

IN THE HIGH COURT OF SINDH AT KARACHI

J.M. No.58 of 2010

M/s. Hashmi Charitable Trust-----Applicant/Intervener

Versus

Javed Baloch & others-----Respondents

Dates of hearing: 23.11.2016 & 15.12.2016.

Date of Order: 17.02.2017

Applicant: Through Mr. Abrar Hassan, Advocate along with M/s. Muhammad Younis and Syed Imran Younis, Advocate.

Respondent No.1: Through Mr. Malik Naeem Iqbal, Advocate.

ORDER

Muhammad Junaid Ghaffar, J. This is an Application under Section 12(2) CPC, whereby, the Applicant/Intervener has prayed for recalling of Order dated 22.12.2009, passed in Execution Application No.21/2008 with a further prayer to put the Applicant in vacant possession of the Shops in question by ejecting the Decree Holder/Respondent No.1.

2. Precisely, the facts, as stated, are that the Applicant is a Trust claiming to be the owner and landlord of the entire building known as “HASHMI CHARITABLE TRUST BUILDING”, constructed on Plot No.RB-10, New Urdu Bazaar, Mohan Road, Ram Bagh Quarters, Karachi. The Decree Holder/Respondent No.1 had obtained a Money Decree of Rs.42,80,000/= in Suit No.912/2007 against the Judgment Debtors vide Judgment and Decree dated 07.03.2008. Thereafter Execution Application No.21 of 2008 was filed and an order was passed on 09.04.2008, whereby, the goods belonging to the Judgment Debtors in the shops in question were attached and subsequently Shop Nos.34 and 38 at ground floor and Shop Nos.41 & A-15 on the first floor of the Suit Building

were also attached. Thereafter, through further orders, the tenancy rights were also transferred to the Decree Holder and through impugned order, the Nazir was directed to execute the Tenancy Agreement as the Applicant/Intervener had failed to do so. Through this J.M the Applicant/Intervener has impugned the aforesaid order.

2. Learned Counsel for the Applicant/Intervener has contended that in this Execution Application, which is for a money decree, the Decree Holder had chosen the execution through seizure/attachment and sale of the movable properties lying in the Suit Shops under Order 21 Rule 43 CPC and further by arrest and imprisonment of the Judgment Debtors in Civil Prison under Order 21 Rule 37 C.P.C. Per Learned Counsel the mode and manner for execution of a Money Decree is provided under Order 21 Rule 30 CPC and therefore, the Executing Court could not have ordered for transferring the tenancy rights in favour of the Decree Holder. Learned Counsel has also referred to Order dated 14.05.2009, passed in the Execution Application and has contended that on such date the Chairman of the Applicant Trust was present in Court and after his statement he was asked not to appear again, whereas, now through the impugned order, the Nazir has transferred the tenancy rights in favour of the Decree Holder and has also executed the Tenancy Agreement. Learned Counsel has also referred to Order dated 14.01.2010 and has contended that the Landlord at the relevant time had made an attempt to file his objections to the Nazir's Report, however, such contention of the Applicant was repelled and it was observed that the Applicant is at liberty to seek redress in accordance with Law, hence instant application. Learned Counsel has contended that the Executing Court cannot go beyond the Decree and cannot grant any further relief except the Decree and the mode of execution adopted by the Decree Holder. Per Learned Counsel in the entire Execution Application, the Decree Holder never claimed that the Judgment Debtors had any tenancy and or goodwill rights and therefore, the impugned order has been obtained by fraud and misrepresentation, hence an Application under Section 12(2) CPC is competent. In support of his contention he has relied upon **2003 SCMR 1202** (*Allah Ditta v. Ahmed Ali Shah and others*) and **1989 SCMR 640** (*Muhammad Ali and others v. Ghulam Sarwar and others*).

3. On the other hand, learned Counsel for the Decree Holder has contended that no fraud or misrepresentation has been committed with the Court so as to bring the grievance of the Applicant within the ambit of an Application under Section 12(2) CPC. Per learned Counsel several notices were issued to the

