

**ORDER SHEET**  
**HIGH COURT OF SINDH, KARACHI**

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C.P. No.D-6755 & 6756 of 2019

<b>Date</b>	<b>Order with signature of Judge</b>
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**Present**

**Mr. Justice Muhammad Ali Mazhar.**  
**Mr. Justice Yousuf Ali Sayeed.**

C.P.No.D-6755 of 2019

Rahim Iqbal Rafiq & Co. ....Petitioner

Versus

XIth Additional District & Sessions Judge,  
Karachi East & others & others.....Respondents

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XIth Additional District & Sessions Judge,  
Karachi East & others & others.....Respondents

**Date of hearing 16.01.2020**

Mr. Saleem uz Zaman advocate for the petitioners.

Mr. Muhammad Nawaz advocate for the respondent No.2.

Mr. Ghulam Shabbir Shah, Addl. A.G.

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**Muhammad Ali Mazhar, J:** The aforesaid petitions have been brought to challenge the order passed by XIth learned Additional District Judge, Karachi East on 14.01.2019 in two Civil Revision Application No. 66 and 67 of 2018. In both the revisions, the applicant and the respondent were same.

2. The brief facts of the case are that Habib Bank Limited filed two suits for recovery of arrears of rent against the petitioner vide civil suit No. 1679 of 2016 and civil suit No. 1680 of 2016. Both the suits are pending in the court of learned Vth Senior Civil Judge Karach, East. During pendency of the suit, the petitioner filed an application for framing of additional issues under Order XIV Rule 5 C.P.C but both the applications were dismissed by the learned trial court, therefore, the separate orders passed in two separate suits were challenged in the civil revisions and both the civil revisions were also dismissed.

3. Learned counsel for the petitioner argued that for some period for which the arrears of rent have been claimed against the petitioners in fact Al-Asif Sugar Mill was the tenant of the Bank and in order to appreciate this aspect, application was filed for framing of additional issue whether Al-Asif Sugar Mill was tenant of the plaintiff? One more additional issue was proposed that whether plaintiff/HBL has submitted any documentary evidence that the defendant/petitioner has sublet the suit premises to Al-Asif Sugar Mill Limited?.

4. Quite the reverse, learned counsel for the respondent No.2 supported the order passed by the learned trial court dismissing the application for framing additional issues. He further argued that the petitioner has challenged the concurrent findings of the two courts below and failed to point out any illegality in the orders. He further argued that

the impugned orders were passed by the revisional court on 14.01.2019, whereas, the petitions have been presented in this court on 19.10.2019, therefore, both the petitions are also hit by laches.

5. Heard the arguments. It is an admitted fact that eviction order was passed against the petitioner and they have also challenged the orders in appeal but the eviction order was maintained, thereafter, the C.P. was filed in this court but the learned counsel for the Bank argued that during pendency, the execution application was allowed and possession was handed over to the bank and on that account the petition was become infructuous. The copy of the order dated 19.09.2016 passed C.P. No.S-1145 of 2012 and C.P. No.D-1146 of 2012 are already available on record and attached with the objections filed by the Bank to the petitions. In the trial court, basically, the controversy is confined to the payment of arrears of rent and its recovery and both the suits are pending. We have also gone through the issues framed by the learned trial court to resolve the controversy and at least issue No.2 & 4 framed in both the suits relates to the disclosure of cause of action and the entitlement of the plaintiff to recover the arrears of rent in respect of the demised property. Learned counsel for the petitioner further argued that one more application has been moved in the trial court under Order 1 Rule 10 C.P.C for impleading Al-Asif Sugar Mill but the same is pending. In case this application is allowed on merits by the trial court, Al-Asif Sugar Mill will be

impleaded and provided opportunity of filing written statement and hearing and in case the application is dismissed by the learned trial court then in the premise of issue No. 2 & 4 the petitioner may put up their case through evidence in the trial court for establishing whether they were tenant or some other person was tenant during any specific period for which the suit for recovery has been filed and what were the findings of Rent Controller on the plea of subletting if any. Even otherwise the question of subletting was the province of learned Rent Controller and in the recovery suit the trial court is not required to decide the issue of subletting.

6. As a result of above discussion, we feel that issue No. 2 & 4 may cover the controversy which the petitioner tried to bring before this court so we do not feel any illegality in the orders passed by the courts below. The petitions are dismissed, however, the petitioner in view of the aforesaid findings may produce the tangible evidence if they feel that defendant has no cause of action in terms of issue No. 2 and may also challenge the entitlement of the plaintiff for the recovery of rent in terms of issue No.4 .

Office is directed to place copy of this order in connected petition.

JUDGE

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