JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

F.A.O. NO. 78 OF 2025

METROPOLITAN CORPORATION, ISLAMABAD

VS

M/S MIRZA MUHAMMAD ISMAIL & CO.

Appellant by : Mr. Hassan Rashid Qamar, Advocate.

Respondent by : Mr. Qamar Inayat Raja, Advocate.

Date of hearing : 30.05.2025

MUHAMMAD AZAM KHAN, J.

C.M. NO. 948/2025:

1. Through the instant application, the Applicant [Abdul Aziz Khan] seeks his impleadment as a Respondent/Plaintiff in the titled appeal on the ground that he participated in the open auction for the Municipal Cattle Market of Sacrificial Animals for Eid-ul-Azha 2025, conducted by the Metropolitan Corporation Islamabad (MCI), and also deposited earnest money of Rs. 2,000,000/- with the competent authority.

2. After examining the record and hearing the parties, it is evident that the Applicant was not a party to the original suit filed before the learned Trial Court, nor was any relief sought against him therein. The scope of the present appeal is confined to the challenge against the Impugned Order passed by the learned Trial Court on the application under Order XXXIX Rule 1 & 2 CPC. Since the Applicant was not a party in the original proceedings, his impleadment at the appellate stage would not be appropriate and may unnecessarily broaden the scope of the adjudication.

3. Accordingly, the instant C.M. is **dismissed.**

C.M. NO. 949/2025:

Exemption sought for is allowed subject to all just and legal exceptions.

MAIN CASE:

1. Through the instant Appeal filed under Order XLIII of The Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), the Appellant [Metropolitan Corporation, Islamabad] has assailed the order dated 22.05.2025 ("**Impugned Order**") passed by learned Civil Judge 1st Class, Islamabad-West **("Trial Court")**.

2. The brief facts of the case giving rise to the instant appeal are that the Respondent/Plaintiff filed a suit before the learned Civil Judge, Islamabad-West, whereby he sought a declaration and permanent injunction. In said suit, it was the contention of the Respondent/Plaintiff that the Appellant/Defendant invited bids for cattle Mandi Eid-ul-Azha 2025, Islamabad at five different sites. (i.e. a. Near Facto Cement Factory Sangjani, Islamabad; (b) Sector I-15 Markaz, Islamabad; (c) Near Juggi Stop, Bhara Kahu, Islamabad; (d) Near Sultana Foundation, Lehtrar Road, Islamabad; and (e) Near Zia Masjid Expressway, Islamabad) through advertisement dated 26.04.2025 published in the daily newspaper namely "The Nation". As per the requirement of the appellant/defendant, the respondent/plaintiff deposited two CDRs amounting to Rs.30,00,000/- each for participating in the bidding process for the site near Sultana Foundation, Lehtrar Road, Islamabad, and near Zia Masjid Expressway, Islamabad. In the bidding process of the above-mentioned sites, the respondent/plaintiff stood highest bidder with the offer of Rs.65,00,000/- for the site near Sultana Foundation, Lehtrar road, Islamabad, and Rs.51,00,000/- for the site near Zia Masjid Expressway, Islamabad. On 17.05.2025, it transpired to the respondent/plaintiff that appellant/defendant floated another advertisement dated 16.05.2025 through which they called bids for two more new sites in Islamabad i.e. (i) Sector I-12, Islamabad and (ii) Bhinder Stop, Japan Road, Expressway, Islamabad out of which one is very near to the site of the respondent/plaintiff on the same expressway road i.e. near Zia Masjid Expressway, Islamabad and it will cause huge financial losses with regard to the recovery of the respondent/plaintiff. The above mentioned advertisement dated 16.05.2025 having public notice of two days is not only against the spirit of PEPRA Rules, but also seems mala-fide and fraudulent scheme in order to jeopardize the rights of respondent/plaintiff and to defeat the ends of justice. Alongwith the suit, the respondent/plaintiff also filed an application under Order

XXXIX, Rule 1 & 2 read with Section 151 CPC, for the grant of interim relief, praying therein that appellant/defendant may kindly be restrained from auctioning the new sites mentioned in advertisement dated 16.05.2025 and its operation may kindly be suspended till the final decision of the suit. The main suit as well as the application was contested by the appellant/defendant and the learned Civil Court, after hearing the arguments of the parties, accepted the application of the respondent/plaintiff vide impugned order dated 22.05.2025. Being aggrieved by the impugned order, the appellant has filed the instant appeal.

3. The learned counsel for the Appellant contended that the learned Trial Court has gravely erred in law since the superior Courts have held legal character as synonymous to legal status as mentioned in Section 42 of the Specific Relief Act, 1877 denoted a character or status conferred by law and not conferred by contract whereas in the instant case the respondent has sought a declaration against the Appellant not to auction the Site for the purposes of setting up of the Cattle Market/Mandi situated at Japan Road, near Islamabad Expressway and as such the Suit for Declaration was not maintainable in its present form; that, even otherwise it is to be appreciated that provision of Section 42 of the Specific Relief Act, 1877 are attracted to a case in which "Plaintiff" (Respondent in the instant case) approaches the Court for safeguard of his right to legal character or property but where right to his own legal character or property is not involved the Suit is not maintainable; that, even otherwise, a suit for Declaration to challenge "auction proceedings" is not maintainable, that too when the respondent has no legal right to challenge the same. He relied upon the case law reported as 2024 CLC 1824. He further argued that there is no infringement of any of the respondent’s existing legal rights under the contract awarded to him; that, the Impugned Order is also silent as to any irreparable loss caused to the respondent, which is a necessary prerequisite for granting temporary injunction, whereas admittedly the only loss which can be allegedly caused to the respondent is financial which is not an irreparable loss, which is a settled principle of law; that, rather by granting the stay order an irreparable loss has caused to the appellant and general public as if the suit of respondent is dismissed in future, then the loss caused due to stay order i.e. non formation of cattle Mandi cannot be undone since Eid will be passed; that, the learned Civil Court also failed to appreciate the fact that the prayer in application

