021	Appellant	Pending adjudication		
21697 of 2021	Under Section 159 of the Sindh Chief Court Rules for permitting them to file the Written Statement.	Respondents	Pending adjudication		
361 of 2022	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 for violating the order dated 29 November 2021	Appellant	Pending adjudication		
4022 of 2022	Under Section 151 of the Code of Civil Procedure, 1908 with 7 Prayer Clauses	Appellant	Pending adjudication		
4973 of 2022	Under Section 151 of the Code of Civil Procedure, 1908 set aside the order dated 1 March 2022 permitting the Respondent No. 2 and 3 from filing their Written Statement	Appellant	Pending adjudication		
5923 of 2022	Under Section 151 of the Code of Civil Procedure, 1908 to demolish the building constructed on the Said Property by the Respondent No. 11.	Appellant	Pending adjudication		

6746 of 2022	Under Section 3 and 4 of the Contempt of Court Ordinance, 2001 against the PS Jamshed Quarters and SSP East and DIG East for detaining the Daughter of the Appellant	Appellant	Pending adjudication		
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6. It would seem that the Said Property was an evacuee property and there is a dispute pending in Suit No. 1326 of 2012 as to the title of the Appellants and the Respondents to the Said property. Regarding the various interim injunctive relief that has been granted it is apparent that initially an order directing the parties to maintain status quo was passed on 1 October 2012 on CMA No. 10350 of 2012. This application was disposed of on 5 December 2013 with the consent of all of the parties with directions that the Respondents would be permitted to construct at their own risk and cost subject to the decision in Suit NO. 1326 of 2012. It would seem that such consent was given by the Counsel for the Appellant who, the Appellant alleges did not have the authority to give such a consent. The Appellant therefore moved an application bearing CMA No. 13604 of 2013 for recalling the order dated 5 December 2013. On 7 December 2013 an order was passed directing that the parties maintain status quo and which was subsequently modified on 17 December 2013 with directions that the Respondents would be permitted to construct on the Said Property at their own risk and cost. An appeal bearing HCA No. 11 of 2014 was preferred as against the order dated 17 December 2013 and which was dismissed on 25 November 2014. A further application for leave to appeal bearing No. 419-K of 2014 was preferred before the Supreme Court of Pakistan and which was dismissed on 5 January 2015. Thereafter the **Respondents** have filed CMA No. 17228 of 2021 in which on 14 October 2021 and order

was passed restraining the Appellants from interfering with the construction of the Respondents. This Order was modified on 29 November 2021 directing the parties to once again maintain status quo.

7. From the record it apparent that on 15 February 2023 there were 15 applications pending before the learned Single Judge in Suit No. 1326 of 2012. Out of the fifteen applications, two were fixed for orders each of which taken up by the learned single judge and were dismissed and which order of dismissal has been impugned by the Appellant in this Appeal.

A. CMA No. 4022 of 2022

8. The Appellant has moved this application under Section 151 of the Code of Civil Procedure, 1908 seeking the following relief:

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1. It is prayed that this Honorable Court take action against defendants because they are violating Honorable High Court orders, and they are threatening for dire consequences and harassing plaintiff family and they want to usurp/grab the property.
 2. It is prayed that kindly take legal and lawful action in the interest of justice on damaging / demolishing the suit property, demolishing the main boundary wall of the plaintiff house, trespass, held, illegal occupation, illegally detaining plaintiff and her daughters and on stolen or taken away the ornaments or the things mentioned in the application.
 3. It is prayed that this Honorable Court vacate / execute defendants and his allies from the plaintiff house as mention in stay order dated 29/11/2021.
 4. It is prayed that the stolen/taken away ornaments and things would be replace/compensate by the defendants/ defendants counsel or the defendants will compensate the payment/pay the compensation which cost of rupees fifteen carore (15 carore) to the petitioner in payorder.
 5. It is prayed that kindly provide legal protection and order to lodge an FIR against defendants 1 to 15 in the interest of justice on damaging/demolishing the suit property, demolishing the main boundary wall of the plaintiff house, trespass, held, illegal occupation, illegally detaining plaintiff and her daughters and on stolen or taken away the ornaments or the things mentioned in the application and on supporting defendants No. 1 to 6 and 11 to 15 on their criminal activities and on illegal occupation on the plaintiff house.

6. It is prayed that the defendants have taken illegal electricity connection/electricity wire in plaintiff house 588 JM from plot no.594 JM in the portion which they have occupied illegally on the force of guns and by illegally detaining plaintiff and her daughters. So this Honourable High Court give order to the concerned department to cut the supply of electricity of defendants and his allies permanently which they have taken kunda/illegal wire of electricity from 594 JM.
7. Any other or further relief(s) which this Hon'ble Court may deem proper relief may pleased be granted.
8. It is prayed that this honorable court provide deem fit relief to the plaintiff and her daughters and to the plaintiff house.
9. It is prayed that is allowed in the interest of justice with cost."

