

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
Suit No. 2489 of 2016

DATE: **ORDER WITH SIGNATURE (S) OF JUDGE (S)**

1. For hearing of CMA No.16415/16
2. For hearing of CMA No.662/17

30th May, 2017

Mr. Muhammad Nazir Tanoli, Advocate for the plaintiff.
Mr. Naveed Ahmed Khan, Advocate for defendant No.1 to 3.
Syed Aal-e-Maqbool Rizvi, Additional A.G. Sindh.
Ms. Naheed Akhter State Counsel.
Mr. Pervez Ahmed Mastoi, Advocate for KDA
Ms. Rehmatunissa, Advocate for KDA

Plaintiff has filed this suit, *inter alia*, for directions, to take over the assets of defendant No.1-M/s. Latif Memorial Hospital Welfare Association, of which defendants No.2 and 3 are also the members, on the ground that objectives as contained in the Memorandum of Association of both the entities, that is, plaintiff and defendant No.1, are similar and defendant No.1, in view of its Article 20 relating to dissolution, is bound to donate its assets to any such committee which has the similar objectives. The plaint contains the following prayers:

“PRAYER

- a) *Declaration to the effect that all the assets of the defendant No.1 per By Law of the Latif Memorial Welfare Association vide clause 20 can only be donate to the other association having the same aims and objectives and selling its assets to any person against the spirits of the objectives of the society is void ab initio illegal unlawful and against the constitution and bylaws of the society.*
- b) *To restrain the defendants No.2 to 3, their men, agents, accomplices, attorneys or any other person or persons acting for or on behalf of the defendants No.2 to 3 from selling, executing Gift deed or any other*

instrument in respect to assets of the Latif Memorial Hospital Welfare Association and or Amenity Plot ST-18/D Scheme 24 Gulshan-e-Iqbal and the Hospital so for Built there on under the Name and style of Latif Memorial Hospital Welfare Association and similarly the Defendants Nos.4 & 5 may be restrained from transferring / mutating the said property by way of Gift deed, Sale deed, Conveyance deed etc. in the name of private defendant No.2 & 3 or any other third person or persons.

c) To direct the defendant No.1 and 2 to donate Latif Memorial Hospital Welfare Association and / or Amenity Plot No.ST-18/D Scheme 24, Gulshan-e-Iqbal and the Hospital so for built thereon under the Name and Style of Latif Memorial Hospital Welfare Association.

d) Cost of the case.

e) Any other relief/s, which this Honourable Court deems fit and proper under the circumstances of the case.”

Mr. Muhammad Nazir Tanoli, learned counsel for the plaintiff, has argued that it is a matter of record that in a meeting of 25.02.2016 held at the Hospital premises built at plot No.ST-18/D, Block No.6, Scheme No.24, Gulshan-e-Iqbal, Karachi, the members of defendant No.1 by consensus had decided to dissolve the association, whereafter the said decision of dissolution was submitted to the Registrar, Joint Stock Companies, Karachi. It is further argued that after dissolution, plaintiff addressed a detailed letter, in which it has offered to purchase the assets of defendant No.1, however, such correspondence was never replied to by defendant No.1, which means that they have no objection to such an offer.

To a query about entitlement or legal character of the plaintiff as envisaged under Section 42 of the Specific Relief Act, 1877, counsel for the plaintiff submitted, that the above provision by virtue of various judicial pronouncements has been diluted and cannot be pressed into service in a strict manner and the Court must see the basic object of filing of the case, which is a noble one and in the public interest and, therefore, the cause of

action is very much within the parameters of law and the prayer clause can be granted by this Court.

On the other hand, Syed Aal-e-Maqbool Rizvi, learned Additional Advocate General Sindh, has raised objection to the maintainability of suit and on a specific query, he replied that since the concerned Registrar comes within the domain of Provincial Government, the proper checks and balances are applied to such type of entity and he has referred to Section 16-A of the Societies Registration Act, 1860, *inter alia*, providing that in case of irregularities reported in a Society or Association of the nature, the same can be taken over by the Government.

Mr. Naveed Ahmed Khan, learned counsel for defendants No.1 to 3, has first argued that the Hospital built on the above plot is owned by a partnership firm with the name and style of M/s. Latif Memorial Hospital and the Ninety Nine (99) years lease, available at page-75 of the case file, has been awarded by defendant No.4-Karachi Development Authority (“**KDA**”) in the name of defendant No.1-M/s. Latif Memorial Hospital. He has further referred to clause-20 of the said lease, wherein there is some clog on the transfer of the plot in question, which admittedly is an amenity one and cannot be put to any other use in terms of the Sindh Regulation and Control Ordinance, 2002 and relevant Building Regulations. The crux of defendants No.1 to 3’s stance is that dissolved defendant No.1 has no nexus with the above plot in question.

In compliance of the earlier Court’s order, the counsel for defendants No.1 to 3 has placed on record the official record from the Registrar of Firms, showing the latest position of partners, wherein defendants No.2 and 3 are also mentioned as partners. On a query, counsel for defendants No.1 to 3 has produced the deed of retirement of partnership, which change was

duly effected in the documents produced under his Statement as well as partnership deed which is a registered document and clearly shows that the said Firm (M/s. Latif Memorial Hospital) is the owner of Hospital built on the above mentioned plot. It was next argued that when the Hospital and its other assets do not belong to defendant No.1, then the same cannot be handed over to the plaintiff nor there is any agreement as such between the plaintiff and defendant No.1.

I have given my anxious consideration to the undisputed documents and stance of the respective parties.

No doubt that after various precedents, import and effect of Section 42 of the Specific Relief Act, 1877, has been narrowed down and one of the leading Judgment in this regard is 2004 C L C 1029 [*Arif Majeed Malik and others v. Board of Governors Karachi, Grammar School*]. But nevertheless, the statutory provision is still there in the statute book and exists and has to be applied accordingly. In absence of any clause under the Memorandum and Articles of Association of defendant No.1 that the assets should be given / handed over or donated to any specific entity or any agreement between the parties hereto (which admittedly is not there), that is, plaintiff and defendant No.1, the plaintiff cannot as a matter of right claim that the assets of dissolved entity (defendant No.1) should be handed over to the plaintiff. This is an undisputed factual position and in absence of any such document or undertaking by defendant No.1, neither any right nor even any interest has accrued in favour of the plaintiff for bringing an action of the nature. Pleadings of the plaintiff show that latter does not have legal character for instituting the present suit. Consequently, I find that no cause of action has accrued for filing the present suit and the same is also hit by section 42 of the Specific Relief Act, 1877 and thus the basic features to attract Order VII, Rule 11 of Civil Procedure Code, 1908, are present in

instant case. Therefore, plaint of this suit is rejected with no order as to costs.

Riaz / P.S*

Judge