

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit Nos. 1521, 1522 & 1523 of 2007

DATE ORDER WITH SIGNATURE OF JUDGE

Suit No.1521 of 2007

For hearing of CMA Nos:-

1. 1364/09 (U/O VII rule 11 CPC)
2. 809/10 (U/S 151 CPC)
3. 8427/08 (U/O X Rule 2)
4. Examination of Parties/Settlement of Issues.
5. For orders on CMA No.4048/15 (U/O 39 Rule 1 & 2 CPC)

Suit No.1522 of 2007

1. For hearing of CMA No.1365/09 (U/O VII rule 11 CPC)
2. For Examination of Parties/Settlement of Issues.

Suit No.1523 of 2007

1. For hearing of CMA No.1366/09 (U/O VII rule 11 CPC)
2. For Examination of Parties/Settlement of Issues.

15.02.2018

None present

Muhammad Junaid Ghaffar J. All these three Suits have been filed by the Plaintiff (Landlord) against Defendant (Tenant) with a prayer that after expiry of the Tenancy Agreement, the Tenants are bound to hand over vacant possession thereof. None is present on behalf of the parties and matter was kept aside, however, in the second round also no one was in attendance. It appears that there are applications pending under Order VII Rule 11 CPC for rejection of Plaint on the ground that the Suits are barred in law, whereas, Office Objections were also raised at the time of institution of the Suits to the effect that prayer sought in these Suits are hit by Sections 8 & 42 of the Specific Relief Act, whereas, KPT has not been impleaded as a Defendant. It appears that on 21.11.2007, an order was passed by the Court when such objection was overruled for the time being and thereafter the matter has not been proceeded with on behalf of the parties.

2. I have perused the record and so also the application(s) under order VII Rule 11 CPC. It is the case of the Defendant(s) as well as the Office Objections that the matter in question pertains to an issue between landlord and tenant and

therefore it has to be dealt with under the Sindh Rented Premises Ordinance, 1979 (“1979 Ordinance”). It is not in dispute, rather an admitted position that the case of the Plaintiff is that the property in question is owned by the Plaintiff on the basis of some Gift Deed, whereas, the lease granted by KPT has since expired and is under renewal. The grievance of the Plaintiff is not against KPT and therefore, KPT has not been joined as a Defendant. Rather the Plaintiff’s case is against the Defendants/tenants as according to the Plaintiff the agreement with them stands expired, and therefore, they should be directed to vacate the premises and hand over the peaceful possession to the Plaintiff. I am afraid that such relief cannot be granted in a Civil Suit as for that the appropriate remedy is before the Rent Controller under the 1979 Ordinance as the relationship between the Landlord and Tenant is governed by a Special Law. Section 2(j)(i) of the Ordinance defines a “Tenant” as any person, who continues to be in possession or occupation of the premises after the termination of his tenancy, whereas, Section 13 of the Said Ordinance provides that no tenant shall be evicted from the premises in his possession except in accordance with the provisions of the Ordinance. A combined reading of both these provisions clearly reflects that once it is admitted that the relationship between the parties is of tenant and landlord, then the tenant cannot be ejected without taking due course of law as provided under the Ordinance. It is a Special Law and the relationship has to be governed by such law, whereas, for this no declaration is required to be made by the Courts. Therefore, in all fairness there does not seem to be any cause of action for the plaintiff to have filed instant Suit seeking remedy under the Specific Relief Act.

3. The arguments of the Plaintiff’s Counsel as noted in order dated 21.11.2017 in response to the office objections that in KPT area 1979 Ordinance is not applicable does not depicts the correct position of law. Section 3 of the said Ordinance deals with the applicability of the Ordinance and provides that notwithstanding anything contained in any law for the time being in force all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance and Sub Section (2) provides that Government may, by notification, exclude any class of premises, or all premises in any areas from operation of all or any of the provisions of the Ordinance. Though there may be a situation when a property in question is owned by KPT itself and is rented out, then perhaps the same may be exempted from the applicability of the provisions of the Ordinance. However, this is not the case here. The Plaintiff owns the property on the basis of a lease in perpetuity and it is only the land which falls within the KPT area, whereas, the Defendants are tenants. On a plaint reading, I am of the view that the exemption, if any, under the