The application as drafted falls foul of Clause (a), (b) and (c) of Sub-rule 1 of Rule 74 of the Sindh Chief Court Rules which read as under:

- " ... 74. Contents thereof.
- (1) Except where otherwise provided by these rules or by any law for the time being in force, an interlocutory application:-
 - (a) shall contain only one prayer or one series of alternative prayers of the same kind;
 - (b) shall not contain any argumentative matter;
 - (c) shall be supported" by affidavits stating clearly the grounds and the facts on which the application is based; and
 - (d) when filed in a suit or matter valued at Rs.50 or less, shall specify the fact that it is so valued by a note to that effect at the top of the left and margin.
 - (2) Every application not in accordance with this rule shall be returned for amendment."

The Application as framed having 6 main prayers and three additional prayers seeking ancillary relief should have been returned by the office of this Court for amendment. This was not done. Be that as it may, we have examined each of the prayer clauses of this application and have given our reasons for dismissing the appeal in respect of each of the prayer clauses:

1. **It is prayed that this Honorable Court take action against defendants because they are violating Honorable High Court orders, and they are threatening for dire consequences and harassing plaintiff family and they want to usurp/grab the property**

This prayer clause has three separate prayers, the first is seeking actions to be taken as against the Respondents for violating orders that have been passed in Suit No. 1326 of 2012. In this regard no fewer than four applications under Section 3 and 4 of the Contempt of Court Ordinance, 2003 have been filed by the Appellant i.e. CMA No. 13706 of 2012, CMA No. 621 of 2014, CMA No. 19710 of 2021 and CMA No. 6746 of 2022 and as has been correctly held by the learned Single Judge, each of which are pending adjudication thereby barring this application for being maintained. We are of the opinion that multiple applications cannot be maintained by the same party seeking the same relief and hence to that extent the Application was not maintainable. The second element of the prayer that has been pressed is that the court should take “action” as against the Appellants as they are threatening and harassing the Appellant with an intent to seize the Said Property. It is apparent that the prayer in this Application does not come within the purview of Suit No.1326 of 2012 as it is outside the perimeters of the prayer clause as framed therein. It is settled law that applications cannot be maintained seeking interlocutory relief that are beyond the scope of the main prayer clause in the suit and hence to that extent the Application was not maintainable. Reliance in this regard may be placed on the decision of the Supreme Court of Pakistan in *Marghub Siddiqui vs. Hamid Ahmed Kan and 2 others*¹ wherein it was held that:²

“ ... in a suit where no perpetual injunction is claimed no question of granting ad interim injunction can possibly arise.”

2. **It is prayed that kindly take legal and lawful action in the interest of justice on damaging / demolishing the suit property, demolishing the main boundary wall of the plaintiff house, trespass, held, illegal occupation, illegally detaining plaintiff and her daughters and on stolen or taken away the ornaments or the things mentioned in the application.**

¹ 1974 SCMR 519

² *Ibid* at pg. 521

This prayer clause has three elements, the first is for this Court to take “legal and lawful action” to restrain the Respondents from:

- (a) “damaging / demolishing the suit property,
- (b) demolishing the main boundary wall of the plaintiff's house,
- (c) committing trespass and illegal occupying the Appellants property

Each of these prayers come within the purview of CMA No. 2641 of 2015 filed by the appellant and CMA No. 17228 of 2021 filed by the Respondents each being applications under Rule 1 & 2 of Order XXXIX of the Code of Civil Procedure, 1908 which are pending adjudication and on which an ad interim order is subsisting directing the parties to maintain status quo. We are of the opinion that multiple applications cannot be maintained by the same party seeking the same relief and hence to that extent the Application was not maintainable. The second element of this prayer clause i.e. asking this Court to take “legal and lawful action” in respect of the illegal detention of the Appellant and her daughter and in respect of purported theft of various ornaments by the Respondents are prayers that aside from being outside the scope of the prayer clause of Suit No. 1326 of 2012 can only be properly adjudicated in the jurisdiction of criminal courts rendering these application as not maintainable.

3. **It is prayed that this Honorable Court vacate / execute defendants and his allies from the plaintiff house as mention in stay order dated 29/11/2021.**

The Order passed by the learned single judge in Suit No. 1326 of 2012 on 29 November 2021 is as under:

“ it appears paramount importance that excesses to the plaintiffs property be ceased forthwith, for which till next date of hearing all the parties are directed to maintain status quo...”

As is apparent the order that has been passed by the learned Single Judge in Suit No. 1326 of 2012 on 29 November 2021 was to direct the Respondent and his allies to maintain “status quo”. No directions have been passed in Suit No. 1326 of 2021 for the Respondents or his agents to “vacate” the Appellants house. This Application to this extent is therefore misconceived.

- 4. It is prayed that the stolen/taken away ornaments and things would be replace/compensate by the defendants/ defendants counsel or the defendants will compensate the payment/pay the compensation which cost of rupees fifteen carore (15 carore) to the petitioner in payorder.**

It is clear that compensation for any criminal wrong for trespass to goods is beyond the pleadings of the Appellant with respect to the prayer clause of Suit No. 1326 of 2012. As the prayer in this application does not come within the purview of Suit No.1326 of 2012 this application to seeking interlocutory relief that is beyond the scope of the main prayer clause in the suit is not maintainable.³ In addition as damages cannot be awarded on an interlocutory application to that extent this Application is misconceived.

- 5. It is prayed that kindly provide legal protection and order to lodge an FIR against defendants 1 to 15 in the interest of justice on damaging/demolishing the suit property, demolishing the main boundary wall of the plaintiff house, trespass, held, illegal occupation, illegally detaining plaintiff and her daughters and on stolen or taken away the ornaments or the things mentioned in the application and on supporting defendants No. 1 to 6 and 11 to 15 on their criminal activities and on illegal occupation on the plaintiff house.**

³ *Marghub Siddiqui vs. Hamid Ahmed Kan and 2 others* 1974 SCMR 519 at pg. 521

This prayer has two separate elements, the first is to provide legal protection to the Appellant for which C.P. No. 249 of 2019 had been filed and in which relief was granted. Further to the extent that such relief is prayed for through this Application this relief is outside the scope of the prayer of Suit No. 1326 of 2012. It is settled law that interlocutory relief which is beyond the scope of the main prayer clause in the suit cannot be granted and to that extent the Application was not maintainable.⁴ The second element in respect of the lodging of a FIR aside from being outside the scope of the prayer of Suit No. 1326 of 2012 is also outside the ambit of the original civil jurisdiction of this court and would necessitate action to be taken in the criminal jurisdiction. To this extent as well this Application was not maintainable.

6. **It is prayed that the defendants have taken illegal electricity connection/electricity wire in plaintiff house 588 JM from plot no.594 JM in the portion which they have occupied illegally on the force of guns and by illegally detaining plaintiff and her daughters. So this Honourable High Court give order to the concerned department to cut the supply of electricity of defendants and his allies permanently which they have taken kunda/illegal wire of electricity from 594 JM.**

As is apparent each of the prayer clauses are either not maintainable or outside the jurisdiction of the learned Single Judge in the Original Civil Jurisdiction of this Court. Any relief for violation of the interim order operating would be maintainable in contempt proceedings and for which, as correctly held by the learned Single Judge, no fewer than four applications under Section 3 and 4 of the Contempt of Court Ordinance, 2003 have been filed by the Appellant bearing CMA No. 13706 of 2012, CMA No. 621 of 2014, CMA No. 19710 of 2021 and

⁴ *Ibid*

CMA No. 6746 of 2022. This Application to that extent is therefore misconceived and not maintainable.

7. **Any other or further relief(s) which this Hon'ble Court may deem proper relief may pleased be granted.**
8. **It is prayed that this honorable court provide deem fit relief to the plaintiff and her daughters and to the plaintiff house.**
9. **It is prayed that is allowed in the interest of justice with cost.**

These three clauses are general prayer clauses for ancillary relief which are usually found in a suit and which have incorrectly been pleaded in an application under Section 151 of the Code of Civil Procedure, 1908 and which are misconceived.

B. CMA No. 5923 OF 2022

7. This was an application moved by the Appellants under Section 151 of the Code of Civil Procedure, 1908 seeking the following relief:

“ It is prayed to demolish the building ground plus 2 which is constructed on the open road compound of the plaintiff Property in 2014 by Defendants.”

The Learned Single Judge while dismissing this application was pleased to hold that the application was not maintainable as there were two suits pending rendering this Application as being frivolous. While noting that the pendency of the two suits would have no bearing on the maintainability of this application, keeping in mind the various interim orders that have been passed initially permitting the Respondents to construct at their “own risk and cost” it would seem that to that any relief for demolishing the construction being carried out by the Respondents would be regulated either by the various applications that are pending under Rule 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908, the applications under Section 3 and 4 of the Contempt of Court Ordinance, 2003 or by the final

relief that would be granted in the subject suit. To the extent that the applications are pending adjudication we would once again state that multiple applications cannot be maintained by the same party seeking the same relief and hence to that extent this Application was not maintainable.

8. For the foregoing reasons, we are of the considered opinion that **CMA No. 4022 of 2022** and **CMA No. 5923 of 2022** as filed in Suit No. 1326 of 2012 were both applications that were misconceived and which were correctly dismissed by the learned Single Judge. We therefore dismiss the appeal and would have imposed special costs on the Appellant, but as she is appearing in person and is a widow we have chosen to exercise restraint on this occasion. Finally, keeping in mind that the suit has been pending since 2012, we are sure that the learned single judge will decide all the pending applications as expeditiously as possible keeping in mind the Suit has been pending since 2012.

JUDGE

Nasir PS.

JUDGE

