JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

W.P. No. 1498 of 2022

AFTAB AHMED KHAN AND ANOTHER.

Vs

DILAWAR KHAN, ETC.

Petitioners by	**:**	**Mr Ahmed Shahzad Awan Advocate.**
Respondents by	**:**	**Mr Shahryar Nawaz Khan Advocate.**
Date of hearing	**:**	**25.11.2022.**

SAMAN RAFAT IMTIAZ, J. Through this Writ Petition the Petitioners [Aftab Ahmad Khan and Anwar Kamal Khan] have assailed Order dated 17.03.2022 ("**Impugned Order No.1**") and Order dated 05.04.2022 ("**Impugned Order No.2**") passed by the learned Respondent No.3 [Civil Judge 1st Class, Islamabad-West] and the learned Respondent No.2 [Additional District Judge, Islamabad-West], respectively whereby the Petitioners' application under Order XXXIX, Rule 2(3), C.P.C., was dismissed as well as the appeal filed against such dismissal.

2. Brief facts as per the Memo of Petition are that the Petitioners filed a Suit for Declaration, Possession, Recovery of Mesne Profit, Mandatory and Permanent Injunction ("**Subject Suit**") against the Respondent No.1 and others which is still pending before the learned Respondent No. 3. Along with the Subject Suit, the Petitioners also moved an application under Order XXXIX, Rules 1 and 2, C.P.C. The learned Respondent No.3 was pleased to grant an ad-interim injunction on 05.12.2019 which was confirmed vide order dated 28.01.2021. Thereafter the Petitioners filed an application under Order XXXIX, Rules 2(3), C.P.C. alleging that the Respondent No. 1 has started violating the stay order by renting out shops, hence contempt of court proceedings be initiated against the Respondent No.1. The contempt application was withdrawn by the Petitioners in view of a compromise reached with the Respondent No.1. Subsequently, the

Petitioners once again filed an application under Order XXXIX, Rule 2(3), C.P.C. read with Sections 94 and 151 C.P.C. alleging that the Respondent No.1 has started violating the stay order yet once again by renting out shops and raising illegal construction. However, the learned Respondent No.3 after hearing the learned counsel for the parties dismissed the application vide the Impugned Order No.1. The Petitioner preferred an appeal against Impugned Order No.1 but that too was dismissed vide Impugned Order No.2 by the learned Respondent No.2, hence, this petition.

3. The learned counsel for the Petitioners contended that the ad-interim injunction which was later on confirmed not only restrained the Respondents from alienating the suit property but also required them to maintain status quo. He argued that therefore the illegal construction being carried out by the Respondent No. 1 on the suit property constitutes contempt. He further submitted that in case the Subject Suit is decreed as prayed the Petitioners will suffer loss on account of any illegal construction carried out by the Respondent No. 1 on the Petitioners' land and as such the Impugned Orders No.1 and 2 are not sustainable.

4. The learned counsel for the Respondent No.1, on the other hand, submitted that the ad-interim order dated 05.12.2019 was confirmed on 28.01.2021, which had a validity period of six months pursuant to Order XXXIX, Rule 2B, C.P.C. He argued that therefore no contempt was committed by the Respondent No.1 as there was no injunctive order in the field in February, 2022 when the alleged contempt was committed. Even otherwise, he submitted that it is undisputed that the Respondent No. 1 has not alienated the suit property whereas the stay order was only to the extent of restraining the Respondents from alienating the suit property. He further submitted that no illegal construction was being carried out by the Respondent No.1 and as stated in the Respondent No.1's counter affidavit/reply to the Petitioners' contempt application the Respondent No.1 had only carried out some repair work for the damage caused due to heavy rain fall. He added that the Respondent No.1 had no intention to disobey the court's order.

5. Arguments advanced on behalf of the learned counsel for the parties have been heard and record perused with their able assistance.