Applicant who was duly served, whereas, on one date of hearing he also appeared before the Court but chose not to challenge the orders passed by this Court. Learned counsel has further contended that in fact the first order was passed on 11.03.2009, which is the main order, whereby, the Nazir was ordered to seek transfer of the tenancy rights from the Applicant to the Decree Holder, whereas, the order impugned through instant J.M has been passed in furtherance of the earlier order and therefore, this application is even otherwise not maintainable. Per Learned Counsel after passing of the impugned order, the Decree Holder is in possession of the Suit Shops as a tenant and is depositing rent through Miscellaneous Rent Case (MRC) before the concerned Rent Controller, and therefore, the Applicant may seek its remedy before the appropriate forum. He has further contended that earlier one Arshad Naseem claiming to be a subsequent tenant in the Suit Shops made an application to the Court for recalling of the orders of transfer of tenancy but his application was dismissed vide Order dated 03.11.2009 against which an Appeal was preferred, which also stands dismissed vide Judgment reported as **2012 CLC 1293** (*Arshad Naseemuddin Ahmed v. Javed Baloch and 3 others*), wherein, the Division Bench was pleased to observe that the Applicant and Arshad Naseem, alleged subsequent tenant were hands and gloves and were acting in collusion with each other. Learned Counsel has further contended that the tenancy is a property right and in support of his contention he has relied upon **AIR 1959 ASSAM 61** (*Niresh Chandra Das, Judgment Debtor, Appellant v. Paresh Chandra Routh, Decree-holder, Respondent* and **AIR 1926 Oudh 616** (*Gobardhan Dass v. Jang Bahadar and another*).

4. I have heard both the learned Counsel and perused the record. The facts as above do not appear to be in dispute inasmuch as that the Decree Holder filed a Suit bearing No.912/2007 for recovery of money against the Judgment Debtors, which was decreed vide Order dated 07.03.2008 and Execution Application No. 21/2008 was filed. Through the Execution Application, the mode in which the assistance of this Court was sought was by seizure/attachment and sale of the movable properties lying in Shops No.34 & 38 at the ground floor, 41 & A-15 at the Ist Floor of the Suit Building. Such request was made by the Decree Holder under Order 21 Rule 43 CPC with further request of execution by arrest and imprisonment of the Judgment Debtors in Civil Prison under Order 21 Rule 37 CPC. After filing of the Execution Application, the Judgment Debtors were properly served but none affected appearance and thereafter certain directions were issued to the Nazir of this Court, who placed two reports dated 17.04.2008 and 29.04.2008, whereby, the Nazir informed the Court regarding the preparation

of an Inventory of the goods lying in the Suit Shops and further proceedings taken by him. It further appears that after Nazir's Report was furnished, the Decree Holder filed an Application bearing CMA No.330/2008, in which it was prayed that Nazir be directed either to sell the property rights and interests of Judgment Debtors in the properties i.e. Suit Shops with further directions and powers to the Nazir to get the rent receipts changed from the Applicant into the name of the Decree Holders to satisfy the Money Decree. Such application was made subsequent to filing of this Execution Application under Order 21 Rule 64 CPC on 05.05.2008. Both the Nazir's Reports were taken on record and this CMA No.330/2008 on the basis of Nazir's Report was allowed. Thereafter on 11.03.2009 the following Order was passed:-

“Through this Execution application the Decree Holder seeks recovery of money decree that was passed against the J/Ds, who were running Book Shops in Urdu Bazar. After coming to know about these Execution proceedings, as per the Nazir's report, the J/Ds have abandoned their shops leaving behind only Books which are of no worth; hence only fraction of the decree could be recovered through the sale of the said books.

The Nazir has also reported that the J/Ds were tenants of Shops No.34 and 38 on the ground floor and Shops No.41 and A-15 on the first floor of Hashmi Charitable Trust Building, Urdu Bazar, Karachi, which they obtained on payment of goodwill.

The Decree holder present in person points out that he is not aware of any other property of the J/Ds and tenancy rights in the above mentioned shops may be transferred in his name so that he may adjust the decretal amount.

Since the shops obtained by the J/Ds have been abandoned in fear of recovery of decretal amount, let the tenancy rights in the said shops be transferred in the name of the Decree Holder. In this regard, the Nazir is directed *to issue notice to the landlord of the shops and seek transfer of tenancy rights in favour of the decree holder. In case, the landlord fails to do the needful, the Nazir may hand over the possession of the shops to the decree holder and direct the Decree holder to tender rent directly to the landlord.*

With the above observations, this Execution Application stands disposed of.” **(Emphasis supplied)**

5. On 14.05.2009, when the Chairman of the Applicant Trust was present in the Court, the following order was passed:-

“In compliance of order dated 6th May 2009 Mr. Syed Razi Ahmed, Chairman of the Hashim Charitable Trust, Urdu Bazar has affected his appearance and has stated that M/s. Rehbar Publisher is tenant of trust in respect of shop No.41 and 41/1. Both the shops are situated on the ground floor and have been amalgamated in the one unit. To come up on hearing on 27.05.2009. The Chairman of Trust need not to appear.”

