

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 443 of 2007

Date	Order with signature of Judge
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For hearing of CMA Nos:

1. 11847 of 2011 (U/O 39 R 2(3) CPC)
2. 9340 of 2011 (U/O VII R 11 CPC)
3. 11846 of 2011 (U/S 151 CPC)
4. 1235 of 2009 (U/S 194, 195)
5. 793 of 2008 (U/S 151 CPC)
6. 9107 of 2008 (U/S 26 R 9 )
7. 2929 OF 2007 (u/o 39 r 1&2)

06/11/2013:

Mr. Abdul Jabbar Advocate holding brief for Syed Zaki Muhammad, Advocate for the plaintiff.

M/s. Abdul Wajid Wyne and Syed Masroor Ahmed Alvi, Advocates for Defendants No.1 to 3.

Mr. Irfan Hassan, Advocate for Defendant No.7.

Ms. Naheed Naz, Advocate for Advocate General Sindh for Defendants No.8 to 10.

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**NAZAR AKBAR, J.** This case is pending since 2007. Today several applications are fixed for hearing, some are pending since 2007, 2008, 2009 and 2011 include an application (CMA No.9340 of 2011) under Order VII Rule 11 CPC. However, learned counsel for Defendants No.1 to 5 was under the impression that one CMA No.6322 of 2013 is also fixed for hearing/orders which is not listed for orders. Through this application (CMA No.6322 of 2013) the defendants want endorsement of the Court on Annexure 'A' of the said application. The prayer in this application is as follows:-

“In view of the above applications being CMA No.11846/2011 and CMA No.11847/2011 may be disposed of in terms of the letter of the Secretary to Govt. of Sindh, Land Utilization Department dated 20.3.2013.”

The Annexure ‘A’ is the letter of Land Utilization Department dated 20.03.2013 which is reproduced as under:-

“To,

- 1) The Director General  
Master Plan Group of Officers,  
City District Government Karachi (Defunct)  
KARACHI.
- 2) The Deputy Commissioner (Malir),  
KARACHI.

SUBJECT: VERIFICATION OF 100-0” WIDE ROAD PASSING THROUGH 35-75 ACRES INCLUDING PLOT NO. “G” & “H” (01-00 ACRES EACH) CHAPAL PROJECTS IN SECTOR 29, SCHEME 33, KARACHI.

As per letter of Additional Director (UD) Master Plan of Group of Offices, City District Government, Karachi (Defunct) has verified that 100-0” wide road passing through 35-75 acres Chapal Projects, sector 29, scheme-33, Karachi, vide No.URP-33-364/MPEC/88/pt/UD-371/L dated 16.12.2011 and as per sketch paste on back side of regularization order issued by this Department vide No.03-64-02/SO-I(i)/164 dated 09.02.2008 is correct.

The letter of Survey Superintendent, Karachi vide No.S-S/Kye/208/2013 dated 21.02.2013 are hereby withdraw/cancelled.

Sd/-

SECRETARY TO GOVERNMENT OF SINDH  
LAND UTILIZATION DEPARTMENT

C.c to:

1. Senior Member, Board of Revenue, Sindh at Karachi.
2. Survey Superintendent, Karachi.
3. Director, General, Sindh Building control Authority, Karachi.

4. M/s. Chapal Builders & Developers, Karachi.”

A bear reading of this letter gives an impression that the Land Utilization Department has given NOC to the Defendants No.1 to 5 regarding the disputed land. When this case was taken-up in the morning I had directed the defendants' counsel Mr.Masroor Alvi to call the Revenue Officer who has issued this letter which is merely a confirmation of earlier letter issued in 2008. Now after the tea break Mr. Abdul Wajid Wyne Advocate alongwith Mr. Masroor Ahmed Alvi Advocate has informed that this letter (Annexure “A” to the application) is not in respect of the property which is subject matter of the present Suit No.443 of 2007. When asked that how and why an observation of the Court is required in respect of this letter through the CMA No.6322 of 2013 he says that there is some confusion and through the said application this Court can dispose of two other applications which are listed today at Serial Nos. 1 and 3 bearing CMA No. 11847 of 2011 and 11846 of 2011 respectively.

When this matter is taken-up at 11.00 a.m. even the plaintiff counsel has come to rescue the Defendants No.1 to 5 and I have been informed by him that I had represented the plaintiff in some cases. Be that as it may, I have examined the application (CMA No.6322 of 23013) and prayer made therein is neither in favour nor against the plaintiff. Therefore, in view of the fact that this application has nothing to do with the present controversy in the suit, the filing of this application speaks of some possible abuse of the Court.

