

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

H.C.A. No.277 of 2024

Roque Martin D'Mello & others

Versus

Federation of Pakistan & others

Date	Order with signature of Judge
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1. For orders on CMA 1699/24
2. For orders on office objection a/w reply as at "A"
3. For orders on CMA 1700/24
4. For hearing of main case.
5. For orders on CMA 1701/24

Dated: 23.08.2024

M/s Makhdoom Ali Khan and Arshad Tayebally along with Mr. Talha Jawed for appellants.

Ms. Rizwana Ismail appeared voluntarily representing the Applicants of the Contempt Application.

Salahuddin Ahmed appearing in support of Appellant however we did not find his Vakalatnama in the appeal

Zahid Ebrahim appearing for appellants in the connected appeal(s) filed by the Parents of children of Cedar (Pvt.) Ltd. run school(s)

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Impugned in this appeal is an order dated 19.08.2024¹ whereby learned Single Judge on an application filed under Order XXXIX Rule 2(3) read with Section 94(c) and 151 CPC² filed in Suit No.746/2024 issued a show-cause notice to the alleged contemnors, as arrayed in the said application.

Brief history of the case is that the residents of the area filed Suit No.746 of 2024 for declaration, permanent injunction and cancellation in respect of a school, alleged to be operating on a residential premises.

¹ Pages 37-45 of the Appeal file.

² Pages 47-65 of the Appeal file.

Substantially, they were seeking a declaration to the effect of running a school in the subject property on Plot No.34/16-A, Block 6, PECHS, Karachi, measuring 1,221 sq. yds. and also filed an application seeking a restraining order for the operation of the school, namely The Cedar School PECHS Campus, Karachi (hereinafter referred to as “CS PECHS Campus”). It was operated by Cedar (Private) Limited (Respondent No.10). The learned Single Judge heard the Misc. Application/injunction application in the referred suit and then passed an injunctive order dated 10.08.2024.³ While deciding the pending application, learned Single Judge was also apprised of the fact as to the pendency of an earlier petition, i.e. C.P. No.D-3209 of 2024,⁴ in respect of some of the issues which were found to be overlapping in the instant suit connected to the Subject Property, such as, the enforcement of Regulations 18-4.2.2 and 25-5.2 of the Karachi Building & Town Planning Regulations, 2002, etc.⁵ Substantially, the order dated 10.08.2024 was passed considering the pendency of the aforesaid petition and also in terms of paragraph 24, the order considered the validity of the school license in respect of the CS PECHS Campus in Karachi having been issued to Cedar (Pvt.) Limited by the Director General, Directorate of Inspection and Registration of Private Institutions Sindh (Defendant No.11 in Suit No.746/2024)(Respondent No.9 in this Appeal). The substantive part of the order, which is embodied in paragraph 24 reads as follows:-

*“For the foregoing reasons the CMA No.10199 of 2024 is allowed and the relief prayed for therein is moulded by giving directions to the Defendant No.11 to forthwith suspend the license granted by it to the Defendant No.8 for operating a school on the Said Property as prima facie the license has been issued arbitrarily by ignoring Regulation 18-4.2.2 and Regulation 25-5.2 of the Karachi Building and Town Planning Regulations, 2002 and with **further directions to the Defendant No.11 to ensure that until the final decision the Defendant No.8 does not commence its operations of a school on the Said Property.** CMA No.10263 of 2024 and CMA No.10312 of 2024 are correspondingly disposed of on account of such an order as having served their purpose.”*

The order dated 10.08.2024 has two parts; in part one the Director General, Directorate of Inspection and Registration of Private

³ Pages 163-199 of the Appeal file.

⁴ Pages 133-139 of the Appeal file.

⁵ On 28.06.2024 in CP No.D-3209/2024, Cedar (Pvt.) Ltd. had obtained an order that “no coercive action shall be [taken] against the petitioner until his application [dated 22.02.2024 filed with the Master Plan Department seeking approval of using the subject property for educational purpose] is decided in accordance with law after giving [Cedar Pvt. Ltd.] an opportunity of being heard.” Initially, Cedar Pvt. Ltd. had wrongly disclosed the address of the suit property in its Petition as “F-11, Block-9, Clifton, Karachi” when, in fact, the actual address was that of the Subject Property. This correction to the Order was made by a different Division Bench of this Court on 10.07.2024.