6. Subsequently, the Decree Holder filed an Application bearing CMA No.1135/2009 for directing the Nazir to comply with the earlier orders and transfer the tenancy rights in respect of the Suits Shops and on 22.12.2009 the following Order was passed:-

“Vide order dated 11.03.2009 while disposing of the execution application the tenancy rights were ordered to be transferred in the name of the Decree Holder and the Nazir was directed to issue notice to the landlord in order to seek tenancy rights. Notices have been issued, but the landlord has failed to come up and contest the proceedings. In the circumstances, the Nazir is directed to execute rent agreement on behalf of the landlord in respect of Shops No.34 & 38 on the ground floor and Shops No.41 and A-15 on the first floor of Hashmi Charitable Trust, Urdu Bazar, Karachi.

The listed application stands disposed of in the above terms.”
(Emphasis supplied)

7. Insofar as the present J.M filed under Section 12(2) CPC is concerned, it is challenging the last order passed in the Execution Application i.e. 22.12.2009, whereas, the first order which was passed by this Court regarding the transfer of the tenancy right was made on 05.05.2008 and subsequently on 11.03.2009. Both these orders have not been challenged through instant J.M and if assuming that this J.M is allowed, even then, orders dated 05.05.2008 and 11.03.2009 would remain in field. However, notwithstanding this, even otherwise it is not the case of the Applicant/Intervenor that any fraud or misrepresentation was committed insofar as notice and pendency of the Execution Application is concerned. Admittedly, time and again the Applicant was served with Court notices and even on one date the Applicant was present before the Court on 14.05.2009, on which date the Orders dated 05.05.2008 and 11.03.2009 had already been passed but the Applicant did not challenge them through any proceedings. It is also pertinent to note that one objector namely Arshad Naseem also made an attempt in these proceedings claiming to be a subsequent tenant in one of the Suit Shops and filed an application before this Court, which was dismissed vide order dated 3.11.2009 and against which an Appeal was preferred but the same was also dismissed vide judgment reported as *Arshad Naseemuddin (Supra)* with the observation by the Appellate Court that perhaps Respondent Nos.3 & 4 (Applicant) in the Appeal were supporting the case of the objector as it seems apparent that they are in collusion with the appellant/objector.

8. The further ground, which has been urged by the learned Counsel for the Applicant is that since a fraud has been committed with the Court inasmuch as in a Money Decree no tenancy rights can be transferred, therefore, instant application be allowed. The learned Counsel has further pleaded that once the

Decree Holder choses a certain mode for execution of a Decree, which in this matter was only to the extent of the attachment of movable assets of the Judgment Debtors, then thereafter no further plea could have been entertained by the Executing Court to transfer the tenancy rights of the Suit Shops. However, I am not impressed with such contention of the learned Counsel for the Applicant. As noted hereinabove, Nazir had furnished two reports before the Court dated 17.04.2008 and 29.04.2008, whereafter in furtherance of the Execution Application, the Decree Holder filed CMA No.330/2008, which was allowed by this Court on 05.05.2008. Through this application, the Decree Holder specifically prayed for transfer of the tenancy rights in their favour through the Nazir of this Court. It is but a settled proposition that any act in aid of the execution application, if in accordance with law, cannot be termed illegal or without jurisdiction so as to frustrate the decree. The Executing Court can always take note of subsequent proceedings. Therefore, this objection is misconceived and is hereby repelled

9. It is also of utmost importance to note that when the first Order dated 11.03.2009 was passed by the Court for transferring the tenancy rights, Nazir's Report dated 20.11.2008 was before the Court, of which the relevant portion reads as under:-

"It is respectfully pointed out that the *shops bearing No.34, 38 situated on Ground Floor and Shop Nos. 41 and A-15, both situated at First Floor of Hashmi Charitable Trust Building, Urdu Bazaar, Karachi are on Goodwill and Chariman of the said Charitable Trust is Mr. Syed Razi Ahmed.* It is further pointed out that the attached property the books which are lying in shops have no worth to sell and achieve good value. It can be disposed of by way of weight of scrap. Therefore, in nutshell it is submitted that the Darsi Books which were attached and are to be sold has no worth, *the four Shops are on good will only can be dispose of on Parchi Badel through its owner Mr. Razi Ahmed, who has been issued notice several time who refused.* Therefore decree can not be satisfied. Therefore the matter is referred to the Honourable Court for further orders." (Emphasis supplied)

