

this Court since **January, 2013**. I would rely on facts referred by Counsel for the applicant in Revision Application.

2. Both the Revision and the IInd Appeal are directed against the concurrent findings. The Ist Senior Civil Judge, West Karachi by judgment dated **25.11.2003** decreed civil suit No.1053/2002 filed by Respondent No.1 and the IIIrd Additional Sessions Judge, West Karachi by two identical judgments both dated **31.05.2010** dismissed civil appeal No.56/2004 and Civil Appeal No.48/2004 preferred by defendants No.2 and 3 (applicant) respectively and maintained the findings of the trial Court in favour of Respondent No.1. The Revision and the IInd Appeal are both against these concurrent findings.

3. To be very precise, the facts of the case are that Respondent No.1/Plaintiff filed a civil suit for possession and mesne profits valued **Rs.24,00,000/-** against the applicant/ Defendant No.3 and Respondents No.2 and 3 (Defendants No.1 & 2) stating therein that Respondent No.2 had entered into a license agreement dated **18.01.2000** with him in respect of a godown No.2 constructed on an area of 50,000 sq. ft. in their mills premises at A-22, Maripur Road, SITE Karachi (the demised premises) for storage of rice. Respondent No.2 was allowed to use the said godown for a fixed period of five months upto **17.6.2000** as per terms and conditions of the agreement against a lump sum amount of Rs.1,52,000/- payable in cash at the time of execution of the license agreement and handing over the possession of the godown premises to him. It was further averred that after expiry of the licence agreement on **17.6.2000**, Respondent No.2/ Defendant No.1 avoided and neglected to vacate

the premises and it came to the knowledge of Respondent No.1/Plaintiff that Respondent No.2 has illegally allowed use of the godown premises to M/s Muhammad Amin, Muhammad Bashir Ltd./ Respondent No.3/Defendant No.2 who had stored some goods therein, which were under pledge with the applicant/National Bank of Pakistan. It was in utter disregard and contravention of the licence agreement and without knowledge, consent and permission of Respondent No.1/Plaintiff and they have not paid any payment of occupation charges of the demised godown premises to Respondent No.1/Plaintiff. It was further averred that as per agreement, Respondent No.2 was liable to pay **Rs.6/-** per sq. ft. after expiry of the licence agreement for the period of their illegal possession which on the date of filing of suit on **17.2.2001** was amounting to **Rs.24,00,000/-**, therefore, Respondent No.1/ plaintiff filed the said suit for recovery for the said amount.

4. On service of notice, Respondent No.2/Defendant No.1 filed his written statement wherein he admitted that he was tenant of Respondent No.1/Plaintiff but he claimed that he could not be evicted from the demised premises without adopting the procedure provided under Sindh Rented Premises, 1979. He further contended that the goods of Respondent No.3/ Defendant No.2 were stored with the consent of Respondent No.1/ plaintiff and he had paid the rent upto **17.7.2000** and thereafter Respondent No.1/Plaintiff did not accept the rent from him and also refused to issue receipt of payment. He further contended that he was not liable to pay Rs.6/- per sq. ft. per month but they were only liable to pay **Rs.30,400/-** per month.

5. Respondent No.3/Defendant No.2 also filed their written statement wherein they stated that they have no knowledge about the relationship between Respondent No.1/Plaintiff and Respondent No.2/ Defendant No.1. They contended that they entered into an licence agreement with Respondent No.2/Defendant No.1, which was executed on **18.10.1999** and they are paying huge amount to Respondent No.2/Defendant No.1 as licence fee for using the godown in question and had stored their goods which were pledged with and under the lock and key of M/S National Bank of Pakistan/ the applicant. Respondent No.3 further contended that they have no concern with the dispute between Respondent No.1/plaintiff and respondent No.2 and Respondent No.1/Plaintiff is not entitled to claim any amount from them.

6. The applicant/Defendant No.3 also filed their separate written statement wherein they raised legal plea that there is no privity of contract between them and Respondent No.1/Plaintiff and they were neither necessary nor proper party, therefore, plaint against them was liable to be dismissed. They further contended that as a security for the payment, Respondent No.3/Defendant No.2 pledged stock of rice which was kept in the demised godown and the applicant as pledgee, have the right/lien on the pledged stock and Respondent No.1/Plaintiff cannot claim either rent or the attachment of pledged stock from them.

