

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.97 of 2014

Present: **Mr. Justice Nazar Akbar**

Applicant : Nadeem Hyder, through
Mr. Muhammad Tariq Abbasi, advocate.

Versus

Respondent No.1 : Abdul Nadeem Ahmed Khan.
Respondent No.2 : Waseem Ahmed Khan.
Respondent No.3 : Shakeel Ahmed Khan.
(Nemo for Respondents No.1 to 3).

Respondent No.4 : The State
Ms. Rahat Ahsan, Additional P.G.

Date of Hearing : **26.04.2019**

Date of Decision : **10.05.2019**

J U D G M E N T

NAZAR AKBAR, J.- Applicant Nadeem Hyder has preferred this Criminal Revision Application against the order dated **17.05.2014** delivered by learned District and Sessions Judge, East Karachi in Criminal Complaint No.10/2014, whereby his criminal complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005 has been dismissed.

2. To be very precise, the facts of the case are that the Applicant/ complainant filed Criminal Complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005 before the trial Court stating therein that he has purchased House No.88/10, 5-D Landhi No.6, Karachi (the demised premises) through sale agreement dated 26.08.2007 and 14.11.2007 for which he has paid Rs.20,00,000/- to Respondents and possession of the demised premises was handed over to him by Respondents on 14.11.2007. Thereafter the complainant filed civil suit No.1472/2009 before this Court for

specific performance of contract, declaration and permanent injunction in respect of the demised premises. It was further averred that the Respondents instead of contesting the civil suit came at the demised premises alongwith some ladies on 20.02.2014 and illegally dispossessed the complainant and occupied his business premises through force, therefore, the complainant filed criminal complaint against the respondents.

3. The complaint was registered and report was called from the concerned SHO. Learned trial Court after hearing learned counsel for the parties by order dated **17.05.2014** dismissed the Criminal Complaint and, therefore, the instant Criminal Revision.

4. I have heard learned counsel for applicant as well as learned Additional P.G representing the State and perused the record.

5. Learned counsel for the Applicant/ complainant contended that the impugned order is based on misreading of the evidence placed on record. He further contended that the respondents have illegally dispossessed the applicant/complainant as per statement of area police the applicant/complainant was illegally dispossessed, hence the cognizance ought to have been taken which was not taken by the trial Court, therefore, the impugned order is liable to be set aside.

6. Conversely, learned D.P.G has supported the impugned order and contended that the trial Court has rightly passed the impugned order, since the trial Court was seized of a case in which subject property was under dispute.

7. I have considered the arguments advanced by the applicant/complainant and learned Additional PG for the State. From perusal of

impugned order it is revealed that the disputed property is also subject matter of a civil suit No.1472/2009 which was filed by the applicant/complainant before this Court and even the applicant/complainant had obtained stay order in respect of the demised premises and in this context the learned trial Court in the impugned order has also observed as follows:-

*The suit property is described in para-1 of the memo of plaint which manifest as “Student Restaurant & Catering Service situated at plot No:88/10, 5-D, Landhi No:6, Karachi constructed double story including shop No:5 & 6”. As to the consistent contention of the complainant regarding his possession over the premises House No:88/10 5-D, Landhi No:6, Karachi alongwith shop No:5 & 6, the application annexed as Annexure B with the petition stated to have been sent by the complainant to the concerned P.S. reflect his assertion that **“on:2.9.2009 one Abdul Shakeel has handed-over his residential premises to complainant”**. Suit pliant is filed on:20.10.2009 after around one month and 18 days of receiving of possession by the complainant, **but such fact has neither been mentioned by the complainant in his civil suit before the Hon'ble High Court of Sindh nor in the instant proceedings through out the contents of memo of petition.** Admittedly respondents are the owners by virtue of inheritance of the subject premises by virtue of sale agreement. The fate whereof is pending before the Hon'ble High Court of Sindh in civil suit No:1472/2009. **During hearing it has been affirmed by the learned counsel for the complainant that for the alleged incident complainant has also filed contempt application before the Hon'ble High Court of Sindh in such civil suit as well as lodged FIR against the respondents. Admittedly since after filing of the civil suit till the day of alleged incident no any inspection has been got carried out in respect of possession of the complainant which too as per pleadings brought on record is observed self-contradictory as above noted.***

The above observations clearly reflect that the dispute between the parties is of civil nature and the applicant/complainant himself has filed a civil suit for specific performance of contract before this Court. Therefore, no case is made out to interfere with the impugned order

passed by the learned trial Court. In view of the above stated facts the case-laws referred by the learned counsel for the applicant is not relevant to the facts of the case in hand. The Civil Suit about the subject property has been filed by the applicant himself and not by Respondents.

8. The crux of the above discussion is that the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. Consequently, this Criminal Revision Application is dismissed with no order as to cost.

JUDGE

Karachi
Dated:10.05.2019

Ayaz Gul