6. The ad-interim order dated 05.12.2019 which was confirmed vide order dated 28.01.2021 is reproduced herein below:

> *"Keeping in view the content of plaint alongwith application U/o 39 Rule 1 & 2 CPC, affidavit and documents annexed with the plaint, it transpires that tentatively an arguable case exists in favour of the applicants/plaintiffs.* ***Accordingly ad-interim injunction/ status quo is granted. Defendants/respondents are restrained from illegally and unlawfully alienating suit property No. 14-., F-8 Markaz, Islamabad in any manner whatsoever****, till further orders. However, instant order shall not affect the order/proceedings of any other competent court or lawful forum."* [Emphasis added].

7. The Respondent No.3 has held in the Impugned Order No.1 that the term *'status quo'* has been interpreted by the ad-interim order itself by restraining the Respondents from alienating the suit property. In other words the Respondent No.3 has held that the status quo order was restricted to the extent of ownership of the suit property. Such interpretation has been upheld by the Respondent No. 2 vide the Impugned Order No. 2.

8. The term *'status quo'* literally means *'the situation that existed before something else (being discussed) occurred'*. Reliance is placed on *Government of Pakistan v. Dr. M. Akbar Rajput*, 2011 SCMR 1298. Therefore, by itself the term '*status quo'* would imply that the situation that immediately existed before the passing of the injunctive order is to be maintained. There was no need to specify that the defendants are restrained from alienating the property as the same would go without saying once status quo has been ordered. Yet, the ad-interim order which was later confirmed used specific language to restrain the defendants from alienating the suit property over and above the status quo order. This indicates that the status quo order was not of general import rather the existing state of affairs pertaining to ownership of the property was to be maintained. One could argue that in such case the use of the term 'status quo' was misplaced. However, it would not lead to any conclusion other than what has been held by the Impugned Orders as specific language would prevail over the general. The specific restraint on alienation of the suit property would therefore limit the scope of the general status quo order.

9. No allegation of alienation has been made by the Petitioners. Even otherwise, as far as the allegation of illegal construction is concerned, it may be seen that the Respondent No.1 took a specific stance vide his reply sworn on oath that only repair work was carried out and no construction had been made on

the suit property which stance remained un-rebutted by the Petitioners as no affidavit-in-rejoinder was filed by them. In such circumstances the Petitioners have remained unable to establish that any disobedience or breach of the stay order has been committed.

10. Last but not least, the learned counsel for the Respondent No.1 argued that there was no stay order in the field at the time of the alleged contempt as the order dated 28.01.2021, whereby the ad-interim order dated 05.12.2019 had been confirmed had a validity period of six months pursuant to Order XXXIX, Rule 2B, C.P.C. which therefore expired on 27.07.2021. In order to consider such objection it shall be beneficial to reproduce the relevant provisions of Order XXXIX, Rule 2 C.P.C. herein below:

> *2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*
>
> *(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction keeping an account giving security or other wise, as the Court thinks fit.*
>
> *(3) -----*
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> *(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.*
>
> *[(2A) An interim injunction passed under rules 1 or 2 in the absence of defendant shall not ordinarily exceed fifteen days: Provided that such injunction may be extended for failure of its service on the defendant when such failure is not attributable to the plaintiff* ***or when the defendant seeks time for defence of application for injunction.***
>
> *(2B) The order of injunction made under rules 1 or 2 after hearing the parties or after notice to the defendant* ***shall cease to have effect on the expiration of six months*** *unless extended by the Court after hearing the parties again and for reasons to be recorded for such extension:*
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> *Provided that report of such extension shall be submitted to the High Court.* [Emphasis added].

11. The above reproduced sub- rules 2A and 2B of Order XXXIX C.P.C. were inserted by way of Civil Laws (Reforms) Act, 1994, which according to its preamble was promulgated for bringing about procedural reforms aimed at expeditious disposal of civil cases. The said provisions of law have come under

discussion in a plethora of case law from various superior courts of the country which are summarized below:

i. *Syed Muhammad Shah Jehan Shah and 22 others v. Fazal-ur-Rehman and 45 others,* 1996 CLC 1572 [Peshawar]:

> *"3. A perusal of the aforesaid Act XIV of 1994 promulgated on 31-7-1994 would provide that it is an amendment in a Procedural Law which has to be retrospective. Thus, one has no escape from the consequence that the temporary injunction issued by the Trial Court ceases to exist at present. The very language of newly-added Rule 2(b) of Order 39, C.P.C. would undoubtedly indicate that such powers of extending the injunction can be exercised by the Court either suo motu or on the application of any party interested. Rather the idea indicating suo motu exercise of power by the Trial Court is more dominant in view of the very scheme of the amendment that requires every Civil Court to be conscious of and vigilant about all the temporary injunctions issued by it.*
> *4. Having the aforesaid view, the temporary injunction has ceased to exist but the Trial Court is at liberty to hear the parties again and to pass any order deemed fit within the contemplation of Order 39, Rule 2(b), C.P.C."*

ii. *Raja Talat Mahmood v. Ismat Ehtishamul Haq,* 1999 SCMR 2215 [Supreme Court of Pakistan]:

> *"**Rule 2-A of Order XXXIX, C.P.C., does not require a specific order for extension of the interim injunction after expiry of 15 days in case defendants seek time for defence of application for injunction.** From the order-sheet it follows that from 24-4-1998 (the next date after 10-4-1998) till 28-7-1998 (when the written statement was filed by the petitioner) on all the various dates of hearing as the reply was not filed, dates were given enabling the petitioner to file his reply. In such circumstances, it was not necessary to pass specific orders of extension of the interim status quo order on each date of hearing. Status quo order, dated 10-4-1998 would be deemed to have continued. **It is under Rule 2-B that the interim injunction stands expired after 6 months.**"* [Emphasis added].

iii. *Gul Haider v. Dr. Muhammad Asad Zia,* 2003 YLR 913[Peshawar]Division Bench:

> *"1. The plaintiff, respondent herein, instituted a suit in the Court of learned Civil Judge 1st Class, Mardan for the specific performance of contract mainly on the ground that the defendant, appellant herein, has by virtue of an oral agreement promised to sell the property in dispute. The respondent also asked for the issuance of a temporary injunction restraining the appellant from alienating the property pending decision of the case. The application for the temporary injunction was allowed by the learned trial Court vide order, dated 12-5-2001. The appellant filed an appeal against the said order in the Court of District Judge, Mardan but as the valuation of the suit exceeded Rs. five lacs, it was returned vide order, dated 13-10-2001. **In the mean time when the impugned order ceased to have effect after the expiration of six months,** the respondent moved another application for temporary injunction which was allowed by the learned Civil Judge vide his order, dated 17-7-2000, hence this appeal."* [Emphasis added].

iv. *XEN PESCO (WAPDA) Mansehra through Chairman, PESCO and 4 others v. Gas Masters CNG Filling Station, Mansehra through Khalid Latif and others,* PLD 2005 Peshawar 132[Peshawar]:

"6. ***The law maker has introduced (rule 2-B) with the object to suppress the mischief of delay in the disposal of those cases in which temporary injunctions are granted.*** *The outer limits of six months, i.e., the terminus provided for the initial order bf injunction is with the object to place an embargo on the powers of the Courts granting temporary injunction in pending cases for indefinite period so to ensure the speedy disposal of such cases.* ***Additionally, the amendments introduced were with the view that the beneficiary of it may not misuse the same by protracting the litigation a fact judicially noticed by the Courts in the past.*** *The proviso to rule (2-B) has further laid emphasis that copy of the order extending temporary injunction shall be submitted to the High Court which is a further check on the discretionary powers of the subordinate Courts. Again the aim and object behind it is that District Courts shall decide those cases in which temporary injunctions are granted as quickly as possible.* ***After the enactment of rule (2-B) the extension of temporary injunction is no more a matter of routine and it cannot be done in the old fashion. The Court while extending the same shall have to record sound reasons and copy of the same is to be essentially sent to the High Court for information. The absolute discretion earlier vested in the said Courts has thus been taken away.***

We have noticed with concern that ordinarily copies of such orders are not sent to the High Court which amounts to a clear violation of the mandatory provision of rule (2-B), C.P.C. Non-compliance therewith would render such order legally defective and susceptible to interference in appellate or revisional jurisdiction.
All the subordinate Courts, therefore, are required to send copy of the order extending the temporary injunction each tinge to the High Court without fail.

