

0

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI.**

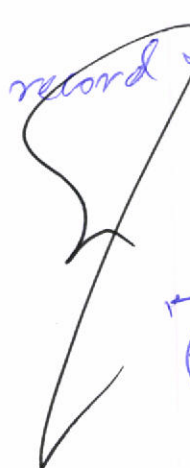
NA

NO.

44

OF

20 13

Date	Order with signature of Judge.
	<p style="text-align: center;"><u>For Dissections</u></p> <p>* For orders on M.I. II Reports dated: <u>21/2/2018</u>, 28/2/18, 8/3/2018, 14/3/2018, 19/3/2018, 21/3/2018, 25/3/2018.</p> <p style="text-align: center;">————— x —————</p> <p><u>10.5.2018</u> None present Report is taken on record subject to further compliance.</p> <p style="text-align: right;"> Judge</p>

8

**IN THE HIGH COURT OF SINDH AT KARACHI**

Civil Revision Application No.44 of 2013

M/s Latifi Cooperative Housing Society  
Versus  
Muhammad Imran & others

Date of hearing: 08.11.2017  
Applicant: Through Mr. Shabbir Ahmed Sheikh Advocate  
Respondents No.1&2: Through Mr. Jameel Ahmed Advocate.  
Respondent No.5: Through Ms. Naheed Parveen, DAG.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.** - This Civil Revision Application is filed against the concurrent findings of the two Courts below in terms whereof the suit filed by respondents No.1 and 2 was decreed in terms of Order XV Rule 1 CPC by holding that the parties are not at issue.

Learned counsel for the applicant submits that the respondents No.1 and 2, being habitual of filing frivolous litigation, have filed three suits in a row for the same relief. The last suit filed is bearing Suit No.445 of 2009, the subject matter of this Revision Application, in which an application under order XV rule 1 CPC was filed, to which a counter-affidavit was filed refuting the contention of the respondents. The application was heard and the trial Court was of the view that the parties were not at issue.

Learned counsel for the applicant has taken me to various pleadings wherein applicant has denied the claim of respondents inasmuch as there was a restriction as to conversion of the plot into an amenity or commercial, as the case may be, as they have to maintain a ratio of 8% for commercial plots within the Society and hence it was incorrect to say that the parties were not at issue. The order of the Rent

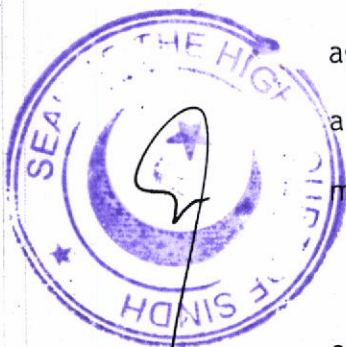


Controller to the effect that parties were not at issue was maintained by the appellate Court. The pleadings of the parties, at least to the extent of applicant, are clear that the Society is not willing to give no objection as far as official conversion of the subject plot into commercial for running a marriage lawn is concerned.

On the other hand learned counsel for respondents No.1 and 2 argued that subsequent to filing of the suit and subsequent to the denial for issuance of no objection to the respondents the applicant society has issued no objection to many other sub-lessees/members of the Society for conversion their respective plots who were running commercial activities therein and hence it was a discrimination on the part of the applicant. Learned counsel submits that the order of this Court in Suit No.205 of 2004 is clear when they (respondents No.1 and 2) were directed to approach the concerned authority for redress of their grievance which include conversion of the amenity plot into commercial one.

I have heard the learned counsels and perused the record. After detailed deliberation it seems that it was incorrect to hold that the parties, at least to the extent of issue raised in the suit, were not at issue. Right from the beginning the applicant was denying that the subject plot is liable to be converted into commercial one where marriage lawn is/was in operation. Be that as it may, the parties have agreed that the suit may be disposed of on merit after framing issues and recording of evidence of the parties, preferably within three months.

Accordingly, in view of the above by consent the impugned orders, passed by the trial Court and Appellate Court, are set aside and the application under order XV CPC is dismissed. The case is remanded to the trial Court to frame issues and record evidence of the parties and **conclude the proceedings preferably within three months with periodical**



report through MIT-II of this Court. The parties may file their respective list of witnesses and documents within one week from the date of settlement of issues. No frivolous adjournment shall be granted to any of the parties.

The revision application, along with pending applications, stands disposed of in above terms.

SD/-MUIHAMMAD SHAFI SIDDIQUI,  
JUDGE.

Certified to be true copy.

Assistant Registrar  
Civil/Writ(S.B)

*D 13/11/2017*

Endt. R.A. No. 44 of 2013.

Karachi dated: 13-11-2017.

Copy is forwarded for information and compliance to:-

1. The Learned M.I.T.-II of this Hon'ble Court.
2. The Vth-Addl. District & Sessions, Judge Karachi (East), In Civil Appeal No. 336/2010.
3. The 1st-Sr. Civil Judge, Karachi (East), In Civil Suit No. 445 of 2009.
4. The Cantonment Executive Officer, Cantonment Board Faisal, Shahrab-e-Faisal Karachi *X*
5. The 14th-Sr. Civil Judge Karachi (East) In Civil Suit No. 1256/2004.
6. The 11th-Sr. Civil Judge, Karachi (East) in Civil Suit No. 445/2009.

*D 13/11/2017*  
(Assistant Registrar)  
Civil / Writ (S.B)



*o/c*

RECORDED UNDER  
2263  
14/11  
*(2)*