

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R.No.05 of 2016
Sajjad Ahmed
Versus.
Chairman, Capital Development Authority & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.02.2016	Mr. Umar Hanif Khichi, Advocate for the petitioner, Mian M. Faisal Irfan, Advocate for the respondents
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Through the instant Civil Revision Petition, the petitioner, Sajjad Ahmed, seeks to challenge the Order dated 04.01.2016, passed by the court of the learned Additional District Judge-III, Islamabad (East), whereby the petitioner’s appeal against the Order dated 12.12.2015, passed by the court of learned Civil Judge 1st Class, Islamabad (East), was dismissed. Vide the said order dated 12.12.2015, the learned Civil Court dismissed the petitioner’s application for interim injunction under Order XXXIX, Rules 1 & 2 of the Code of Civil Procedure, 1908 (“C.P.C.”). The civil suit filed by the petitioner is still pending.

2. The facts, briefly stated, are that the petitioner was a transferee of Plot No.272, measuring 283.1/3 Sq. yards situated at Gawala Colony, Rawal Town, Islamabad. The petitioner obtained possession of the said plot on 05.11.1991. Thereafter, the petitioner applied to the Capital Development Authority (“CDA”) for the approval of the building plan. It appears that on 24.06.1992, the petitioner swore an affidavit and applied to the CDA for the issuance of a completion certificate with respect to the house constructed on the said

Plot. Furthermore, on 28.09.1992 another affidavit was sworn by the petitioner in which the petitioner undertook that whenever the CDA orders and directs the petitioner would, at his own cost, demolish the windows and shades made in violation of the building plan. Based on the said affidavits, the CDA on 25.11.1992, approved the building plans and issued a completion certificate in favour of the petitioner. Vide order dated 10.12.2009 passed by the Building Control Directorate, CDA, under Section 49-C (1) of the CDA Ordinance, 1960, the petitioner was directed to remove the following unauthorized construction from the said plot:-

- i) "First floor and mumty constructed without approval.
- ii) Construction of unauthorized foot staller.
- iii) Reference your under taking dated 28-09-1992, all roof projection, chajjas and opening of window towards plot No.271, have to be removed.
- iv) Wall on roof of first floor."

3. The said order dated 10.12.2009 was impugned by the petitioner in a suit for declaration and permanent injunction filed before the court of Civil Judge 1st Class, Islamabad. Vide order dated 24.12.2009, the learned civil court rejected the plaint under Order VII, Rule 11 C.P.C. The appeal against the said order was dismissed, vide judgment dated 29.01.2010, by the court of Additional District Judge, Islamabad. Paragraph 6 of the said judgment is reproduced herein below:-

"6. Stance of the appellant as per his own plaint (para-4) is that prior to issuance of notice dated 10.12.2009, the concerned officials of the CDA had visited the site and noted some violations which were mentioned in the said notice which were

later negotiated between the parties (as per para-5 of the plaint) and the respondent department compounded the same while imposing the fine but the fact remains that this fine and the affidavit of the appellant pertains to the violations committed by him while completing the single storey as is evident from completion certificate dated 25.11.1992 whereas according to the impugned notice, he has constructed another floor alongwith mumi without approval besides construction of an unauthorized food staler etc, but no explanation whatsoever is borne out from the contents of the plaint itself nor could be elaborated during arguments by learned counsel for the appellant. It appears that in the garb of payment of fine in respect of the violations in construction of the single storey, the appellant has now resorted to file the suit to cover the unauthorized construction of another floor etc without approval/sanctioned site plan and has rather suppressed the actual facts while seeking the equitable relief. He has, thus, not approached the Court with clean hands either and has rightly been non-suited by the learned Trial Court since he had no cause of action to bring the suit in hand.”

4. On 10.05.2010, the petitioner applied to the CDA for a provision of a lane between Plot No.272 and Plot No.271. This application was made so as to accommodate the unauthorized windows and shades constructed on Plot No.272.