The contention of counsel for Defendants No.1 to 5 that the application may be disposed of in terms of the letter of Secretary, Government of Sindh, Land Utilization Department, would facilitate the Court in disposal of two other applications persuaded me to examine the said applications as well particularly in view of the contention of learned counsel for the defendants that the property mentioned in the said letter is not subject matter of the suit in hand. The perusal of CMA No. 11846 of 2011 reveals that it is an application under Section 151 CPC with the following prayer:-

“It is, therefore, prayed that this Hon’ble Court may be pleased to direct the Assistant Commissioner, Scheme No.33, and Mukhtiarkar Revenue, Scheme No.33, Malir Karachi to maintain status quo in the matter till the decision of the above suit.”

And CMA No.11847 of 2011 is an application for contempt of order dated 14.4.2007 against Survey Superintendent Karachi, Scheme No.33 and Mukhtiarkar, Scheme No.33, namely, Muhammad Khan Rindh and Abdul Latif Abbasi for violation of order dated 14.4.2007. Interestingly enough there is no order of 14.4.2007 in the suit and even contents of above mentioned two applications have no nexus with the letter reproduced above and annexed with CMA No.6322 of 2013 which has been sought to be disposed of. Even these two applications are outside the scope of the present suit. It is very strange that in all the three applications relief claimed by Defendants No.1 to 5 is against Defendant No.7 though no such grievance was even mentioned in the written-statement of Defendants No.1 to 5 to give a slightest impression that there was any dispute amongst the co-defendants in the present suit. Therefore, in the circumstances, entire exercise of filing of these applications has no legal basis. This is an attempt to “abuse the power of Court”. The disposal of an application “in terms of letter of the Secretary to Government of Sindh, Land Utilization Department” shall be subsequently misused in the office of Defendant No.7. Who knows this letter reproduced above is genuine, manipulated or otherwise lawfully issued by the concerned officer after taking due care of rules and regulations. It is pertinent to mention here that CMA No.11846 of 2011 was an application to restrain the Defendant No.7 from lodging an FIR against the Defendants No.1 to 5 and CMA No.11847 of 2011 is contempt application filed by Defendants No.2 to 5 against the subordinate official of the Defendant No.7 who has issued the above letter in favour of Defendants No.1 to 5. Interestingly enough, this verification letter has no reference to the possible lodging of FIR against Defendants No.2 to 5 at Police Station Anti-Encroachment Cell, Karachi, or dropping of contempt proceeding against the official named in CMA No.11847 of 2011. The only logical conclusion of above facts is that under the cover of disposal of CMA Nos.11846/2011 and 11847/2011, endorsement of High Court is needed on a verification letter dated 20.3.2013, may be to deter the Defendant No.7 even in future to examine the correctness of this verification letter. The defendants have invoked inherent power of this Court under Section 151 CPC to persuade the Courts to pass orders against the co-defendants outside the scope of the pleadings of the parties. It is not the mandate of Section 151 CPC which has been dealt with in the case of COLLECTOR OF CENTRAL EXCISE AND SALES TAX VS. PAKISTAN FERTILIZER COMPANY LIMITED (2007 SCMR 351) and the relevant portion of the said judgment is reproduced hereunder:-

“5. . . . . Insofar as the provisions as contained in section 151, C.P.C. are concerned the same could not have been pressed into service for the simple reason that where the jurisdiction of a Court is expressly limited to the decision of particular questions, the decision of other questions must be regarded as impliedly removed from its jurisdiction. The powers as conferred upon a Court under section 151, C.P.C. can only be exercised with respect to procedural matters and the exercise of such inherent powers must not affect the substantive rights of the parties. In this regard we are fortified by the dictum as laid down in case Padam Sen v. State of U.P. AIR 1961 SC 218 wherein it was held that “the inherent powers saved by section 151, of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possess. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure.” It may not be out of place to mention here that such inherent powers cannot be used when some other remedy is available and more so, it cannot be exercised as appellate powers. The inherent powers as conferred upon a Court under section 151, C.P.C. applies only to the exercise of jurisdiction where some lis is pending before the Court and does not confer jurisdiction to entertain a matter which was not pending for adjudication. In this regard reference can be made to case Rasab Khan v. Abdul Ghani 1986 CLC 1400; Sajjad Amjad v. Abdul Hameed PLD 1998 Lah. 474; Nazar Muhammad v. Ali Akbar PLD 1989 Kar. 635; Muhammad Ayub Khan v. Riyazul Hasan PLJ 1985 Pesh. 22; Commerce Bank Limited v. Sarfraz Autos PLD 1976 Kar. 973; Muhammad Ashfaq v. Shaukat Ali PLD 1976 Lah. 15; Commerce Bank Limited v. Sarfraz Autos PLD 976 Karc. 973; Mian Muhammad Ashfaq v. Lt. Col. Shaukat Ali 1975 Law Notes Lah. 725; Ganisons Indus. Ltd. v. Akhlaque Ahmed PLD 1974 Kar. 339; Lal Muhammad v. Niaz Parwara PLD 1971 Pesh. 157; Karamatullah v. Government of West Pakistan PLD 1967 Lah. 171; Bashir Begum v. Abdul Rehman PLD 1963 Lah. 408; Sher Muhammad v. Khuda Bux PLD 1961 Lah. 579; Inayatullah Butt v. Cantonment Board, Rawalpindi PLD 1957 Lah. 583; in re: Subramania Desika AIR 1958 Mad. 284 and Muhammad Usman Khan v. Miraj Din PLD 1978 Lah. 790.”