10. ***Before parting with the judgment the District Courts are emphatically directed to intimate/send copy of the order extending temporary injunction to the High Court strictly complying with the proviso to Rule (2-B) of Order XXXIX. It is also emphasized that while granting extension in the injunction order under the above rule the Court shall record sound reasons for the same and shall also consider its own contribution in the delay of disposal of the main case as well as of the patties particularly of the beneficiary of the order.*** *In case the beneficiary of the order is found indulging in delaying tactics by protracting the trial in the main case that can be considered as a disentitling factor for extension of the temporary injunction order. Whenever the Court for valid reason extends the initial order of injunction then the main case shall be given priority for disposal and before the expiry of the extended period the Court shall decide the main case in all circumstances."* [Emphasis added].

v. *Muhammad Zahid Naseem Adil v. Muhammad Shafi and 5 others,* 2007 YLR 2190 [Lahore]:

"5. I have heard the learned counsel for the petitioner and have examined the record, appended herewith. Besides the lawful reasons, which concurrently weighed with the two Courts below while returning the impugned judgments/orders, injunctive order dated 22-1-2000 was to remain operative for a period of 6 months unless the same was extended by the Court through an order passed after hearing of the parties and conscious application of judicial mind, as per provision of rule 2-B of Order XXXIX, C.P.C. ***In this case restraint order was not extended by the trial Court after 22-7-2000 and stood automatically vacated thereafter, by operation of law.*** *All the 3 mutations were sanctioned much later than the date on which the said order seized to exist, consequently petitioner's*

application under Order XXXIX, rule 2(3), C.P.C. was correctly dismissed by the Courts below." [Emphasis added].

vi. *District Collector, Bannu and 4 others v. Muhammad Subhan and 3 others,* 2008 CLC 1568 [Peshawar]:

"4. Merits/demerits of the case need not to be discussed as the impugned order of the trial Court has lost its life and is no more in the field. The trial Court had granted temporary injunction to the plaintiffs/ respondents on 8-12-2007 and ***under the provisions of Order XXXIX, rule 2(b), C.P.C., such order is to survive for six months unless and until it was extended and that too for reasons to be recorded and the same communicated to this Court.*** *The record indicates that neither the aforesaid order has been extended nor the plaintiffs had made any request for its further extension.* ***Thus, the ad interim injunction granted by the learned trial Court on 8-12-2007 stood automatically expired after the lapse of six months*** *on 8-6-2008 and factually there was no order in the field to be impugned by the petitioners/defendants."* [Emphasis added].

vii. *Dr Taj Malook v. Malik Niaz Khan and another,* 2009 CLC 377 [Peshawar]:

"9. The above reproduction of the provision of law would show that the maximum period for an interim injunction is six months or disposal of the suit which ever first occurs or if the same is extended by the trial Court with reasons. The interim order in this case was passed on 29-6-2005 which remains for six months in the field and on 29-12-2005 it expired automatically. Perusal of the record showed that ***the application for alleged contempt was moved on 18-2-2006*** *and the allegations are that the respondents are constructing the Abadi in the suit-land.* ***It is important to mention that on the said date there was no substantive order in the field nor the same had been extended by the trial Court.*** *The law reproduced above is very clear and also as held in the case of Syed M. Shah Jehan Shah and others v. Fazale Rehman and 45 others reported in 1996 CLC 1572 and in the case of Gul Haider v. Dr. Asad Zia reported in 2003 YLR 913 that the 'ad interim order passed under Order XXXIX, rule 1, C.P.C. expires after six months."*

So neither the injunctive order was existing at the time of moving the contempt of Court application by the petitioner nor the alleged violation has been proved on the record of the case." [Emphasis added].]

viii. *Muhammad Safdar and another v. Muhammad Naseer Haider and others,* PLD 2019 Lahore 295 [Lahore]:

