

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.99 of 2024

M/s Pakistan National Building Material Display Center Foundation, [PNBMDCF]
Versus
Aqsa Suleman Bawany and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

Hearing case (Priority)

1. For orders on CMA No.684/2024 (Contempt).
2. For order on office objection a/w reply at "A".
3. For hearing of main case.
4. For hearing of CMA No.617/2024 (Stay).

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Dated 20.05.2024

Mr. Zubair Ahmed, Advocate or Appellant.

M/s Sehar Rana along with Mr. Vevaik Madhudhas, Advocates for
Respondent No.2.

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Muhammad Shafi Siddiqui, J.- A suit for declaration, specific performance and permanent injunction was filed that the plaintiff/appellant is entitled for an undivided share in the plot No.G-7, Block-9, KDA Scheme No.5, Karachi by virtue of share disclosed in the conveyance deeds/sub-leases and that defendant No.2 is not entitled to raise additional floors of construction as 6th and 7th floors and also claimed other ancillary relief(s). With the plaint, the appellant also filed an application for injunction only to the extent that the Respondents/defendants therein or anybody on their behalf be restrained from dispossessing the appellant from the rooftop and disturbing his free access to the said property (which formed a portion of the rooftop). The said application was contested and was disposed of by way of the impugned order.

2. The appellant's case has two concerns (i) that his possession over the rooftop being a tenant (which status is denied by Respondents), be protected and (ii) that appellant's ratio over the

land by virtue of a registered instrument/ sub-leases should not be altered, as he is of the view that an additional floor would restrict and/or dilute his rights over the plot acquired by virtue of the sub-leases and additional sub-leases, which are likely to be executed for the two additional floors, would come in the way.

3. We have heard learned counsel and perused the material available on record.

4. There is no interim application to restrain Respondents from raising construction of 6th and 7th floors, permission of which has been granted by cantonment board.

5. Ms. Sehar Rana, learned counsel for Respondent No.2 submits that his [appellant's] occupation over a portion of the 5th floor would be treated subject to law and that should be sufficient for the satisfaction of the appellant, as no unlawful action to re-occupy the portion of the 5th floor is shown to have been attempted by Respondent. Order accordingly.

6. As far as the subsequent point with respect to the appellant is concerned, we have enquired from Ms. Sehar Rana if they intend to alter or dilute the ratio of the appellant over the land which by virtue of the sub-leases is being enjoyed, she submits that the said ratio will be protected to its maximum limit, notwithstanding the construction of two additional floors.

7. Mr. Zubair, learned counsel for appellant should have been satisfied with the statement, however, he insists that the raising of the two additional floors will dilute his ratio which has been recognized over the plot as lien by virtue of the ratio determined in the sub-leases/conveyance deeds.

8. We do not agree with Mr. Zubair. The ratio determined by virtue of the sub-leases of the appellant (which are almost six in number), would remain intact as per statement of counsel, notwithstanding the construction of two additional floors and we consider it as part of order. The appellant's concern, as far as his rights over the plot is concerned, stands satisfied. His insistence is of no consequence when a clear statement is made by Ms. Sehar Rana that the determination of his right over the plot shall strictly be to the extent of ratio already adjudged while the construction was raised up to the 5th floor.

9. We do not see any reason to be convinced by the fiction of imagination that it might dilute the lien when the ratio by virtue of the sub-leases is being maintained by the builder.

10. Any observation either in this order or in the impugned order is only tentative in nature, as the trial will conclude the final rights of the parties.

11. With this understanding, the appeal stands disposed of along with pending applications.

JUDGE

JUDGE

Ayaz Gul