The underlining is provided to emphasis the inherent jurisdiction of Court under Section 151 CPC is limited to the powers to regulate the procedure of Court and limited to the decision on particular question on the lis pending before the Court. It does not confer jurisdiction to the matter which was not

pending for adjudication. Coming back to the facts of the applications in hand (CMA No.3622 of 2013, CMA Nos.11846 and 11847 of 2011), the very fact that through these applications the Defendants No.1 to 5 have sought relief against Defendant No.7 is sufficient to appreciate that these applications are outside the scope of the instant suit. The issue of 100 feet wide road in between the project of Defendant No.1 was never challenged by the plaintiff in the present proceedings and, therefore, this Court has no jurisdiction to entertain any comment/verification about such a matter by exercising inherent power of Court under Section 151 CPC as this issue is not pending adjudication in the suit in hand.

The off shoot of above discussion in my humble view is that an attempt seems to have been made to obtain order of Court on an issue outside the scope of proceedings to serve some unknown ulterior motive by the Defendants No.1 to 5, therefore, this application is dismissed with cost of Rs.25,000/- to be deposited by the Defendants No.1 to 5 in the account of High Court Employees Benevolent Funds within two week of this order otherwise legal proceedings will be initiated for non-compliance of the order. Since I have dismissed CMA No.6322 of 2013 with cost, the other two CMAs listed at Serial Nos.1 and 3 (CMA Nos.11847/2011 and 11856/2011) and mentioned in the prayer of the said application are also dismissed.

Before parting with the order, in view of the above circumstances I need to leave a note of caution for the Additional Registrar/Assistant Registrar (O.S) of this Court to be kept in mind while receiving applications under Section 151 CPC in pending cases. It is also imperative for the Court to be vigilant and very careful in exercising inherent jurisdiction under Section 151 CPC, lest it should not be “advancing” instead of “preventing” the abuse of the process of Court.

It has been observed by this Court in several other cases that applications under Section 151 CPC have been filed wherein certain documents/letters/internal correspondence of the government department are annexed and once such documents are made part of the Court record, subsequently observations of Court are obtained on such documents of the government department and the contents of such documents are treated as part of Court orders. Certified copies of such documents and orders of the Court read together to be misused both by the department as well as the litigant to suit their needs. Therefore, to exercise a restrain and to check a possible misuse of jurisdiction of Court under Section 151 CPC, the Additional

Registrar (O.S) while referring the miscellaneous application to the Judges in terms of Second Provision to Rule 14 of the Sindh Chief Court Rules is directed to ensure scrutiny of each and every application under Section 151 CPC filed in any civil suit before placing the same in Court for orders/hearing. The Assistant Registrar must examine/scrutinize such applications bearing in mind amongst other at least the following queries:-

- a) Whether the applicant who has invoked the provision of Section 151 CPC is already a party in the proceedings or not?
- b) Whether the prayer in the application is relevant to the issues between the parties and is directed against the adverse party in the lis or not?
- c) Whether the inherent powers sought to be invoked are with respect to the procedural matters or it would affect the substantive rights of either party?

Additional Registrar/Assistant Registrar (Original Side) should also keep a copy of judgment reproduced above (2007 SCMR 351) handily available and refer it again and again while scrutinizing applications under Section 151 CPC and if find any of the above query or any other discrepancy is found, they should raise objection on the question of maintainability of such application and draw attention of the Court on the order sheet regarding the objection raised by the office to be decided by the Court before hearing the application under Section 151 CPC.

Adjourned to a date in office.

JUDGE

(Approve for reporting)