Institutions Sindh (Defendant No.11) was directed to suspend the license to operate the school granted to Cedar (Pvt.) Ltd. in respect of its PECHS Campus only; whereas in the second part the Defendant No.11 was further directed to ensure that until the final decision in the Suit, Cedar (Pvt.) Ltd. should not commence its operation of the CS PECHS Campus. Aggrieved by the order dated 10.08.2024 some appeals were filed by the owner of the property as well as by the tenant operating the school, i.e. Cedar (Pvt.) Ltd. and the appellants obtained an ad-interim order on 16.08.2024 from this Court.⁶ The substantive part of the ad-interim order of this Bench in those appeals, i.e. High Court Appeals No.268 and 269 of 2024 is as under:-

“In the meantime operative part of the impugned order, whereby license was directed to be suspended in respect of the subject property, only to such an extent shall remain suspended.”

On realizing the scope of the aforesaid order, a contempt application was then filed on 19.08.2024 along with urgent application. Learned Single Judge while considering the application under order XXXIX Rule 2(3) read with Section 94 and 151 CPC issued show-cause notice to the alleged contemnors pursuant to Section 17(2) of Contempt of Court Ordinance 2003 and notices were also issued to Advocate General Sindh per Contempt of Court Ordinance, 2003.

Aggrieved of the above impugned order dated 19.08.2024, the instant appeal has been filed on several counts. Firstly, that the cognizance (under Contempt of Court Ordinance, 2003), in a way, is like a suo-moto order, which should not have been taken by the learned Single Judge as the application itself was filed under Order XXXIX Rule 2(3) CPC, which has different implication as compared to the actions required under Contempt of Court Ordinance, 2003. Mr. Makhdoom Ali Khan in this regard has relied upon the case of Dr.M.O. Ghani v. Dr. A.N.M. Mahmood (PLD 1966 SC 802).

Further argument of Mr. Makhdoom Ali Khan appearing for appellants is that the jurisdiction of issuing show-cause notice directly should not have been exercised by the learned Single Judge. Additionally, he contended that the order dated 16.08.2024 passed by this Division Bench required interpretation; in that case alone, the matter had to be left to this bench to decide the possible interpretation

⁶ Pages 201-209 of the Appeal file.

of the said order; hence, per learned counsel, no case for contempt of Court could be made out, until it is resolved.

Finally learned counsel contended that the Court has no jurisdiction to initiate contempt of Court proceedings against whom no case of contempt is made out. He relied upon the judgments of the Supreme Court in the cases of Muhammad Sadiq Leghari (PLD 2002 SC 1033) and Syed Naghman Haider Zaidi v. Zahid Mehmood (PLD 2009 SC 380) in support of the contention.

Mr. Tayebally, additionally submitted that the impugned order dated 19.08.2024 was too harsh and disturbed the contemnors.

Mr. Salahuddin principally supported the arguments of Mr. Mukhdoom Ali Khan.

We have heard learned counsels for the appellants, and Ms. Rizwana Ismail, on the above proposition and perused the record.

This appeal is filed under section 19(1) of Contempt of Court Ordinance 2003 read with Section 15 of the Ordinance X of 1980 and Section 3 of the Law Reforms Ordinance, 1972, presumably on the understanding that the impugned order was passed under special law, hence invoked Section 19(1) of Contempt of Court Ordinance, 2003. Mr. Makhdoom's question that the Contempt of Court Ordinance, 2003 cannot be invoked, is a premature question when the defence is yet to be taken by the Appellants and considered by the learned Single Judge. We are also not satisfied that the issuance of a show-cause notice under the ibid law would cause prejudice to the rights likely to be determined by the learned Single Judge. The alleged contemnors have been given the opportunity to file their respective replies against the accusation and allegations raised in the contempt application and jurisdiction could never be an exclusion. The nomenclature of the application itself would not take away the jurisdiction being exercised or if any other jurisdiction that could be exercised by the learned Single Judge which would eventually be determined after hearing. On this count alone, Mr. Mukhdoom's argument that the application was filed under Order XXXIX Rule 2(3) read with Section 94(c) and 15 of CPC and show cause was issued under a different law is far-fetched at this point in time. Without

prejudice to the above, the text of the application itself shows that therein, the plaintiffs of the suit have prayed for proper proceedings required under the law, which in any case could be under the relevant Contempt laws as found applicable.