"*8. Under the circumstances, on the basis of the above facts and the provisions of Rule 2B, ibid., without going into the merits of the case it is observed that since by operation of law there is no temporary injunction in the field the instant petition was infructuous and incompetent at the time of filing. I am fortified in my view on the basis of the judgments reported as "Raja Talat Mahmood v. Ismat Ehtishamul Haq" (1999 SCMR 2215), "District Collector, Bannu and 4 others v. Muhammad Subhan and 3 others" (2008 CLC 1568) and "Xen PESCO (WAPDA) Mansehra through Chairman, PESCO and 4 others v. Gas Masters CNG Filling Station, Mansehra through Khalid Latif and others" (PLD 2005 Peshawar 132).*

9. In Raja Talat Mahmood's case, supra, it has been held that upon confirmation an interim injunction stands expired after, "six months" (in this case one year). In Xen PESCO (WAPDA) Mansehra's case, supra, it has been observed that the law maker has introduced rule 2B,

ibid., so as to suppress the mischief of delay in disposal of those cases in which the plaintiff seeks and is granted interim relief. The outer limit of one year has been fixed to obviate such practice. The amendment was introduced to deny the opportunity to the beneficiary of the temporary injunction to misuse it by deliberately delaying the adjudication of the suit."

ix. *Sahib Zada Din Muhammad v. Muhammad Zaman and others,* 2021 CLC 1560 [Balochistan]:

"3. The object of Rule 2-B of Order XXXIX, C.P.C. is to expedite the disposal of these cases in which temporary injunction was granted. The object of limit of six months to put embargo on the power of court granting temporary injunction for indefinite period. The purpose of the above amendment is to discourage the misuse of the interim order for protracting the litigation. ***After the enactment of rule (2-B) the court while extending the interim injunction shall have to record the reasons coupled with report of the said extension to the High Court.****"* [Emphasis added].

x. *Messrs Pfizer Pakistan Limited and 2 others v. Pharma Plus International through Managing Partner,* 2022 CLC 1298 [Peshawar]:

"3. The above quoted provision was added by the Civil Laws (Reforms) Act XIV of 1994, whereunder the statutory life of the order passed after hearing both the parties is six months and after expiry of six months the order automatically expires or remains no more in field. The phrase "cease to have effect" denotes come to an end, no longer in existence, discontinue, elapse, end, expire, finish, halt, lapse, leave off, let up, pass, quit, stop, terminate, wind up. In Raja Talat Mehmood v. Ismat Ehtishamul Haq (1999 SCMR 2215), the Hon'ble Supreme Court has held that "O.XXXIX, R. 2-B---Interim injunction --- ***Expiry--- Interim injunction stands expired after six months under O.XXXIX, R.2-B, C.P.C****"* [Emphasis added].

12. The preamble of the Civil Laws (Reforms) Act, 1994 as mentioned hereinabove shows that the provisions of Order XXXIX, Rules 2A and 2B were inserted in the C.P.C for the purpose of aiding in the expeditious disposal of cases. The above case law that has developed in relation to such provisions makes it crystal clear that the validity period of a temporary injunction is six months under Rule 2B of Order XXXIX, C.P.C., unless it is extended by the court (a) after hearing the parties again and (b) for reasons to be recorded for such extension provided (c) that report of such extension is submitted to the High Court.

13. In the instant case the ad-interim order dated 05.12.2019 was confirmed on 28.01.2021 and as such was valid only till 27.07.2021. The Petitioners have not brought on record nor alleged that any extension was passed by the learned Respondent No.3 in the absence of which the temporary injunction ceased to

have effect on expiry of six months. In view of the foregoing reasons there was no injunctive order in the field at the time of the alleged contempt.

14. For all the foregoing reasons neither the injunctive order was in existence at the time of the alleged contempt of Court nor has the alleged violation been proved. Consequently, the instant writ is **dismissed.**

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on the 9th day of December, 2022.

JUDGE

Tanveer Ahmed/*

Approved for Reporting
Blue Slip added.