

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Civil Revision No. 320/2016  
M/s Al-Safa Golden Co. (Pvt.) Ltd.  
Versus  
Capital Development Authority, etc.

Petitioner by: Barrister Muhammad Shoiab Razzaq,  
Advocate,  
Respondents by: Hafiz Arfat Ahmad Ch, Advocate,  
Date of Hearing: 27.08.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant civil revision petition, petitioner impugns orders dated 30.07.2016 and 03.08.2016 passed by the learned Civil Judge 1<sup>st</sup> Class and learned Additional District Judge, Islamabad-West, respectively, whereby application under Order XXXIX Rules 1&2 of the Code of Civil Procedure ('CPC') in suit for declaration, permanent and mandatory injunction filed by him, was dismissed while appeal also met the same fate.

2. Facts, relevant for the disposal of instant civil revision petition, are that on 28.07.2016, petitioner filed suit for declaration, permanent and mandatory injunction against respondents/C.D.A impugning seizer and sealing of Al-Safa Gold Mall, F-7, Markaz Islamabad ('suit property'). Along with the suit, an application under Order XXXIX Rule 1&2 of CPC was also filed, wherein, the learned trial Court refused to grant ad-interim injunction vide order dated 30.07.2016. The petitioner assailed the said order in appeal which was dismissed by the learned ADJ vide order dated 03.08.2016, hence, the instant civil revision petition.

3. On 07.08.2020, learned counsel for the respondents/ C.D.A prayed for the dismissal of instant civil revision petition as having become infructuous as according to the learned counsel, the suit property had been de-sealed by

the respondent Authority which rendered the very claim of the petitioner for seeking a decree for de-sealing of suit property, infructuous. According to the learned counsel, suit property, after de-sealing is functional, where the petitioner is carrying on its business which is a grand shopping mall. Learned counsel further contends that the lease of the suit property in the name of petitioner had also been cancelled which too was assailed in the suit but the same was dismissed and Regular First Appeal (R.F.A) against the said judgment and decree is pending before the learned Division Bench of this Court.

In order to counter the above stance, learned counsel for the petitioner sought 2-3 adjournments for seeking fresh instructions from his client. On 11.08.2020, the representative of the petitioner entered appearance and sought an adjournment for engaging a new counsel. On the subsequent date of 20.08.2020, new counsel appeared and sought an adjournment for submission of his power of attorney. The matter was then adjourned for 27.08.2020 when again the learned counsel for the respondents/C.D.A reiterated the stance *ibid*. it was the stance of learned counsel that for all practical purposes, the instant civil revision petition has become infructuous and may be disposed of as such.

In response, learned counsel for the petitioner argued that the petition still contains live issue; that an R.F.A entailing identical subject matter inter-se the same parties is pending before this court, therefore, pending decision of said R.F.A, the instant civil revision petition may be adjourned *sine-die*.

4. The learned counsel for the petitioner next argued that as a matter of fact, the issue is with regard to parking, management office which existed at 3<sup>rd</sup> floor besides

construction on 7<sup>th</sup> and 8<sup>th</sup> floor of the suit property which are still sealed; that the respondent Authority till date has not communicated the details of the outstanding amounts for which the petitioner was held responsible and alleged to have committed the default; that the cause of action still exists as the main grievance is with regard to the de-sealing of the above narrated portions of the suit property and not the entire building, therefore, in case of non-issuance of temporary injunction the petitioner will suffer irreparable loss.

5. Learned counsel for the respondents/C.D.A repelled the above submission. It is argued that the claim of sealing of the suit property in-parts, has been innovated first time during the hearing of the instant civil revision petition. Further asserted that the submission qua non provision of the details of outstanding dues is also against the record and in particular against the order dated 14.12.2016 passed in the instant civil revision petition, wherein it was observed that the Member Planning C.D.A apprised the court that the petitioner owed Rs.2.78 Billion to the respondent Authority; that the outstanding amount is unpaid till date, therefore, the instant civil revision petition deserves outright dismissal as having become infructuous and on merits as well.

6. Heard and record examined.

7. Before proceeding further, it is essential to ascertain the description of the property i.e. subject matter, as mentioned/described by the petitioner in its plaint, available at Page-30 of the file. In paragraph-2, the description of the property which has been termed as 'suit property' was to the following effect:-

**“2. That the plaintiff company was allotted a Plot No.5 (D.H.S.) Markaz F-7, Islamabad, measuring 3777.78 Sq. Yards on lease for the period of 33 years and further subject to its extension for the period of 33 and 33 years (hereinafter referred as suit plot). The defendants handed over the possession of the subject property to the plaintiff company vide letter No. C.D.A/EM-27(2842)/2009/820, dated 19.05.2010.**

As mentioned above, the property which has been termed as **‘suit property’** is Plot No.5 (D.H.S.) Markaz F-7, Islamabad, measuring 3777.78 Sq. Yards. It was so mentioned in subsequent Para 4, 6 and 7, therefore, there remains no ambiguity that the term ‘suit property’ circumferences the entire building and not any specific part of it.

