

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**
R.A.No.S-143 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE(s)
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1. For Katcha Peshi
2. For hearing CMA 946/2016
3. For hearing of CMA 947/2016

18-12-2017.

Mr. Sundardas, Advocate for the applicant.
Mr. Arbab Ali Hakro Advocate for respondents No.1 to 4
Mr. Muhammad Arshad S. Pathan Advocate for respondents No.6 to 14
Mr. Ghulam Abbas Asstt: A.G.
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Learned counsel for the applicant states that restoration application for the civil suit was dismissed by the learned trial court and the said order was not only upheld by the learned appellate court, observations as to the merits have been passed, which were not the subject matter of the appeal. It is further contended by learned counsel for the applicant that dismissal orders have failed to consider that the coercive power even if they were to be exercised could have been used against and were limited for the newly impleaded defendants as notices were not got issued against them. As such against the already existing defendants the suit was liable to be proceeded with.

2. Learned counsel for respondents No.1 to 4 states that there was continuous delay and default available on the part of applicant as such the order is not likely to be set aside and the findings are concurrent in nature.

3. Learned counsel for respondents No.6 to 14 states that each and every act of the applicant was an attempt to delay the proceedings and in this regard he has relied upon the orders passed by the learned trial court as well as learned appellate court. It was also brought before this court that the applicant was having premises as tenant and possession thereof has since been acquired through rent proceedings by way of eviction.

4. In rebuttal learned counsel for the applicant states that the rent proceedings and these civil proceedings of specific performance were independent and on dismissal the applicant / plaintiff was unable to bring forward its entitlement, as evidence was yet to be lead.

5. Having heard the learned counsels and with their assistance gone through the record, it is observed that though the subject order is harsh in nature yet the same is

not illegal and discretion was available with the Presiding Officer, as non-compliance was present irrespectively.

6. While going through the record including the plaint however, it was observed that agreement of sale is said to be pertaining to the year 1982 whereby some other transaction has also is said to have taken place without a date in para No.8, whereafter, cause of action is said to have been accrued in the year 2003 on the alleged refusal. The only understandable stretch of time from 1982 to 2003 can be based upon the part possession, unfortunately the said possession having already been treated as under tenancy by the rent proceedings cannot be now healed to be under part performance. Both the proceedings being independent and cannot be put to any conflict. These civil proceedings as such are found prima facie time barred. Learned counsel for the applicant when confronted with this aspect was unable to provide any explanation to this delayed exercise except to that of the cause of action already given above and that the agreement against which has not been filed in the proceedings not having time as its essence. In the circumstance, the impugned orders through harsh are not disturbed.

In consideration of the forgoing reasons, this revision application is dismissed, however, in present circumstances no order as to costs follows.

JUDGE

A.RASHEED