7. The trial Court after framing issues, recording evidence and hearing learned counsel for the parties, by Judgment dated **25.11.2003** decreed the suit filed by Respondent No.1. The applicant/ Defendant No.3 preferred Civil **Appeal No.56/2004**

against the said judgment which was dismissed by order dated **31.05.2010**. Respondent No.2/ Appellant also challenged the judgment of the trial Court in Civil **Appeal No.48/2004** which was also dismissed by judgment dated **31.5.2010**. The applicant/ Defendant No.3 has impugned both the concurrent findings in Civil Revision Application No.166/2010. Respondent No.2/Appellant has also challenged both the concurrent findings in IInd Appeal No.18/2011.

8. I have heard learned counsel for the applicant and Respondent No.1 in Revision Application No.166/2010 and perused the record as well as written arguments filed by learned counsel for respective parties in Revision.

9. Learned counsel for the applicant in his written arguments has only contended that there was no privity contract between the applicant and Respondent No.1 whose godown was used by Respondent No.2 under a license agreement, however, he admits that the goods owned by Respondent No.2 were stored in the godown of Respondent No.1 and those goods were under pledged with the applicant. In his written arguments learned counsel for the applicant has not commented on the effect of the orders passed by the trial Court on two miscellaneous applications whereby the Court has been pleased to order that, pending the suit, the goods stored in the subject property will remain in godown. That status-quo order was not against the applicant, however, the applicant has preferred an application under **Order XXXIX Rule 4 CPC** seeking modification of the order dated **24.10.2001** and permission to remove/sale the pledged stock lying in the godown owned by Respondent No.1. Such

application was contested and a conditional order was passed by this Court on **30.05.2002** whereby the order of restraining defendant to dispose of the stock was modified in the following terms:-

*“I have heard all the learned counsel and order that the NBP (defendant No.3) shall sell the stock and **since the prayer is to the extent of Rs.2,400,000/-, therefore, they shall retain the said amount from the sale proceeds in a separate account.** Information of this separate account shall also be conveyed to this Court as that amount shall be held in trust till the disposal of this dispute.”*

The applicant has also not commented on another application which was filed by Respondent No.1 under **Order XXXVIII Rule 5 CPC** for formal attachment of the pledged goods/ amount of Rs.24,00,000/- held in the trust with the applicant which was also disposed of in presence of the applicant with the observation that the interest of Respondent No.1 already stand secured by order dated **30.5.2002** reproduced above.

10. Learned counsel for Respondent No.1 has only relied on the two orders which have protected the interest of Respondent No.1 and has further submitted that Respondents No.2 and 3 have already given no objection to the release of trust money towards satisfaction of the judgment and decree in Execution No.12/2010. The learned Executing Court by order dated **25.8.2010** has already been pleased to direct the applicant to deposit the said amount with the Nazir of District Court West. The contention of learned counsel for the applicant that he has no privity contract with Respondent No.1 is not relevant in the given facts of the case because the goods have been attached by the Civil Court and that attachment was not against the applicant. Another thing to be noted is that in the application under

Order XXXIX Rule 4 CPC when the applicant has sought modification of interim order, the applicant without any details has only claimed that the property is pledged with them as Respondent No.2 has borrowed some money after pledging the same with the applicant. The applicant never had any decree for the sale of pledged goods nor in the said application they have even given the details of any exact amount to be recovered from Respondent No.1. However, they have agreed that out of total sales consideration they will keep Rs.24,00,000/- in trust. It was obvious that the said amount was not supposed to be claimed by the applicant even in the subsequent proceedings, therefore, like there was no privity of contact between the applicant and Respondent No.1, there cannot be any claim of applicant on the trust money. The applicant has not even disclosed what was the total sale consideration of the pledged goods and how and on what basis the applicant opposed the release of trust money. Be that as it may, if there was any liability between the applicant and Respondent No.2, their dispute was independent to the issue between Respondents No.1, 2 and for their grievance, if any, against Respondent No.2, the applicant has not approached the Court of Law. Even in their written statement the applicant has neither prayed for any relief nor the decree can be set aside or nullified on their request since they have never sought any relief from Court during the proceedings of suit filed by Respondent No.1 or by any independent case against Respondent No.2.

11. In view of the above facts and discussion, the Revision Application No.166/2010 has no merits and the IInd Appeal No.18/2011 has never been pressed by the appellant/Respondent No.2 nor he can press the same after having given no objection before

the Executing Court for directions to applicant herein/National Bank to release the sum of Rs.24,00,000/- in favour of Respondent No.1/decree-holder, therefore, both the Revision Application No.166/2010 and IInd Appeal No.18/2011 are dismissed with no orders as to costs.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul