

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
C.P.No.D-1833 of 2019

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For orders on MA-7031/19
3. For hearing of main case.

**29.10.2019.**

Mr. Karim Bux Rind, advocate for petitioner.  
Mr. Khadim Hussain Soomro, advocate for private  
respondents.  
Mr. Muhammad Ismail Bhutto, Addl.A.G.  
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The facts in brief necessary for disposal of instant constitutional petition are that; a rent application was filed against the petitioner by the private respondents. It was allowed by learned IInd Rent Controller, Shaheed Benazirabad on 10<sup>th</sup> October, 2013, which was impugned by the petitioner by preferring an appeal. It was also dismissed by learned 4<sup>th</sup> Additional District Judge, Shaheed Benazirabad. After dismissal of such appeal, an Execution Application was filed by the private respondents, it was allowed. Consequently, the writ of possession was issued against the petitioner. In the meanwhile, petitioner by making an application under Section 47 C.P.C took a plea that the property in his possession is different to the one, which is being owned by the private respondents. Such application was dismissed by learned IInd Rent Controller, Shaheed Benazirabad on 29<sup>th</sup> May, 2019. It was impugned by the petitioner by preferring an appeal under Section 104 C.P.C. It was dismissed by learned 5<sup>th</sup> Additional District Judge, Shaheed Benazirabad on 06.07.2019, such dismissal of his appeal is impugned by the petitioner before this Court by way of instant constitutional petition.

2. It is contended by learned counsel for the petitioner that the property in his possession is different to the one which is being owned by the private respondents. By contending so, he sought for direction against learned 2<sup>nd</sup> Rent Controller Shaheed Benazirabad to conduct proper enquiry with regard to identification of the property owned by the private respondents and is in possession of the petitioner.

3. Learned A.A.G and learned counsel for the private respondents have sought for dismissal of the instant constitutional petition by supporting the impugned order by contending that the petitioner is intending to defeat the course of law for one or other reason.

4. We have considered the above arguments and perused the record.

5. The parties had been litigating with each other since 2013 and after very painful litigation, the private respondents were able to seek an order of ejectment of the petitioner from their property in possession of the petitioner. The appeal preferred by the petitioner has already been dismissed. The order passed on Execution Application has not been challenged by the petitioner. In that situation, the petitioner could not be permitted to defeat the order of ejectment by taking a plea that the property in his possession is different to the one, which is owned by the private respondents. In these circumstances, learned 2<sup>nd</sup> Rent Controller and learned appellate Court were right to dismiss the application of the petitioner under Section 47 C.P.C by way of impugned orders. By doing so, they apparently have committed no wrong / any

illegality, which could be made right by this Court in exercise of its constitutional jurisdiction.

6. Consequent upon above discussion, the instant constitutional petition fails and it is dismissed accordingly together with the listed applications.

JUDGE

JUDGE

Ahmed/Pa,