

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Rev. Appln. No.42 of 2017.

Date

Order with signature of Judge

1. For orders on M.A. No. 2998 of 2018 (Ex/ A).
2. For hearing of maintainability of Crl. Rev. Application (As per order dated 16.03.2018.
(Notices issued to Respondents No. 6 & 7 through SHO concerned for 10.01.2019).

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10.01.2019

Khawaja Muhammad Asghar, attorney of applicant present in person.

Mr. Sagheer Ahmed Abbasi, Asstt. Prosecutor General Sindh alongwith S.I. M. Haroon, P.S. Gulistan-e-Jauhar.

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At the outset, applicant contends that learned trial judge has failed to examine the facts of the complaint filed by the applicant being attorney as well purchaser of the subject matter property as well failed to call police report which was mandatory in nature as per Section 3, 4 & 5 of Illegal Dispossession Act 2005, therefore, impugned order is not sustainable.

At this juncture, this Court has noticed that trial Court has referred in his order that applicant failed to produce Power of Attorney of Ghulam Nabi Qureshi, whereas pleadings are not showing that complainant is claiming to be attorney of Ghulam Nabi Qureshi. At this juncture, counsel for the respondent contends that in fact there is a reported case of Ghulam Nabi Qureshi annexed for reliance thereupon and erroneously learned

trial judge has referred the name of the petitioner of the reported case as complainant of this case.

Relevant paras of the complaint is that:

“1. That the complainant is the owner of the Plot Bearing No.B-32, measuring 400 Square yards at Block 10, Scheme No.36, Gulistan-e-Jauhar, Karachi, which was transferred to her by Transfer Order No. CDGIK/ADA WING/3037/L dated 30.10.2004, Allotment Order No.84/NS/L&E/3516 dated 06.05.1981 Possession Order No. 0084/381, dated 10.11.1987, Acknowledgment of Possession, dated 09.12.1987 Site Plan dated 26/*01/2002 of KDA, **hereinafter called the said property.**

2. That on 27-06-2016, the Respondent No 01 to 07 accompanied by large number of their other associates, came to the site of plot no. B-32 Block-10 Gulistan-e-Jauher Karachi, the said property, performed ‘Alam’ hoisting Ceremony with one of the leading Political Personality who performed, the opening Ceremony of an ‘Imam Bargah’, sacred place for ‘Shia’ Sect.

3. That during the raising ceremony, slogans of the ‘Shia’ Sect were raised and during all this activity the armed guards of the illegal occupants, remained alert, to watch any untoward activity, So that no body can dare come near to the site of the said property. Then the Attorney (The Occupier) of the Complainant visited the P.S. Gulistan-e-Jauhar Karachi, and informed the Respondent No.08, but to no avail. The respondent No.8, didn’t co-operated and this way the lady lost her above property at the hands of the present illegal occupants.”

It is strange that an Additional Session Judge without examining the facts has referred names of parties which were in fact part of the reported case and has ignored the facts of the case wherein petitioner though is claiming attorney of Nasima Yousuf, as well as purchaser of that property, such facts are very much available in the complainant.

The *peculiar* situation, so emerged, has made me to remind that a Court is not a *mere* mixture of construction material but in its literal sense is a ‘**hope**’ where complainant or plaintiff (as the case may be) comes with

a hope of 'justice'. Thus, the Court (s) must always act in such a manner so that every single decision thereof should satisfy its literal meaning i.e 'a place where justice is done/dispensed'. I shall insist that litigants should never be given a 'disposal of their approaches' but a 'decision by a Court of law'. Here, to substantiate the purpose of 'Court' and that of its 'decisions' a referral to relevant portion of case of MFMY Industries Ltd. v. Federation of Pakistan 2015 SCMR 1549, being relevant is made hereunder:-

"E" ..It is in the aforementioned circumstances that where the legislature or the executive branch has erred in the exercise of its jurisdiction or the executive branch has erred in the exercise of its jurisdiction and is responsible for any of the deviations indicated above, that an affected person for the purposes of seeking redressal of his grievance against such wrong and / or for enforcing his rights under the law, including his fundamental rights as enshrined in the Constitution, comes forth to the judicature by knocking at its door (note: in the contest of above, I am purposely not making reference to any private litigation between two individuals). **This is the last resort for a beleaguered and aggrieved person.** It is commonly and jurisprudentially known all over the republican and democratic world that the courts are the guardians of the Constitution and are responsible for preserving and securing the rights of the aggrieved citizens / persons as against the State.

"F" .. Whereas, a great virtue of a judicial functionary is that he applies the rules of balancing and proportionality while performing his functions and discharging his duties.