5. The petitioner's request for the provision of a lane between Plot No.271 and Plot No.272 was considered by the CDA Board in its 6th Meeting held on 05.05.2010. In this meeting, the Director General (Planning), CDA explained the background of the case to the Board. He was of the view that the provision for a lane between Plot No.271 and Plot No.272 to accommodate the opening of unauthorized windows by the allottee of Plot No.272 was not technically feasible. The

decision taken by the CDA Board in the said meeting, is reproduced herein below:-

“The allottee was given an opportunity of explaining his case and the Board observed that the opening of windows was granted by the CDA on submission of undertaking by the allottee at the time of start of construction that whenever required by allottee of plot No.271, he will close the windows and remove the shades. As far as the issue of charging the compounding of other construction is concerned, CDA will look into the reasons for the grant of this permission and fix responsibility. The allottee of Plot No.271 has serious objection to the proposal and both the parties are in litigation. Therefore, the proposal for the provision of lane between Plot No.271 and Plot No.272 was not approved by the Board.”

6. The CDA Board in its 7th Meeting held on 26.05.2010 made the following decision:-

“The allottee of Plot No.271 presented his case before the Board and after taking the view point of allottee Board decided to suspend its earlier decision dated 05-05-2010 and further decided that the detailed inquiry be conducted on allegations of allottee regarding corruption and mal-administration of CDA staff while examining his case. Meantime, the staff of Planning Wing to visit the site and come up with a proposal regarding provision of passage between Plot No.271 and 272.”

7. The record is silent as to the developments between 26.05.2010 when the 7th Meeting of the CDA Board was held, and on 14.09.2015 when the Building Control Directorate of the CDA requested the Director Enforcement, CDA to take immediate action and remove/demolish the violations of the Building & Zoning Regulations on Plot No.272, Rawal Town, Islamabad. Furthermore, on 14.10.2015, the Enforcement Directorate issued letter No.CDA-12(43)(71)/Enf/2015/1941, captioned, “removal of violation of Building and Zoning

Regulations in respect of plot No.272, Rawal Town, Islamabad”. Perusal of the said letter reveals that the competent authority had accorded approval for demolishing the following violations in the building constructed on the said Plot No.272:-

- i. “Construction of un-authorized food staller.
- ii. Un-authorized / illegal roof projection / chajja and opening of window towards Plot No.271.”

8. According to the said letter, the Enforcement Directorate of the CDA had planned a demolition operation on 16.10.2015 and for this purpose, a request was made for the provision of a magisterial cover to the Enforcement Staff to avoid any complication in the course of action.

9. On 15.10.2015, the petitioner instituted a suit for permanent and mandatory injunction before the court of learned Civil Judge, Islamabad, praying for a decree for permanent injunction restraining the CDA from demolishing the projections constructed by the petitioner towards the eastern side of the house, and from closing the windows/exhaust. Additionally, the petitioner prayed for a direction to the respondents to act upon the decision of the CDA Board dated 26.05.2010. Along with the said suit, the petitioner filed an application under Order XXXIX, Rules 1 & 2 C.P.C. praying for an injunction restraining the respondents from demolishing the said projection/canopy over the windows/exhaust of the house of the petitioner on the eastern side. The respondents contested this suit by filing a written statement / written reply, wherein

details of the earlier litigation between the petitioner and the CDA were given. In the said written statement, the respondents maintained that the unauthorized construction made by the petitioner on Plot No.272 was liable to be removed. The construction which the petitioner raised unauthorizedly on Plot No.272 was stated to be as follows:-

- i) "Construction of First Floor and mummy without approval of map plan from CDA.
- ii) Construction of unauthorized food staller.
- iii) Construction/opening of window and Chajjas towards plot No.271.
- iv) Wall on roof of first floor."

10. Vide order dated 12.12.2015, the court of the learned Civil Judge 1st Class, Islamabad, dismissed the petitioner's application under Order XXXIX, Rules 1 & 2 C.P.C. inter-alia, on the ground that the petitioner has no prima-facie case in his favour. Against the said Order, petitioner filed an appeal before the Additional District Judge, Islamabad, which too met the same fate, vide judgment dated 04.01.2016. Paragraph 7 of the said judgment is reproduced herein below:-