Ordinance, 1979 read with Notification, would be applicable on the properties that are owned, occupied or rented out by KPT itself and not to those that are perpetually leased out by KPT to the Lessees. Therefore, in all fairness, the Ordinance is applicable in this case and the appropriate remedy lies with the Rent Controller and not by filing these Suits, which even otherwise are in respect of a prayer, which is barred in law. In the case reported as *Lalazar Enterprises (Pvt) Limited v Oceanic International (Pvt) Limited* (**2006 SCMR 140**), the issue in this respect stands decided inasmuch as if the dispute is between a lessee of a building raised within the KPT area and a tenant of such lessee, then the exemption provided under S.3 of 1979 Ordinance and or a Notification thereunder, would not apply to such dispute and would fall within the jurisdiction of the Rent Controller. The Hon'ble Supreme Court in this judgment has also considered the effect of an earlier judgment reported as *B.S. Khan v Pakistan State Oil Company Limited* (**1989 SCMR 75**) on the ground that if the property in question is an open plot, then perhaps the exemption granted to KPT in terms of a Notification under S.3 ibid might apply, but not in case of building so raised on such a plot. The relevant finding reads as under;

7. Upon a glance at the above quoted provision of law as well as the notification issued by the Government of Sindh, it would appear that all premises belonging to the Federal Government or the Provincial Government whether owned or requisitioned under any law, by or on behalf of any of the Governments, situated within an urban area are exempted from the operation of the provisions of the Ordinance, 1979. .subsection (2) empowers and authorizes the Government to exempt any class of premises or all premises from the operation of the Ordinance, 1979. Much would, therefore, depend upon correct and true interpretation of the terms "premises" used in the provision of law as well as the notification. The expression "premises" has been defined in section 2(h) of the Ordinance, 1979 to mean a building or land, let out on rent but does not include a hotel. As there is no dispute with regard to the relationship of landlord and the tenant between the parties because petitioner is admittedly the owner of the building constructed on land and the respondent has already attorned as tenant by regularly depositing rent in the name of petitioner, there would be no occasion to dilate upon the terms landlord and the tenant, as used in the Ordinance, 1979. Undoubtedly, open Plots Nos.10 and 11 in "C" Group, belonging to Karachi Port Trust were leased out to the petitioner. Furthermore, the A construction raised thereon admittedly belongs to him, which was carried on with the written consent of the lessor and out of the funds and expenses borne by the petitioner. As noted hereinabove, the term "premises" means and includes the land and building. The expression "building" as defined in clause (a) of section 2 of the Ordinance, 1979 means any building or part thereof together with all fittings and fixtures therein, if any, and includes any garden, garage, out house and open space attached or appurtenant thereto. The meaning of the expression "land" has been defined in clause (e) of section 2 of the Ordinance, 1979, which means land or open space, not being agricultural land or land or open space attached or appurtenant to any building. It is, however, eminently clear in the facts and circumstances of the case that while land in the shape of plots was leased out to the petitioner in terms of the

conditions of lease, he had raised the construction of building, consisting of warehouse, which was rented out to the respondent for storage purposes. By any stretch of imagination and in the light of definition of the terms "building" and "land" included within the purview of the term "premises", the warehouse being the subject-matter of the rent case does not belong to Karachi Port Trust. Since the term "premises" includes laird as well as building and the property let out to the respondent was not open piece of land, a portion of the plot or the open ground belonging to Karachi Port Trust, we are of the considered opinion that the exemption from the operation of the provisions of the Ordinance, 1979 would not extend to such kind of buildings. The view taken by Appellate Authority, therefore, in the circumstances, appears to be more rational, logical and in consonance with the spirit and object of law. The object of law behind the enactment of section 3 and, the notification issued thereunder appears to be to exclude properties owned by or belonging to the Federal Government or the Provincial Government from the operation of the provisions of the Ordinance, 1979 but in case a building has been constructed by a third party and it has been let out to a private person and neither requisitioned by the Federal Government nor by the Provincial Government, exemption from operation in favour of such premises, would not arise under any circumstance.

8. Mr. Farogh Nasim, learned counsel appearing on caveat on behalf of the respondents relied upon judgment reported as B.S. Khan v. Pakistan State Oil Company Ltd. 1989 SCMR 75 in order to defend the judgment of the High Court but we are unable to agree with his submission as in the reported case, open piece of land had been leased out by Karachi Port Trust to the Pakistan State Oil for setting up a petrol pump. The case is evidently distinguishable on facts and exemption from the operation of the provisions of the Ordinance, 1979 would not extend to the facts of this case. Learned counsel also cited Director of Schools v. Zaheeruddin 1996 SCMR 1767. In our view, this case also does not advance the cause of the respondent, as all buildings of the Private Schools and Colleges, taken over by the Federal Government, were exempted from the operation of the provisions of the Ordinance, 1979.