5. Termination of a *lis* undoubtedly is through a verdict of a court which is a **decision** disposing of a matter in dispute before it (the Court) and in legal parlance, it is called a **JUDGMENT'** . It is invariably known that a Judge finally speaks through his judgment. According to Black's Law Dictionary, a judgment has been defined to mean '**A court's final determination of the rights and obligations of the parties in a case'** and per Henry Campbell Black, A Treatise on the Law of Judgment '**An action is instituted for the enforcement of a right or the redress of an injury. Hence a**

judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is invoked.' These definitions are adequately self-explanatory. In our procedural law (*civil*) , judgment as defined in Section 2(9) of Code of Civil Procedure means "*the statement given by the judge of the rounds of a decree or order*". It should be emphasized here that a judgment should supply adequate reasons for the conclusion reached and arrived at and should be reflective of application of proper judicial mind by the Judge and it should not be a mechanical and not speaking judgment in nature.'

Thus, if it comes to '**rights and obligations**' of litigants the Court (s), *legally and morally*, cannot take an excuse of '**rush of work**' etc therefore, not a single '**decision**' of a Court of law should reflect that it was not a '**decision**' but an attempt to earn '**numbers/ units**' or to lessen the number of cases, entrusted to it for disposal '**according to law**'. The thin line between two known *legal* maxims i.e '**justice delayed is justice denied**' and '**justice hurried is justice buried**' must always be appreciated by every single Court.

I would add that the *lower judiciary* is the first step of the '**stair**' of available legal judicial system, therefore, importance and role thereof can be denied by none. It is a place where the *aggrieved* which is provided closest to the *aggrieved* with assurance that he (*aggrieved*) shall have protection to his '**rights**' and '**wrong doer**' shall be given his due which *divine* duty cannot be expected if the lower judiciary merely start focusing on '**disposal of cases**'. How a '**decision**' could be recorded if the writer thereof is not ready to take the pain of going through the complaint / plaint or petition, as the case may be? when he *himself* chosen to a *divine*

duty, meant to 'give relief / ease to an aggrieved'. Here, I would refer another portion from case of MFMY(supra) which reads as:-

It may be reiterated that **without a judgment, there is no concept of justice and / or fruitful outcome of litigation which without any fear of contradiction means that the State lacks and effective justice system.** In such a situation, I would, rather, go to the extent of saying that if the Judge/ the Court does not pronounce a judgment for resolving the legal and factual issues involved in a dispute before it at all, the very purpose of the judicial branch of the State will be frustrated and eroded . **If there is no judgment in terms of law, the entire judicial setup shall be rendered farce and illusionary, which obviously shall in turn disturb the equilibrium between the pillars of the State upon which it rests, resulting into serious impairment of the functioning of the State.**

If above is summed up, I would conclude that the Court must reflect a place where:-

- a) one (judge) shall be available to *aggrieved* for **hearing** with full ears and **patience**;
- b) he (judge) shall satisfy the legal requirement of '**due process**' with every effort to ease the course of '**hearing/ trial**' for both ends;
- c) he (judge) without any influence shall ensure '**justice**' while performing *divine* duty;
- d) he shall pay every attention while writing '**decisions**' and shall never come with an excuse of '**rush of work**' etc;

The above purpose and objectives must always remain within conscious of the Court (s), particularly on lower judiciary, being foundation of judicial system, because *unfortunately* every up-word step on such '**ladder**' costs *heavily* to '**aggrieved**'. However, I would admit that the learned trial court judge seems to have acted *otherwise*. It is not expected from any

court to decide the matters in such slipshod manners nor same can be taken *lightly* because every court is bound to adjudicate the matters after due care and hearing of the parties, which is lacking in this case. Legally, every judgment / decision is to be written as a whole wherein every stage of proceedings has its own effects and consequences. The facts of a '**case / complaint**' play a pivotal role and even *legally* no departure thereto is permissible. This legal position was also not appreciated by learned trial court judge, I, while attempting to swallow such attitude, take it as *inadvertent* but with a warning that learned Judge shall ensure satisfaction of detailed objects and meanings. **Hence**, impugned order is set aside; case is remanded back to decide as fresh after calling police report and other necessary requirements as provided under Illegal Dispossession Act 2005; judicial propriety demands that learned District & Sessions Judge, East shall withdraw that case from Ms. Mushtari Khanum, XI Additional Sessions Judge, Karachi East and transfer the same to any other competent judge, who decide the matter in accordance with law.

Learned MIT-I shall communicate this order to learned trial Judge, who passed impugned order.

JUDGE

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