

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
H.C.A. No.43 of 2023

 Date Order with signature of Judge

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mobeen Lakho

Muhammad Rafique & othersV/s.....Muhammad Iqbal & others

29-08-2023

Mr.Jam Khizar, Advocate holding brief for Mr.Shahab Sarki,
 Advocate for the Appellant No.4
 Syed Ali Zaidi, Advocate for the Respondent No.1
 Mr.Muhammad Aijaz, Advocate for Respondent No.8
 Mr.Musharraf Raza, Advocate for Intervener.
 Mr.Miran Muhammad Shah, A.A.G.
 Mr.Ghulam Shabbir Shaikh, Advocate for Board of Revenue.

Today, a statement has been filed along with annexures by the learned counsel for the Proposed Intervener containing the list of containers lying on the subject premises, which according to learned counsel, are owned by the intervenor, however, per learned counsel, on account of pendency of instant HCA and the restraining orders operating in the instant case, the proposed intervenor, being owner of the containers, is not a position to lift the containers, which is resulting in the piling up of demurrages charges. Said statement is taken on record.

2. No one is in attendance on behalf of Appellant Nos1 to 3, whereas, Mr. Jam Khizar, Advocate holding brief for Mr.Shahab Sarki, Advocate for the Appellant No.4, submits that the latter could not attend the Court, as he reportedly busy also and out of station. Learned counsel for the respondent No.1 has drawn the attention of this Court towards the orders dated 02.08.2023 and 15.08.2023, which are reproduced as under:-

"02.08.2023.

*Syed Ali Zaidi, advocate for the respondent No.1
Mr.Musharraf Raza, advocate for the applicant/interveners.
Mr.Yousuf Sohail, advocate for respondent No.8*

Counsel for the appellant is called absent. Learned counsel for the respondents and Intervener submit that the appellants have settled the dispute with the respondent No.1 who was the contesting respondent and therefore, they have no further interest in the appeal. Learned counsel for the Intervener submits that in the meanwhile, the interim order dated 24.02.2023 prevents the intervener from removing containers of his clients from the plot that was in dispute.

To come up on 15.08.2023 after notice to the appellants and their Counsel Mr.Shahab Sarki. If no representation is made, this appeal may be dismissed."

"15.08.2023.

*Mr.Mairajuddin, Advocate for the appellant No.4.
Mr.Syed Ali Zaidi, Advocate for the respondent No.1
Mr.Musharraf Raza, Advocate for the applicant/interveners.*

Learned counsel for the applicants/Interveners has drawn attention of this Court to various applications filed on behalf of the proposed Interveners listed at serial Nos. 1, 4 and 5 and seeks urgency in the matter. Let notice of such applications be issued to all concerned. Counsel present in Court on behalf of various parties waive notice and claim copy of the said applications and request for time to file reply/objection, if any. Learned counsel for the applicants/Interveners undertakes to supply the same during course of the day. Since the parties are seeking adjournment. To come up on 29.08.2023. Let notice of the listed applications be issued to the counsel for appellants No.1, 2 and 3 for the next date of hearing. "

3. It is regretted to observe that despite aforesaid specific orders, the appellants and their counsel have chosen to remain absent without any intimation, whereas, no objection whatever has been filed on the Intervener's application and the request of the Proposed Intervener for lifting of the containers belonging to the proposed intervenor from the subject land. It has been further observed that instant HCA has been filed against an ad-interim order, passed by learned Single Judge on 15.2.2023, whereas, the injunction application (CMA No.2687/2023) is

still pending. According to learned counsel for proposed intervenor, the Suit is not proceeding further due to pendency of instant HCA, therefore, request of release of containers has not been acceded. Learned counsel for the respondent No.1 submits that the matter has been compromised between the parties in the Suit, and the parties have filed their affidavits also to this effect, therefore, instant HCA is otherwise has become infructuous. Learned counsel for the appellant No.4 could not controvert above factual position, whereas, no one has come forward to pursue instant High Court Appeal on behalf of the appellants No.1 to 3.

4. Be that as it may, keeping in view the peculiar facts and circumstances of the case, as noted above, instant HCA is disposed of with the directions to learned counsel for the parties to appear before the learned Single Judge, who may pass appropriate order on the injunction application after hearing all the parties as well as on the compromise, if any, reached between the parties in accordance with law.

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

JUDGE

JUDGE