**8. The stance regarding sealing of different parts/portion of the suit property is also not in consonance with the pleadings. In paragraph of the plaint, at Page-29 of the file, it is mentioned:-**

**“That instead of providing any legal order, the defendants has given one letter to the plaintiff’s manager, wherein it has been mentioned that the suit property has been sealed and electrical and mechanical system is to be kept and controlled by the plaintiff’s management, without entering into the property, which is impossible to control such a huge mechanical and electrical system installed in the building. If the plaintiff is not allowed to enter into the building to control the building, mechanical and electrical system, there will be every chance for any emergency/disaster in the building.”**

**9. It is quite obvious from the above paragraph that the respondent Authority sealed the entire building and petitioner was not allowed to enter and was directed to control the electrical and mechanical appliances from outside of the building. Paragraph 2 of the suit specify the area of the suit property and recognizes handing over of the possession to the petitioner by the respondent**

Authority on 19.05.2010. In concluding paragraph 10, it was asserted that the cause of action had arisen on 28.07.2016, when the respondent Authority issued impugned letter and sealed the suit property at 05:00 am.

10. Likewise, the prayer of the application under Order XXXIX Rules 1&2 of CPC was to the following effect:-

“In the above mentioned circumstances, it is therefore, respectfully prayed that the operation of the orders passed for the seizure/sealing of the suit property including impugned letter dated 18.07.2016 may very kindly be suspended, till final decision of the instant suit.

Further it is also prayed that respondents may kindly be restrained from illegal interference into the suit property, sealing the suit property or doing any other act having prejudice effects upon the legitimate rights of the applicant in any manner whatsoever, may kindly be passed in favour of plaintiff against the defendants, till final decision of the instant suit, to meet the ends of justice.”

11. In addition, there is a receipt at Page 36 of the file contents whereof reads as under:-

"بلڈنگ صفا گولڈ مال کو سیل کر دیا گیا ہے اور اسکی Electrical and Mechanical System کی ذمہ داری Management of Safa Gold Mall کے حوالے کی جاتی ہے تاکہ کوئی مسئلہ نہ ہو۔"

12. Moreover, there is an application moved by the Director Building Control, C.D.A to the Inspector General, of Police, Islamabad Capital Territory (ICT) for legal action against the petitioner on 29.07.2016 wherein it is specifically mentioned that the officials of the respondent Authority sealed the Al-Safa Gold Mall (suit property).

13. From the above pleadings and documents, it is clear that the suit of the petitioner was regarding sealing/de-sealing of the suit property as a whole and not in parts, as put forth by the learned counsel for the petitioner,

therefore, the submission to this effect is accordingly repelled being misconceived.

14. Adverting to the next submission regarding pendency of R.F.A. No.74/2020 on the same subject, suffice it to say that through the referred R.F.A, petitioner assailed judgment and decree dated 22.01.2020 passed by the learned Civil Judge Islamabad-West, whereby its suit assailing cancellation of the allotment of the suit property vide letter dated 03.01.2018 was dismissed. The claim in the instant petition qua sealing/de-sealing of the property, therefore, is quite distinct having no nexus with the one referred to above, therefore, this ground is also not available to the petitioner.

15. Adverting to the merits, it is noticed that the respondent Authority served the petitioner with numerous notices that includes:-

1.	Letter dated 26.05.2013.	Violations of building and zoning regulations.
2.	Notice dated 21.08.2013.	Violations of building and zoning regulations.
3.	Letter dated 04.09.2013.	Request for commercialization of 1 <sup>st</sup> basement of building was turned down.
4.	Letter dated 17.09.2013.	Violations of building and zoning regulations.
5.	Letter dated 09.10.2013.	Violations of building and zoning regulations.
6.	Letter dated 07.02.2014.	Request for commercialization of 1 <sup>st</sup> basement of building was turned down.
7.	Letter dated 17.02.2014.	Violations of building and zoning regulations.
8.	Letter dated 05.03.2014.	Violations of building and zoning regulations.
9.	Letter dated 10.03.2014.	Direction to petitioner to remove illegal constructions.
10.	Show cause notice dated 24.04.2014.	Under section 49-C sub clause (20) of the CDA Ordinance, 1960.
11.	Letter dated 09.01.2015.	Petitioner was directed to vacate the building or get the completion certificate.
12.	Notice dated 26.02.2015.	Violations of building and zoning regulations.
13.	Letter dated 05.03.2015.	Violations of building and zoning regulations.

16. The petitioner was repeatedly asked to remove the encroachments and illegal constructions while the contention regarding non communication of the details of outstanding amount, as mentioned above is also against the record and negated by the order dated 14.12.2016, referred to above. Moreover, the petitioner has also not been able to show that whether any amount in terms of outstanding dues has been deposited with the respondent Authority till date. The petitioner has also not been able to show any approved building plan in its favour.

17. As a sequel to above, the orders of the two learned courts, in the backdrop of the facts highlighted above qua merits of the case, are well reasoned and do not call for any interference. The instant civil revision petition lacks merits, and, otherwise, has become infructuous. It is thus accordingly dismissed.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran

Announced in open Court on 04.09.2020.

**JUDGE**