

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.S-284 of 2021

Order with signature of Judge(s)

Fresh case

1. For orders on CMA No.3729/2021 (Urgent Application)
2. For orders on CMA No.3730/2021 (u/s 151 CPC)
3. For orders on office objections as at 'A'
4. For orders on CMA No.1839/2021 (Stay Application)
5. For hearing of Main Case

05.08.2021

Syed Farhat Hussain, Advocate for the petitioner

1. Urgency granted.
3. Learned counsel for the petitioner undertakes to comply with the office objections before the next date of hearing.

2,4&5. This petition has been filed challenging the judgment dated 24.02.2021 in First Rent Appeal No.41 of 2020. By way of background, learned counsel for the petitioner submits that First Rent Application No.275 of 2016 was filed against son of the petitioner namely Muhammad Shahroz before the learned Senior Civil Judge and Rent Controller-VI, Karachi East, where the applicant alleged that she was the owner and landlady of shop No.6, ground floor Kamal market, Main Madina Bazar, admeasuring 7 X 7 square feet, (the demised property) by virtue of gift deed from the earlier owner of the said property. Grounds taken in the said application were "default" and "personal need". Learned counsel draws Court's attention to page No.131, where the legal heirship certificate of the petitioner's son is attached showing him 17 years of age at that time. Counsel contends that first of all not only that the rent application was filed against a minor, be that as it may, it was duly defended by the present petitioner, who was mother of the said respondent and the wife of late Khan Muhammad, who was the earlier tenant.

Learned counsel further points out that the preliminary objections and written statement were filed by the present petitioner and she also appeared in the witness box and the learned Rent Controller through its judgment dated 28.01.2020 (available at page No.73) allowed the said application directing the respondent in the rent application to handover physical vacant possession of the premises within 60 days to the applicant. Counsel contends that against the said judgment, an appeal was preferred under section 21 of the Sindh Rented Premises Ordinance, 1979 being First Appeal No.41 of 2020, however, the same was dismissed by judgment dated 24.02.2020 primarily on the ground that the appeal has been filed by a non-suited individual (i.e the present petitioner), as the rent application was filed against her son Muhammad Shahroz. Counsel contends that the appellate Court failed to take into cognizance that the said Muhammad Shahroz was minor when the rent application was filed and he never appeared before the trial Court nor filed any written statement or objections, all such steps were taken by her mother, the present petitioner and the final judgment was accordingly passed. Counsel contends that instead of deciding the appeal on merit, the appellate Court on technical grounds dismissed the appeal, which violated the rights of fair trial guaranteed by the Constitution.

Contentions raised by the learned counsel merit consideration. Issue notice to respondent No.1 for **26.08.2021**. In the meanwhile, operation of both the impugned judgments to remain suspended till the next date of hearing. Let R&P be called.

JUDGE