

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

CP.No.D-2200 of 2024.

Date: Order with signature(s) of the Judge(s)

Fresh case.

1. For orders on Misc. No. 10073/2024 (U/A).
2. For orders on Misc. No. 10074/2024 (Ex./A).
3. For orders on Misc. No. 10075/2024 (Stay/A).
4. For hearing of main case.

10th May 2024.

Petitioner Ms. Rehana Waheed present in person.

1) Urgency granted.

2 to 4) Petitioner seeks permission to raise construction of boundary wall on the subject Plot No. A1-247, measuring 200 sq.yds, Project No.7, (P.R.E.C.H.S), Gulshan-e-Iqbal, Karachi. Further, It has come on record that petitioner has filed a Civil Suit No. 44 of 2005 before this Court. Being relevant, the operative part of the order dated 30.05.2005 of the suit is that:-

“The plaintiffs in the circumstances are allowed to raise construction on the plots in question in accordance with the relevant building laws, rules and regulations and after obtaining necessary sanctions and approvals from the authorities concern”

Accordingly, the petitioner was asked to demonstrate to the Court the maintainability of this petition, since the Civil Suit filed by her with regard to subject property is pending adjudication, in response whereof she could not give any plausible explanation.

It is evident from the record that the petitioner has already availed herself of recourse by instituting a Civil Suit before this Court, which is stated to be pending adjudication. This course of action appears to be an adequate and efficacious remedy. It is a settled proposition of law that should an aggrieved party have recourse to an alternative statutory remedy, it is incumbent upon it to avail the remedy available under the law prior to invoking Constitutional jurisdiction of this Court.

Intervention by the High Court is justified exclusively in absence of any alternative legal remedy. Where litigants are embroiled in civil litigation, particularly involving a civil suit within the original jurisdiction of the Civil Courts or this Court, circumventing the statutory remedy and seeking Constitutional redress is unwarranted. A writ petition is tenable only in the absence of a statutory recourse against the impugned action/order. Hence, a petition cannot be filed by a person without prior availing the alternate remedies before the competent Courts of civil jurisdiction. The Apex Courts time and again emphasized that Constitutional jurisdiction of the High Court should not be invoked; particularly when statutory remedies are available or civil proceedings are in progress.

In view of what has been stated above, we have no hesitation to hold that instant petition is not maintainable, which is hereby dismissed in limine along with listed applications.

JUDGE

JUDGE

SAJID