Without commenting as to whether an order issuing show-cause notice under the Contempt of Court Ordinance, 2003 would constitute an appealable “order” as contemplated under section 19 of the *ibid* Act or not, we are inclined to leave this aspect open for debate in some other appropriate case as it is nobody’s case before us.

The appellants are well within their right to respond to the show cause by raising questions as to whether the competence of the show cause issued under the Contempt of Court Ordinance, 2003 and Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 is proper. The question of jurisdiction itself is sub-judice before the learned Single Judge, and he retains competence to decide such issue relying on Tareen’s case.⁷

The questions raised by the learned Counsels for the Appellants before us could be taken as a defence by filing proper counter-affidavits/replies as mentioned above. The learned Single Judge must first address these questions and any others that may come up during the hearing. We are not inclined, at this stage, to take up such questions in an appeal against a show-cause notice when the application itself is not heard and/or taken to its logical end after hearing.

We may also add here that the citations relied upon by the learned Counsels for the Appellants either did not fit the facts and circumstances of the case in hand, or dealt with contempt of court cases prior to the promulgation of the Contempt of Court Ordinance, 2003 or were distinguishable for both reasons mentioned herein.

With regard to the Appellants Counsels’ submissions that this Bench’s ad-interim order dated 16.08.2024 passed in HCA Nos.268 and 269 requires interpretation the same is not understood. We find that this Bench’s order does not require any clarification of the nature. As stated above, the ultimate paragraph of the impugned order, i.e.

⁷ Commissioner Inland Revenue and Others v. Jahangir Khan Tareen and Others, 2022 SCMR 92

paragraph 24 of the order dated 10.08.2024, had two parts and this Bench, on consideration of the points raised in HCA Nos.268 and 269 of 2024, only the first part of the order dated 10.08.2024 was suspended by this Bench to the extent of the school license of the CS PECHS Campus. This was the extent of the ad-interim relief granted by this Bench vide its order dated 16.08.2024 in HCA Nos.268 and 269 of 2024. Therefore, no case of two interpretations or doubt or ambiguity is made out of this Bench's order dated 16.08.2024

Before we part with the above point, we would like to turn to the first part of paragraph 24 of the injunctive order dated 10.08.2024, which referred to Regulation 18-4.2.2 and Regulation 25-5.2 of the Karachi Building & Town Planning Regulations, 2002. As mentioned earlier: (i) the Karachi Building & Town Planning Regulations, 2002, are the subject matter of CP No.D-3209/2024, which petition is pending before this Court; and (ii) this Bench in its ad-interim order dated 16.08.2024 passed a clear injunctive order. This aspect also needs to be addressed by the learned Single Judge. If at all there are questions regarding the continuous operation of Cedar (Pvt.) Ltd. PECHS Campus during the hearing of the application before the learned Single Judge in the context of the second part of paragraph 24 of the order dated 10.08.2024, then in that case, it is up to the learned Single Judge to decide whether the operative part of the ad-interim order of the learned Division Bench in CP No.D-3209/2024 dated 28.06.2024 pertaining to the Karachi Building & Town Planning Regulations, 2002, may or may not have an effect on the contempt proceedings and/or in any case whether it overlaps the later injunctive order of the learned Single Judge passed on 10.08.2024. Additionally, at this stage, we do not deem it fit and proper to express an opinion on this issue in this Appeal, particularly when CP No.D-3209/2024 is pending for adjudication. We would leave this aspect open for a comprehensive understanding to be articulated by the learned Single Judge before he could frame the charge, if at all required.

In all fairness, all the points and grounds raised by Mr. Makhdoom Ali Khan and those discussed by us herein, are required to be decided by the learned Single Judge as he is already aware of such proceedings in response to the contempt application and counter-affidavits asked to be filed. The parties' questions would be well addressed before the learned

Single Judge. We expect that the learned Single Judge will proceed with the application pending before him and positively address all these questions as primary/preliminary questions before at least a charge can be framed, if at all required.

High Court Appeal stands disposed of in the above terms along with listed applications.

Chief Justice

Judge