

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

F.R.A. No.10 of 2021

Aamir Rafa Siddqui
Versus
VIII-Sr. Civil Judge South & another

Date	Order with signature of Judge
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1. For hearing of CMA 1260/21
2. For hearing of main case

Dated: 25.03.2021

Mr. Shoaib Mohiuddin Ashraf along with Mr. Ameeruddin for appellant.

Mr. Perwez Ahmed Mastoi, Assistant Advocate General.

Mr. Zahid F. Ebrahim for respondent No.2.

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Mr. Zahif F. Ebrahim Advocate files his Vakalatnama on behalf of respondent No.2 whereas learned counsel for appellant has filed a statement annexing therewith diary sheets, which are taken on record.

Appellant being a tenant filed an application under section 12(2) CPC before the executing Court i.e. VIII-Rent Controller Karachi South who is executing an eviction decree/order passed by Additional Controller of Rents, Clifton Cantonment. The application was dismissed by the executing Court on the ground that he does not enjoy jurisdiction to entertain an application under section 12(2) CPC. At the time of dismissing the application a conditional order regarding execution of eviction application claimed to have been passed in the following terms:-

“Execution Application called. Counsel for the judgment debtor filed application under section 12(2) CPC. I am of the opinion that the provisions of section 12(2) are not applicable in execution proceedings particularly in the present case when this Court is only executing Court and order under execution has been passed by Additional

Controller of Rents Clifton Cantonment. Accordingly, application under section 12(2) is dismissed.

Learned counsel for decree holder has submitted notice issued by Additional Controller of Rents Clifton Cantonment and submits that the J.D may be granted time till disposal of application under section 12(2) by Additional Controller Rents Clifton Cantonment. Accordingly, under the provisions of under order XXI Rule 26 CPC, the judgment debtor is granted time till 4th of March 2021 the date on which application under section 12(2) CPC is fixed for hearing. In case the learned Additional Controller of Rents Clifton Cantonment grants stay order by suspending the order under execution the writ shall not be executed. In case no such stay order is granted the bailiff shall execute writ of possession with police aid and permission to open break locks. Office is directed to issue writ of possession for 5th of March.”

It is the case of learned counsel for appellant that the Additional Rent Controller became functus officio once the application under section 12(2) CPC was dismissed and there should not be a conditional order (later part of order). There may not be any cavil with this proposition however if later part of the order is ignored then the executing Court ought to have executed the eviction order as executing Court does not enjoy even such jurisdiction.

If an executing Court is not saddled with the jurisdiction to pass a conditional order, it even does not enjoy the power to pass an unconditional order and hence it is for the interest of the appellant that the executing Court suggested that if she (appellant) does not bring/ obtain the interim order by 4th March, 2021, the Court would be bound to execute the order. Primarily it is not the case that the executing Court becomes functus officio. The later part of the order at the most could be read as an order granting reasonable time to the appellant to avail the remedy before the concerned Rent Controller hence no interference is required.

Regarding the objections of Mr. Zahid Ebrahim as far as hearing of this appeal is concerned that there should be an order directing them to deposit arrears of rent, I am of the view that in terms of Section 17(8) of

the Cantonment Rent Restriction Act, 1963, the Additional Rent Controller is under the obligation to consider the request in the shape of objections of the respondent while considering the application under section 12(2) CPC.

Although as being an appellate Court, it equally enjoys powers to pass rent order in this regard however this may curtail the right of appeal of either of the parties. Hence I am of the view that the requirement of section 17(8) of ibid law be considered first by the trial Court/Additional Rent Controller at the time of hearing the application under section 12(2) CPC. It is expected that the objections/application and requirement of law be taken into consideration expeditiously and preferably in four weeks' time appropriate order in accordance with law be passed.

With the above observations, FRA along with listed application is disposed of.

Judge