"7. The learned trial court has misconstrued the decision taken in 6th board meeting of CDA held on 16.05.2010 by saying that the proposal for provision of lane between plot No.271 and 272 was not approved, as the said decision was taken on 05.05.2010 against which a review application was filed, upon which in 7th board meeting held on 26.05.2010, the earlier decision taken on 05.05.2010 was suspended and it was directed that an inquiry to be conducted on the allegations of allottee regarding the corruption of CDA staff. In the said meeting, it was also directed that the staff of planning wing to visit the spot and come up with proposal

regarding provision of passage between plot No.271 and 272. When confronted the learned counsel for the respondents produced the copies of complete “noting record” carried out by the department. The said notings shows that in para No.116 it has been mentioned that response from the planning wings has not yet been received, however, para No.117 shows that Zaffar Iqbal Zaffar Deputy Director Zone-4 alongwith Director RP has suggested to regret the request of the petitioner regarding leaving of passage between the two plots. In para No.122, the chairman has ordered for the implementation of the orders regarding inquiry and the said referred noting shows that chairman CDA who is competent authority has not accepted the review application of the petitioner. Moreover, the affidavit submitted by the appellant for getting NOC from the department on 28.09.1992 clearly suggests that he has undertaken to remove the windows and shed whenever asked by the department.”

11. The petitioner, in the instant civil revision petition, has impugned these concurrent decisions. Learned counsel for the petitioner submitted that on account of the decision taken by the CDA Board on 26.05.2010, the petitioner was entitled to the provision of a lane between the plot owned by him and plot No.271. He did not dispute the fact that an affidavit was sworn by the petitioner on 28.09.1992, wherein he had undertaken to demolish the violations at his cost whenever ordered by the CDA. However, the learned counsel submitted that the provision of a lane between the said two plots would leave no reason for the CDA to demolish the said violations, which even otherwise had been compounded.

12. Learned counsel for the respondents placed emphasizes on the petitioner’s undertaking contained in his affidavit dated 28.09.1992, and submitted that as the

petitioner had not removed the said violations, the respondents were left with no option, but to demolish the same. He drew the attention of the court to the earlier litigation between the petitioner and CDA, which had been decided against the petitioner. Learned counsel for the respondents submitted that at no material stage had any decision been taken by the respondents or the CDA Board to allow a lane to be created between the plot owned by the petitioner and plot No.271.

13. I have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

14. I find myself fully in agreement with the findings and the reasoning of the learned appellate court. The petitioner had sworn an affidavit in which he had categorically undertaken to demolish the violations at his cost as and when ordered by the CDA. Thus, the petitioner cannot wriggle out of his undertaking by expecting the CDA to create a lane between plot No.271 and plot No.272 just so that the violations committed by the petitioner remain untouched. In the case of Mid East Medical Centre Limited Vs. Government of Pakistan, reported as 1986 CLC 1607, it was held that breach of an undertaking would disentitle an importer from invoking the Constitutional jurisdiction of the High Court under Article 199 of the Constitution. I feel that the same principle will apply to a litigant who breaches his own undertaking and then tries to seek protection by seeking an equitable remedy like an injunction from a court. In the instant matter,

the petitioner neither has a prima facie case for the grant of an injunction, nor is the balance of convenience in his favour. The loss that the petitioner would suffer on account of the demolition of the violations in the construction raised by him is most definitely not irreparable. Hence, the essential ingredients for the grant of an injunction under Order XXXIX, Rules 1 & 2 CPC, have not been satisfied in this case.

15. When the facts and circumstances of the present case are examined in the light of reasoning adopted by the learned courts below, I am of the considered opinion that it is expedient and in the interests of justice not to interfere in the concurrent orders of the learned courts below.

16. Before parting with this judgment, it is essential to note that in the second suit instituted by the petitioner, not a word has been mentioned about the earlier litigation between the petitioner and the CDA with respect to the violations of Building & Zoning Regulations on the plot in question. This concealment was reason enough for the learned courts below to have denied the equitable/discretionary relief of injunction to the petitioner without further ado.

