DATE	ORDER WITH SIGNATURE OF JUDGE

1. For hearing of M.A. No.1479 of 2018.
2. For hearing of M.A. No.214 of 2018.

12.02.2019.

Mr. Zahid Chauhan, Advocate for petitioner No.2.

Respondent No.1 Raees Ahmed Shaikh present in person.
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Neither petitioner No.1 nor his counsel is present.

Respondent No.1 files a Statement attaching therewith copies of certain documents, taken on record, a copy whereof provided to counsel for petitioner No.2.

Counsel for petitioner No.2 draws Court's attention to order dated 25.01.2019 and states that in compliance thereof a counter affidavit has been filed attaching two receipts of payment of rent. The counter affidavit is taken on record. A perusal of the same reveals that there is only one receipt with regard to payment of rent for the months of January and February, 2019 in Rent Application No.75/2006 dated 01.02.2019 (paid after this Court's order dated 25.01.2019). No prior payment receipts have been provided as mandated by this Court's order of 25.01.2019.

Vide this Court's order dated 25.01.2019, a report was also called from the Incharge III-Senior Civil Judge & Rent Controller, Hyderabad, which has been received on 01.02.2019. A review of the same indicates that despite hectic efforts no record of depositing of rent in Rent Application No.75/2006 was found.

Counsel representing petitioner No.2 states that there has been an error in this Court's order dated 22.11.2010, where in the operating part the learned Judge of this Court directed the petitioner No.2 to deposit rent at the rate of Rs.8000/- per month with the Rent Controller. Per counsel, the intention was that the Petitioner No.1 was to deposit the said rent, as Petitioner No.2 was neither residing in the suit premises nor was liable to pay such rent. Respondent

No.1/legal heir of the landlord is present, who filed the aforementioned statement also submits that since last 13 years, the petitioners have not paid a single rupee and they are occupying the demised premises despite a well reasoned judgment rendered in Rent Application No.75/2006, impugned through this Constitutional Petition.

This petition was disposed of vide order dated 22.11.2010 with the following operating part:-

> "   I, therefore, set aside both the impugned orders and remand the matter to the Rent Controller with direction to record evidence of the parties and by framing an issue as to whether there exists relationship of landlord and tenant between the Petitioner No.1 and Respondent No.2 of not. The parties shall lead evidence in support of their contentions and after such evidence is recorded the Rent Controller will pass the order U/s 16(1) of the Sindh Rented Premises Ordinance, 1979, in case he finds that there is relationship of landlord and tenant between the Petitioner No.2 and Respondent No.2. The Rent Controller shall decide the matter within a span of two (2) months from the date of communication of this order. In the intervening period, the Petitioner No.2 shall continue to deposit the rent at the rate of Rs.8000/- per month with the Rent Controller. R & Ps be returned forthwith."

When the matter so remanded to the Rent Controller, the Rent Controller chose to dismiss the rent application in non-prosecution, leaving the landlord in limbo.

This petition was filed in a rent matter challenging the order passed by the appellate Court. Petitioner No.1 has not attended the Court, no proof available that rent has been paid in the intervening period, and counsel for petitioner No.2 states that he has nothing to do with the direction to pay rent. In these peculiar circumstances, I reach to the conclusion that a scheme has been cooked between petitioner No.1 and petitioner No.2 (brothers) to deprive the respondent/landlord of his property/double storey house bearing City Survey No.A/117-49/4, situated at Hirabad, Hyderabad, which property is protected under Article 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973, relevant provisions are as under:-

> "**23. Provision as to property.**
>
> Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

24. Protection of property rights.

(1) No person shall be compulsorily deprived of his property save in accordance with law."

This Constitutional Petition was filed against the concurrent findings of the Courts below in Rent proceedings, in which circumstances, it has to critically pass through the test laid down by the judgment rendered by Honourable Supreme Court in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (**2001 SCMR 338**) as well as in the cases reported as **PLD 2018 SC 81, 201 4 YLR 2331** and **2016 CLC 1850**.

A review of the judgments passed by the Courts below shows no illegality or material irregularity, of which this Court could have taken cognizance of under the Constitutional jurisdiction. In these circumstances, no error is found in the order of this Court dated 22.11.2010.

In view of above, M.A. No.214 of 2018, made by the petitioner No.2 for correction of the order dated 22.11.2010, is clearly ill founded, mischievous and contrary to law and fact, if he is not residing in the premises, he has no locus standi to move such an application. The fact is that even his brother, the petitioner No.1 with whom he is living, has not even deposited rent for the last many years. The disturbing reality is that the property of the respondent has been occupied by the petitioners No.1 and/or 2 without payment of rent and no proof has been provided that this Court's earlier order of 22.11.2010 has been complied with, and rent having been paid.

Accordingly, the instant application (M.A. No.214/2018) is dismissed. Let the Petitioners vacate the demised premises within a period of 07 (seven) days from today. Consequently, M.A. No.1479/2018 being devoid of consideration is also dismissed.

File be consigned to record.

JUDGE

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