## ORDER SHEET THE HIGH COURT OF SINDH, KARACHI CP.No.S-624 of 2020

## Date Order with signature of Judge

1. For orders on office objection.

2. For hearing of CMA No. 3116 of 2020.

3. For hearing of main case.

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05th October 2020

Mr. Amir Nawaz Warrich, advocate for petitioner. Mr. Maroof Hussain Hashmi, advocate for respondent No.1.

Heard learned counsel and perused the record.

At the outset, learned counsel for the petitioner contends that petitioner has purchased subject property; he is in possession being owner of the same and sale agreement in this respect was executed between the parties. Admittedly eviction application was filed by landlord and the same was allowed ex-parte; petitioner moved application for recalling of order along with his counter affidavit and such affidavit is not reflecting the contentions as raised by learned counsel that there was any sale agreement between the parties. Besides, I have examined the FRA alongwith affidavit which is also silent with regard to any sale agreement between the parties, whereas the landlord is seeking eviction of the petitioner however, the petitioner intends to continue his possession on the basis of sale agreement executed between the parties. Further learned counsel contends that he is ready to submit security of Rs.10,00,000/- as that was the sale consideration. Since, petitioner has failed to agitate in his pleadings with regard to denial of tenancy and now agitating the ground of sale agreement, accordingly, petition merits no consideration same is dismissed.

At this juncture, learned counsel for the petitioner contends that sale agreement is not in dispute, however, record is not reflecting the same as such plea of sale agreement is apparently afterthought. Even otherwise, such is concerned, it would suffice to say that taking of such a plea by a tenant leaves him with no option but to do what has been enunciated by Apex Court i.e. "to put the landlord into possession and then to *proceed* for enforcement of his rights". Reference may be made to <u>Abdul Rasheed v.</u> <u>Maqbool Ahmed & others</u> 2011 SCMR 320 wherein it is held as:-

> 5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails...... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.

Therefore, the petitioner is at liberty to agitate such plea before the appropriate forum if advised so.

JUDGE

Sajid