

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.S-396 of 2014

DATE ORDER WITH SIGNATURES OF JUDGE(S)

Hearing/Priority case

1. For orders on CMA No.1748/2014 (Ex. Application)
2. For hearing of CMA No.1750/2014 (Stay)
3. For hearing of Main Case

14.10.2016

Mr. Sikandar Khan, Advocate for the petitioner
Ms. Shehnaz A. Razzaq, Advocate for respondent No.1

The instant constitutional petition arises out of the orders passed in FRA No.85 of 2013, where the appellate Court refused to interfere with the orders passed by the trial Court, where the default by the tenant was upheld, as well as, the personal bonafide need of the landlord was also answered in affirmative. Against these concurrent findings, learned counsel for the petitioner submitted that this is the third round of litigation between the parties, which accordingly is barred by the principle of *res judicata* as the tenant has been enjoying the property for over than 50 years. In support of his contention he relied on the case of Masud Ahmad Siddiqui vs. Rashid Hasan & another (reported as PLD 1994 Karachi 219), where the Court applied the principle of *res judicata* of not vexing a person twice for the same cause of action to the ejectment application, notwithstanding that there was no express statutory mention of the same in the Sindh Rented Premises Ordinance, 1979. The learned counsel submitted that in the previous round of litigation, in first round, Rent Case No. 1075 of 1981, which reached to the Supreme Court in Petition No.246 of 1986, ejectment of the tenant was set aside and in the second

round, which commenced with the Rent Case No.298 of 1998 was dismissed at the trial Court, as well as, FRA was also dismissed.

Learned counsel for respondent No.1 at this juncture pointed out that these proceedings were in relation to fixation of fair rent. Whereas, the current ejectment as permitted by the trial Court and maintained in the instant FRA was on the ground of default and personal bonafide use, therefore, the principle of *res judicata* does not apply in the instant case.

As evident from the foregoing, there are concurrent findings of the trial Court, as well as, of the appellate Court and the only thread with which the tenant is hanging, is the principle of *res judicata*. The Latin word *res judicata* means “a matter (already) judged” and through this principle, a bar is imposed on re-litigation of cases between the same parties in the same court. There is no statutory mention of principle of *res judicata* in rent cases since, relationship between landlord and tenant is continuous in nature and at one given time, the Court could rightly reach to a conclusion of the denial of the right of the any party (say landlord for his personal bonafide use), however, after lapse of some period, there is no bar on the landlord to re-agitate the need for the property for his personal bonafide use as at that moment of time circumstances may have changed. Also, if the tenant who had been held not to have made any default in first litigation, defaults payment of rent after the conclusion of first round of litigation may have occasioned and a new cause of action may arise and the landlord can file an appropriate application for tenant’s ejectment on the ground of default. This view finds support from the case of Nazir Ahmad vs. Dr. M.A Rehman (1987 MLD 3046), where while considering the principle of *res judicata*,

the Court came to a conclusion that application of subsequent ejectment by landlord against the tenant on ground of his own personal use would not be hit by *res judicata*, where former ejectment application in respect to the same property filed by the landlord for the personal use by his son was dismissed. The scheme of law is that the landlord's rights are protected by the Constitution, which under Article-23 empowers him enjoyment of all the rights in the property whereas, the tenant's rights are regulated by the Rent Control Laws, which are always subservient to the Constitution, therefore, the right of the landlord to seek access to his property is a continued and permanent *jus in re* right, which enables him to use all possible legal means to have his property ejected from the defaulting tenant or for his use or the bonafide use of his family.

I therefore, do not find any merit in the assertion raised by the learned counsel for the petitioner that since in previous litigation, the Court came to a different conclusion, the trial Court, which was hearing the present rent matter and the appellate forum, which maintained the same had to be bound by the previous orders on account of *res judicata*. As each new application filed by the landlord would amount to a new cause of action, which would be seen in the light of the circumstances in which the said ejectment application was made. I therefore, find the instant petition meritless and reject the same and reaffirm the judgment impugned herein by the petitioner.

JUDGE