under Order XXXIX Rule 1 & 2 is identical to the main prayer in suit and by allowing the same and setting aside the bid, the learned Civil Court has passed a final dictum in nature, since after passing of Eid days same cannot be undone; that, respondent has only those rights which are expressly enshrined in his Contract which was awarded to him in lieu of his successful bid, therefore he cannot claim anything in excess of his contract nor can he himself presume any of his right which is not a right recognized by law or any contract, since there is no dispute as to the contract of the respondent; that, the learned Civil Court also failed to appreciate the fact that the new site is almost 12 km away from the site of the respondent, hence no prejudice has been caused to him; that, the appellant has already auctioned the new sites in which various bidders took part, hence same was taken under transparency and without any discrimination. Lastly, the learned counsel for the appellant prayed for acceptance of the instant appeal.

4. On the other hand, the learned counsel for the Respondent has vehemently opposed the arguments of the learned counsel for the Appellant and contended that the learned Trial Court has rightly passed the Impugned Order, which needs no interference.

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

6. The Appellant has challenged the Order of the learned Trial Court dated 22.05.2025, vide which the Application under Order XXXIX Rule 1 & 2 CPC was accepted and the auction of the site Bhinder Stop Japan Road Express Highway, Islamabad was suspended/cancelled with the direction to the Appellant/Defendant not to issue final award in this respect. The Appellant/Defendant initially advertised five sites for its auction in order to install Cattle Mandi for the upcoming Eid-ul-Azha. The Respondent took part in that bidding process and got successful in obtaining two sites for installing Cattle Mandi there. The Appellant/Defendant then after some days advertised two more sites keeping in view the requirements of the localities for the installation of Cattle Mandi, but the Respondent felt aggrieved and challenged that auction proceedings on the ground that it will cause him financial loss as he has participated in the previous bidding process for Zia Masjid site while keeping the area and the business which he will cater.

7. For the issuance of status quo under Order XXXIX Rule 1 & 2 CPC, three ingredients are essential i.e. (i) prima facie good case, (ii) balance of convenience and (iii) irreparable loss. In numerous judgments, the superior courts held that financial loss cannot be considered as irreparable loss, which in the present case, the Respondent/Plaintiff is presuming/predicting that if the Appellant/Defendant allowed installation of cattle Mandi to successful bidder at Bhinder Stop site, Japan Road, then he may accrue financial loss. The Respondent/Plaintiff's apprehension is based on mere assumptions, as no actual loss has occurred thus far. Moreover, the Appellant/Defendant is well within its policy framework to advertise additional sites for the establishment of cattle markets to facilitate residents of the Islamabad Capital Territory. Additionally, the distance between the Zia Masjid site and Bhinder Stop, Japan Road Express Highway, Islamabad is approximately 9.8 km, as per Google Maps, which is a considerable separation. Both locations are surrounded by distinct and densely populated localities, and the decision to set up markets at these sites appears to be in the larger public interest.

8. The august Supreme Court of Pakistan while deciding the case titled *"Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and Others Vs. Muhammad Zaman Khan and others"* reported in **1997 SCMR 1508** had held that through an interlocutory order, granting a relief of the nature, which will amount to allowing the main case without trial will not be justified. The relevant portion of the said judgment is reproduced herein below:-

> *"11. As regards the merits of the case, it may be pointed out that it is a well - settled proposition of law that the object of passing of an interlocutory order or status quo is to maintain the situation obtaining on the date when the party concerned approaches the Court and not to create a new situation. Another well settled principle of legal jurisprudence is that generally a Court cannot grant an interlocutory relief of the nature which will amount to allowing the main case without trial/hearing of the same. In this regard, reference may be made to the judgment of this Court in the case of Qazi Inamul Haq v Heavy Foundry and Forge Engineering (Pvt.) Ltd. and another 1989 SCMR 1855, in which the petitioner had been prematurely retired from service. He filed a suit and obtained a temporary injunction from a learned Civil Judge, which was vacated by a learned Additional District Judge. The petitioner then preferred a revision petition before the High Court of Sindh, which was declined for the following reasons: --*

> *"(a) The order of retirement had already taken effect before the civil suit, was instituted to challenge it; and*
>
> *(b) even if the petitioner had merely, an arguable case, the other two essential factors, i.e., presence of balance of convenience, which is in fact balance of inconvenience and causing of irreparable loss did not exist. "*

In the present case as well, the circumstances are similar, in that allowing the application under Order XXXIX Rule 1 & 2 CPC effectively amounts to granting the main relief without trial, as the core prayer in the suit is the cancellation of the bidding process for the site at Bhinder Stop**.**

9. In the light of the above discussion, this Court is of the view that the learned Trial Court has erred while deciding the application under Order XXXIX Rule 1 & 2 CPC by ignoring the fact that financial loss is not an irreparable loss and the third essential ingredient of the status quo is missing in the present situation. Even otherwise, the alleged financial loss has not yet materialized, and the Respondent/Plaintiff merely anticipates potential loss if an additional site is auctioned for the establishment of a Cattle Mandi. The distance between the two sites is approximately 9.8 km (almost 10 km), and both are situated in densely populated areas, serving distinct localities. Furthermore, there exists no legal restriction on the Appellant/Defendant from auctioning multiple sites within the Islamabad Capital Territory to accommodate the needs of the general public. Accordingly, the instant First Appeal Against the Order dated 22.05.2025 is **allowed**, and the Impugned Order is set aside.

(MUHAMMAD AZAM KHAN)
JUDGE

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