Similarly, in the case reported as *Shaheen Enterprises v Ebrahim Trust* (2010 CLC 878) after following the case of *Lalazar (Supra)* a learned Single Judge of this Court has also observed as follows;

13. The applicability of Sindh Rented Premises Ordinance, 1979 to the present case can be examined from yet another angle also. Section 3(1) the 1979 Ordinance exempts such premises from the applicability of the 1979 Ordinance which are owned by the Federal or a Provincial Government. The Notification that was issued under section 3(2) also provides that all premises belonging to Karachi Port Trust are exempted from application of Sindh Rented Premises Ordinance, 1979. If the exemption granted under the notification dated 15-3-1981 was also to be applied to the building which is constructed on the land leased out by Karachi Port Trust then similar interpretation under section 3(1) of the 1979 Ordinance would become applicable to the buildings that are constructed on lands leased out by the Federal or a Provincial Government. Such a strict interpretation of ownership would lead

to disastrous consequences as the concept of ownership if taken only in its etymological sense would then mean that the buildings that are built by lessees on the land leased by Federal and the Provincial Government have to be exempted from the application of Sindh Rented Premises Ordinance, 1979. Almost all buildings in urban areas would then come under the umbrella of exemption as they are mostly built on the lands owned either by federal government or provincial governments. This would amount to doing violence to the meaning of ownership. Under section 3(2) read with the Notification dated 15-3-1981 one cannot give different interpretation to the meaning to the ownership of a premises which is built by a lessee on the land owned by the federal or a provincial government. This was not the intention of the lawmakers while enacting provisions of section 3(1) and 3(2) of the Sindh Rented Premises Ordinance, 1979. Therefore, the concept of ownership as provided in the Notification issued on 15-3-1981 under section 3(2) of the 1979 Ordinance is to be given the same restricted meaning that is being given to the concept of ownership under section 3(1) of the 1979 Ordinance.

Similar view has been expressed in the case of *Azmatullah Limited v S.N.K Trading Co. (Pvt) Limited* (**1989 CLC 877**) in the following manner;

.....Considering the meaning of the word "belonging" the notification under consideration is applicable to properties which are owned by K.P.T. or vest in it. The godown is neither owned by KPT nor it vests or belongs to it. It is the plot which belongs to K.P.T. and the petitioner is not the tenant of the open plot of land. He is a tenant of the godown which belongs to the respondent No.1. The notification, therefore, does not apply to the present case and respondent No.3 has jurisdiction to entertain proceed and decide the ejection case filed by respondent No. 1.

4. It further appears that in a case in respect of a similar property in KPT area, the Hon'ble Supreme Court though in a different context has interpreted the provisions of Section 16 of the Ordinance, 1979, which leads to a presumption that such Ordinance applies to the properties owned by private parties though falling in KPT area; but rented out to private person(s). The said decision is reported as **PLD 2001 SC 331** (*Ibrahim Trust, Karachi v. Shaheen Freight Services*). In the case reported as

5. it is a settled proposition of law that a still born Suit must be buried at its inception and it is the primary duty of the Court to examine and see that whether the Suit is maintainable and the relief(s) being sought can be granted by the Court or not. Rather the Court is under an obligation to reject the plaint in such Suit(s) without any formal application from the party. Reliance in this regard may be placed on the case of *Raja Ali Shan v. Essem Hotel Limited* (**2007 SCMR 741**),

Haji Abdul Karim and Others v. Messrs Florida Builders (Pvt.) Limited (PLD 2012 SC 247), Haji Abdul Mateen Akhunzada & another v. District Co-ordination Officer / Deputy Commissioner, Quetta & 5 others (PLD 2012 Baluchistan 154) and Burmah Eastern Ltd., v. Burmah Eastern Employees Union and others (PLD 1967 Dacca 190)

6. In view of hereinabove facts and circumstances of the case, I am of the view that neither any cause of action has accrued to the plaintiff nor the Suit is maintainable in law, nor any relief as prayed for can be granted by this Court, rather is barred under the law, therefore, the plaint(s) in all Suits are hereby rejected under Order VII Rule 11 CPC.

Judge