17. It is an age-old maxim that “he who seeks equity must come to the court with clean hands.” The relief of injunction is a discretionary and equitable relief, which a party cannot claim as a matter of right. Before the grant of such a relief, the conscience of the court has to be satisfied that the party seeking such a relief has not acted inequitably. The petitioner by

concealing the factum of the earlier litigation, appears to have acted contumaciously and inequitably and has, thereby disentitled himself to the relief of injunction. Section 56 (j) of Specific Relief Act, 1877, also postulates that an injunction can not be granted when the conduct of the applicant has been such as to disentitle him to the assistance of the court. The concealment of the factum as to the earlier litigation between the same parties, in the subsequent suit, is a conduct which disentitles a party to the grant of the discretionary relief of an injunction.

18. Although, the 6th and 7th decisions of the CDA Board were not in the field when the earlier litigation between the petitioner and CDA came to an end, the affidavits sworn by the petitioner undertaking to remove the violations in the construction on Plot No.272 were very much there. In the earlier and the subsequent litigation between the petitioner and the CDA the essential dispute was with respect to the requirement to remove the violations of the Building and Zoning Regulations in the construction carried out by the petitioner on Plot No.272, Gawala Colony, Rawal Town, Islamabad.

19. The subsequent suit bears a certificate, which reads: "It is certified that no matter is pending adjudication between the same parties before any court of law". This is a crafty and a nefarious design by the petitioner to have the subsequent suit entertained without making disclosure of the earlier litigation, which had been decided in favour of CDA. The purpose behind the requirement of a certificate from a plaintiff or

his counsel requiring disclosure of any pending or previous litigation between the parties is to prevent the defendant from being vexed twice. Even though, there had not been a full fledged trial in the earlier litigation and the learned civil court had rejected the petitioner's plaint under Order VII, Rule 11 C.P.C., it was nonetheless obligatory upon the petitioner to have disclosed this fact in the certificate as well as the pleadings in the subsequent suit.

20. Concealment of a material fact in the pleadings is akin to an abuse of the process of the Court. It is an elementary principle of law that a party, who approaches the court for discretionary relief, should candidly and forthrightly narrate all material facts in the plaint and/or the application for the grant of a temporary injunction. A litigant who had failed to make complete disclosure of an earlier litigation in the subsequent suit between the same parties, can be held to have abused the process of law and such an action was considered to be a deliberate attempt to hamper and obstruct due course of judicial proceedings in administration of justice. The petitioner, in the subsequent suit, ought to have disclosed the factum about the earlier litigation between the parties and the result thereof.

21. In the case of Saeeda Vs. Province of Punjab, reported as (2013 CLC 454), the Hon'ble Lahore High Court while deciding a civil revision petition, held, at Paragraph 10 of the report, as follows:-

10. It is also a settled principle of law that besides the above factors the Courts in the facts and circumstances of a case

have to take into consideration certain other factors such as whether the Court has been approached promptly or not; whether the grant of an injunction will be against public interest/policy; whether grant of an injunction to a party shall result into an undue advantage being given to him which would perpetuate injustice and whether a party approaching the Court for interim relief has concealed material facts and/or acted in a malafide manner. In case the answer of any of the questions is in the affirmative then the relief of an injunction being discretionary in nature can be declined. Reliance in this regard is placed on a judgment reported as ATCO Lab. (Pvt.) Limited Vs. PFIZER Limited and others (2002 CLD 120)”

22. Writ jurisdiction, which has certain features common to revisional jurisdiction under Section 115 C.P.C., has consistently not been exercised in favour of a litigant who has concealed or suppressed a material fact from the court. Reference in this regard may be made to the following cases:-

- i) Ramzan Vs. Chief Settlement Commission (PLD 1968 L 258);
- ii) Abdur Rashid Vs. Pakistan (1969 SCMR 141);
- iii) Principal, King Edward Medical College Vs. Ghulam Mustafa (1983 SCMR 196);
- iv) Lahore Development Authority Vs. Mst. Shamim Akhtar (2003 MLD 1543);
- v) Nazir Ahmad Vs. Faisalabad Development Authority (2003 CLC 359); and
- vi) Dilawar Hussain Vs. District Coordination Officer, Okara (2004 CLC 324).

23. By turning down the petitioner’s application for interim injunction and his appeal, I do not find that the learned lower courts have exercised jurisdiction illegally or

with material irregularity. Resultantly, this petition is dismissed.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING

JUDGE

Qamar Khan*

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