

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**C.P No.S-607 of 2019**

Date	Order with signature of Judge
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Hearing/priority Case

1. For hearing of CMA No.446/2020 (U/S 151 CPC).
2. For hearing of CMA No.447/2020 (U/S 151 CPC).
3. For hearing of main case.
4. For hearing of CMA No.2403/2019. (Stay).

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**13.02.2020**

Mr. S.M. Yahya, Advocate for the Petitioner.  
Mr. Muhammad Amin, Advocate for Respondent No.2.

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1-2. It has been consistently case of the Petitioner before the Rent Controller and the Appellate Court that the Petitioner is tenant of a Trust viz “LAHER Muslim Charitable Trust” by virtue of tenancy agreement and the ejectment application has been filed for personal bonafide need by an individual in his personal capacity and, therefore, there was clear-cut case of no relationship of landlord and tenant. On the first date of hearing i.e **22.4.2019** after going through the record and hearing the counsel for parties, this Court has issued notices to the Respondent and suspended the operation of the impugned orders. On **08.5.2019** Mr. Muhammad Amin, Advocate filed power on behalf of Respondent No.2, who had filed rent case for his personal bonafide need in respect of a charitable property and he sought time to file counter affidavit. On **20.8.2019** when the learned counsel for Respondent No.2 again requested for time to file counter affidavit, this Court has directed him to ***“satisfy the Court on the next date regarding maintainability of the eviction application filed by Respondent No.2/trustee in his own name on the ground of his own personal need in respect of the demised premises admittedly owned by a trust”***. Even after that, he did not file any

counter affidavit and kept on seeking dates without filing counter affidavit. On **19.12.2019** Respondent No.2 filed an urgent application and got the interim orders passed earlier recalled even without notice to the Petitioner and without satisfying the Court that how the eviction order was obtained by an individual for his personal bonafide need. Since interim order has been recalled in absence of the Petitioner and it was never expected by them that it could happened in the High Court except on misrepresentation or fraud by Respondent No.2. Even after obtaining order dated **09.12.2019** when the case was listed on **16.01.2020**, learned counsel for Respondent No.2 sought further time to file counter affidavit to main petition. After achieving his motive through the executing Court, on **20.01.2020** Respondent No.2 filed counter affidavit to main petition. It was only after that date the Petitioner came to know that interim order has been vacated by this Court in the manner stated above and he immediately filed **CMA Nos.446/2020** and **447/2020**, one for recalling the order dated **09.12.2019** and another application for restitution of possession of the property in question having been obtained under the cover of orders dated **09.12.2019**. Notice of these applications was waived by the learned counsel for Respondent No.2 on **29.01.2020** and no counter affidavits to these applications have been filed till date. On **11.02.2019** learned counsel for Respondent No.2 again requested for time which was given and the case was adjourned for today (**13.2.2020**).

Today I have heard learned counsel for the parties and perused the record. Learned counsel for Respondent No.2 has not been able to assist the Court on the point of maintainability of eviction application filed by him and he appears to be satisfied since by now he is in possession of the premises in question. He has placed on record

order of execution application in which he has obtained ejectment orders at the back of the Petitioner by directly making an application for taking possession through bailiff by breaking open the locks to the executing Court on the ground that the status-quo orders passed by this Court have been recalled. It is pertinent to note that no counter affidavit to the above two applications has been filed. The contentions of the learned counsel for the Petitioner that the property belongs to the Trust and not to the individual Respondent No.2 was confirmed by Respondent No.2 in his counter affidavit dated **20.01.2020** to main petition. It has transpired that a permission for sale of the trust property including the tenement in dispute has been obtained by the Trust and such position confirms the fact that the rent case has been filed by an incompetent person in his personal capacity. However, before hearing learned counsel for Respondent No.2 at length on the question of maintainability of rent case filed by Respondent No.2, it is hereby ordered that Nazir of this Court should immediately take over the **property bearing Shops No.1 and 2 situated at Ground Floor of plot No.25-C, survey sheet No.35-P/1, "C" Commercial Area, Block-2, PECHS, Karachi** which is subject matter of this constitution petition and the same will remain in the custody of the Nazir of this Court pending decision on instant petition. In case the tenement has been demolished or otherwise damaged, no construction shall be allowed on the subject property pending this petition by anyone. The Nazir should comply with this order **within three days** and if he finds any resistance, he is allowed to have police aid and submit compliance report within one week. Adjourned to a date in office. Call R&Ps of execution proceedings.

JUDGE

Ayaz Gul