10. The aforesaid report of the Nazir very clearly reflects that the shops in question were on *goodwill* and he further reported that the despite notices, the Chairman of the Applicant Trust never turned up. Nazir has further reported that shops on goodwill can be transferred or disposed of by way of Parchi Badel through its owner in the name of Decree Holder. The Court while passing the Order dated 11.03.2009, had acted upon the Nazir's Report and since the rights of the Judgment Debtors in the Suit Shops were not merely a tenancy right; but of goodwill as well, therefore, the Court on 11.03.2009 correctly passed the order by

directing the Nazir to transfer the tenancy rights on the basis of goodwill. The learned Counsel for the Applicant has though made an attempt to convince the Court that tenancy rights cannot be transferred in execution of a Money Decree, but has failed to substantiate that the rights of the Judgment Debtors were merely of a tenant and not by way of goodwill as reported by the Nazir of this Court. Insofar as transfer of tenancy rights independent of any goodwill are concerned, I need not conclusively decide such issue, inasmuch as the present controversy is not merely in respect of independent tenancy rights between the landlord and tenant but on goodwill as well.

11. The learned Counsel for the Applicant has emphatically argued that the tenancy rights of the Judgment Debtor could not have even otherwise be transferred on the orders of this Court, as the same is not a right which could be attached and transferred in execution of a decree. However, I am not impressed with his contention in this regard for the reason that it has come on record that the tenancy rights of the Judgment Debtor were on the basis of goodwill (Pugree). Though in Law the concept of Pugree is not recognized as such, however, it is an admitted practice in such cases of tenancy that Pugree is considered as an advance in favour of the tenant. Either the advance is returned on termination of the tenancy or the tenant sells his tenancy rights or goodwill to someone else and upon payment of certain premium, the Landlord transfers the receipt or as commonly known by way of “**Parchi Badal**”. It is an admitted position in facts as well as in law, that a tenant cannot be evicted without due process of law and reference in this regard may be made to Section 13 of the Sindh Rented Premises Ordinance, 1979 (**Ordinance**), which provides that *no tenant shall be evicted from the premises in his possession except in accordance with the provisions of the Ordinance*. It has come on record that the Judgment Debtor was a tenant of the applicant. Section 15 of the Ordinance further provides that where a landlord seeks to evict a tenant otherwise than in accordance with Section 14, he shall make such an application to the Controller. There are several conditions and situations which allow the landlord to move such application against the tenant and sub clause (iii) is relevant, which reads as under:-

“15. Application to Controller. (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2)

(ii)

(iii) the tenant has, without the written consent of the landlord:---

- (a) handed-over the possession of the premises to some other person;
- (b) used the premises for the purpose other than that for which it was let out;
- (c) infringed the conditions on which the premises was let out;
- (iv)
- (v)
- (vi)
- (vii)

The aforesaid condition provides that the Controller shall make an order directing the tenant to put the landlord in possession of the premises, if he satisfies that the tenant has, without the written consent of the landlord handed over the possession of the premises to some other person. Perusal of this provision clearly reflects that there is no absolute bar on a tenant to handover the possession of the premises to some other person; however, this is subject to the consent of the landlord. This means that, if there is any agreement between the landlord and tenant to this effect, then the tenant can handover the possession of the premises to any other person, which impliedly means that he can sell his tenancy rights. However, again this is with the permission of the landlord. In this matter, as discussed hereinabove, it has come on record that the tenancy of Judgment Debtor was on the basis of goodwill, therefore, the Judgment Debtor could have sold his tenancy rights subject to "Parchi Badal" or change of Receipt by the landlord. Further, as already discussed and noted hereinabove, the applicant despite being served never came before the Court with any plea to the effect that the subject premises was not on goodwill basis and after expiry of agreement between the Applicant and Judgment Debtor, the tenancy ended. Neither the applicant has come up with any application made before the Rent Controller in this regard. In this matter as per Nazir's Report the rights owned by the Judgment Debtors were based on goodwill and it is not in dispute that goodwill rights can be attached, transferred or assigned. It is common practice in these types of matters where the tenant is holding ownership/tenancy on goodwill, the tenant is within his rights to sell or transfer such tenancy by Parchi Badel or the change of receipt on goodwill. Therefore, the arguments that the Court could not have ordered for transfer of tenancy rights through impugned order as well as orders passed earlier has no basis and is hereby rejected. Therefore, it cannot be said that the Court even otherwise erred in transferring the tenancy rights to the Decree Holder. The law permits this, whereas, the landlord never bothered to come and plead his case to the Contrary, and therefore, the Court while executing a decree had all the rights and authority to order for transfer of such tenancy rights.

12. The question that whether goodwill and tenancy rights in premises would be a saleable property and therefore they would be liable to attachment and sale came for scrutiny before a learned Division Bench of the Bombay High Court in the case of *Union Bank of India v. Mittersain Rupachand and others* (**AIR 1995 BOMBAY 371**). Section 15(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act reads as under;

"15(1). Notwithstanding anything contained in any law but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973,, for any tenant to give on licence the whole or part of such premises :

Provided that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification."

The precise objection raised on behalf of the judgment debtor in that matter opposing the attachment of his tenancy and goodwill rights and its sale through the excuting Court was that leasehold interest and premises leased for non-residential purposes cannot be termed as saleable property in which the lessee has disposing power, however, the Court did not accede to such a proposition and went on to hold as under;

The Supreme Court further observed that in the absence of clear and unambiguous legal provisions to the contrary, it will not be in the public interest nor in the interest of the commerce to impose a ban on sale ability of flats by a tortuous process of reasoning. The prohibition intended by the legislature must be in express terms and the Supreme Court failed to find one. The Supreme Court therefore held that the right to occupation of a flat is property both attachable and saleable. The judgment of the Supreme Court, to which attention of the learned single Judge was not invited, is a clear answer to the contention of the respondents that the goodwill and tenancy rights in the office premises are not liable to attachment and sale.

The learned Judge was, therefore, not right in observing that the transfer of leasehold interest in non-residential premises is totally prohibited and therefore not liable for attachment. It was also overlooked that the grievance on account of breach of sub-sec. (1) of Section 15 of the Bombay Rent Act can only be at the behest of the lessor and the lessee whose interest in the leasehold rights is attached cannot complain about the same. Indeed, in the present case, the respondents have admitted on affidavit that out of about 2,000 sq. ft. of the leased area, 1850 sq. ft. have already been parted with either under the cover of sub-leases or licenses. The

conduct of the respondents speak for itself and requires no further comment.

.....The lessee has not created the alleged sub-leases and licenses for no consideration. In the absence of total prohibition of transfer of leasehold interest in respect of non-residential premises, it is not correct to suggest that the lessee of such premises does not hold saleable property or does not hold disposing power in respect of such interest.

13. Again in the case of *Tangerine Electronics Systems Pvt. Limited v. Indian Chemicals and others* (**AIR 2004 BOMBAY 198**) a full bench of that Court reiterated this dictum. The precise question referred before the full bench was *whether the interest of the tenant of non-residential premises to which the Maharashtra Rent Control Act, 1999 applies, is attachable and saleable in execution of the decree against the tenant?* The Court considered various earlier decisions as well as the law in field including the implication of section 26 of the Act of 1999 which reads as under;

"[26](#). In absence of contract tenant not to sub-let or transfer or to give on licence. -- Notwithstanding anything contained in any law for the time being in force, but subject to any contract to the contrary, it shall not be lawful for any tenant to sub-let or give on licence the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein :

Provided that, the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases any premises or class of premises other than those let for business, trade or storage to such extent as may be specified in the notification."

The learned Full Bench went on to hold as under;

15. The said Section [26](#) does not absolutely prohibit or totally forbid the tenant - the tenant as meant by section [7\(15\)](#) - to sublet or give on licence or assign or transfer in any other manner whole or any part of the premises let to him since it is subject to the contract to the contrary with the landlord. In other words, the landlord is always at liberty to permit the tenant to sublet or give on licence or assign or transfer in any other manner whole or any part of the premises let to him. The contract contrary to the prohibition provided in Section [26](#) can be at any time - at the time the premises are let out to the tenant or any time thereafter, even after the tenant has sublet or given on licence or assigned or transferred his interest in the premises let out to him. The landlord can always ratify the action of the tenant in subletting or giving on licence or assigning or transferring in any other manner his interest in the premises let to him. Thus, Section [26](#) of the Act of 1999 cannot be held to contain the absolute bar against the tenant of the non-residential premises nor the transfer in contravention of Section [26](#) is absolutely void that is void against the whole world but may be void against the landlord furnishing him the ground to get a decree for ejection.

25. Section [26](#) forbids the voluntary transfer of interest in the premises by the tenant but does not prevent the transfer by the court. Where the transfer is by an operation of law and not by act of the parties, Section [26](#) shall have no application. The argument that what the defendant could not have done otherwise legally could not be done through court is misplaced and devoid of merit. For one, it is consistently held for more than a century that restriction on assignment to transfer by the tenant under the lease or otherwise does not apply to an assignment by operation of law taking the effect in invitum as a sale under an execution. The other, neither Section [26](#) nor any other provision in the Act of 1999 restricts a sale in execution of the decree.

28. The legal position reiterated in *Golak Nath Roy Chowdhary and Keshab Chandra Pramanik* with regard to a general restriction imposed in the lease deed on assignment of tenancy interest by the lessee that such general restriction on assignment does not apply to an assignment by operation of law taking effect in invitum, as a sale under an execution, is applicable equally to a general restriction in law on assignment of tenancy interest by the tenant and we hold so.

35. There may be a case where the tenant does not transfer or assign his tenancy rights but only surrenders his tenancy to the landlord. Section [26](#) does not come in the picture in that case. For the surrender of his tenancy, the tenant may receive money as there is no prohibition and Section [56](#) of the Act of 1999 legalises that. Yet another case where the tenant transfers or assigns his tenancy rights in non-residential premises to the third party on consideration for transfer or assignment. The landlord ratifies the act of transfer or assignment and also accepts money for grant of such permission to transfer. There may also be a case where the landlord purchases in public auction the interest of the tenant in execution with a view to get back his property without undertaking exercise of eviction. The cases may be many. Can it be said that interest of the tenant in the non-residential premises is not saleable or that the tenant has no disposing power in respect of such interest for his benefit. The answer obviously has to be in the negative.

40. We, therefore, conclude that the tenant's right to remain in occupation of the non-residential premises governed by the Maharashtra Rent Control Act, 1999 is a property; such property is saleable and the tenant has disposing power over the interest of tenancy for his benefit and in view thereof, we hold that the interest of the tenant of non-residential premises to which the Maharashtra Rent Control Act, 1999 applies is attachable and saleable in execution of the decree against the tenant.

14. The aforesaid judgment has though dealt with their local law, but in pith and substance, the 1979 Rent Ordinance, provides for a similar situation, whereby, certain rights are conferred upon the tenant viz a viz his tenancy rights. Section 15 of the Ordinance has been discussed above which caters to a situation like the one in hand before the full bench of the Bombay High Court in *Tangerine case (Supra)*. Therefore, it can be safely held that the executing Court in the given facts of this case was even otherwise competent to direct the Nazir of this Court to transfer the tenancy rights of judgment debtor to the decree holder as apparently the applicant (**Landlord**) waived its right to object to such transfer by his implied conduct, firstly by appearing before the Court and then keeping quiet for such a long duration of time. The record further reflects that even subsequently notices

were sent to him, but on 17.11.2009 he refused to receive the Courts notice personally. Whereas, he, during such period kept silent and even did not appealed the main order by which he could have been aggrieved, coupled with the fact that the new alleged tenant inducted by the applicant Trust after passing of Courts various orders also failed in getting any relief either from the Executing Court or from the Appellate Court. In my view, if by permission of landlord there is no absolute bar or prohibition to transfer the tenancy rights or to put someone else into possession and such permitted act cannot even be a ground for ejecting the tenant under Section 15 *ibid*, then how come the applicants objection to the effect that the Executing Court had no power or authority to do the same, can be sustained in the given facts of this case. In the circumstances as above it appears that instant application under Section 12(2) CPC is an afterthought on the part of the applicant and an attempt to undo and thwart the Execution proceedings and the orders passed thereto.

15. In view of hereinabove facts and circumstances of this case, the applicant's case in my view does not fall within the contemplation of Section 12(2) CPC as neither any fraud has been committed with the Court, nor any misrepresentation has been made, whereas, the applicant despite being served and having knowledge of these proceedings failed to plead his case. Even otherwise, another applicant namely *Arshad Naseem* claiming to be a new tenant in the Suit shop also made an attempt before this Court to get the orders modified as is being pleaded by the applicant now, however, such application was also dismissed and an appeal against that order also failed. Accordingly, instant J.M being misconceived in fact and law is hereby dismissed, however, with no order as to costs.

Dated: 17.02.2017

J U D G E

Ayaz