

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1357 of 2007

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA Nos:-

1. 8758/07 (U/O 39 Rule 1 & 2 CPC.)
 2. 8759/07 (U/O 39 Rule 1 & 2 CPC.)
 3. 865/08 (U/S 99 CPC)
 4. 15378/15 (U/S 151 CPC.)
-

06.10.2016.

Mr. Khalil Ahmed Siddiqui, Advocate for the plaintiff.
Mr. Sardar Sher Afzal, Advocate for defendant No.1.
Ms. Naheed Akhtar, State Counsel.

1 to 3. Adjourned.

4. This is an Application under Section 151 C.P.C. whereby the plaintiff seeks ejectment of the defendant from the Suit Premises, who has failed to deposit the monthly rent since August, 2015 as directed by a Division Bench of this Court vide order dated 4.6.2008 in HCA No.148 of 2008.

Learned Counsel for the plaintiff submits that in this matter on an application under Section 34 of the Arbitration Act, an Order was passed by a learned Single Judge of this Court on 06.05.2008, which was challenged in the aforesaid Appeal and vide Order dated 04.06.2008, the order passed by the learned Single Judge was set-aside, whereas, the defendant was directed to pay an amount of Rs.70,000/- per month directly to the plaintiff from May, 2008 onwards. Per Learned Counsel the defendant paid such amount till August, 2014 and thereafter has failed to honour such payment and consequently this Court has jurisdiction to enforce such order by ejecting the defendant from the said premises.

On the other hand, learned Counsel for the defendant submits that instant application is misconceived inasmuch as the plaintiff is no more the owner of the property in question pursuant to a compromise decree dated 30.03.2009 passed in Suit No.665 of 2008, and the Suit Premises is now owned by Bahaduryar Jung Cooperative Housing

Society. He further submits that pursuant to the compromise decree, Bahaduryar Cooperative Housing Society has entered into a Provisional Lease Agreement dated 25.7.2009 with the defendant initially for a period of five years for which an amount of Rs.42,00,000/- has been paid at the rate of Rs.70,000/- per month and thereafter the Society was required to execute a Sub-Lease in favour of the defendant and upon their failure the defendant has filed a Suit for specific performance bearing No.97/2014, wherein, restraining orders have been passed against the Society. He submits that in view of such position, the defendant is no more required to pay any rent to the plaintiff, hence instant application being misconceived is liable to be dismissed.

I have heard both the learned Counsel for the parties and have perused the record. It appears that the learned Division Bench vide Order dated 04.06.2008 in HCA No.148/2008 was pleased to set-aside the order passed by learned Single Judge on an application under Section 34 of the Arbitration Act and had further given directions which reads as under:-

“Learned counsel for the appellant states that he has been paying Rs.70,000/- to respondent No.1, which factual position has been denied by learned counsel for respondent No.1. In such a situation, it is directed that till pendency of the suit, amount will be sent through cheque directly by the appellant to the respondent No.1 from May, 2008 while any claim in respect of previous period is to be decided by the learned Single Judge.”

It further appears that apparently pursuant to the aforesaid directions, the defendant was paying rent and in support of such contention, the plaintiff alongwith this application has annexed a Letter dated 11.02.2015 through which the plaintiff was paid charges for the month of August, 2014 through Pay Order No.3728147 dated 11.02.2015 by stating that the same is being paid as directed in Suit No. 1357/2007. The plaintiff has also annexed a detailed statement of monthly payments starting from December, 2009 till August, 2014, which further reflects that entire payments have been made by the defendant to the plaintiff through Pay Orders. In such circumstances, the contention of the defendant that the Order dated 04.06.2008 passed in HCA No.148/2008 was being honoured till signing of the Provisional Lease Agreement on 25.07.2009 is belied. If, as stated by the defendant, that they were paying rent to Bahaduryar Jung Cooperative Housing Society pursuant to the Provisional Lease Agreement, then in February, 2015, there was no occasion for them to make payment to the plaintiffs Trust. It further reflects that no material has been placed on record on

behalf of the defendant in respect of payments made to Bahaduryar Jung Cooperative Housing Society. Moreover, the Order passed in HCA No.148/2008 still subsists and the defendant cannot on its own abandon the payment of monthly charges by entering into such an Agreement without leave of the Court.

Similarly, on the other hand, it is also strange and surprising to note that after having entered into a compromise with the said Society, in Suit No. 665 of 2008, in respect of the ownership of the premises, which admittedly now vests in the Society pursuant to the said compromise decree, the plaintiff had been receiving payment(s) in its name, and the defendant was also acting accordingly. This seems to be contradictory to the stance taken by both the learned Counsel before me in respect of their contentions, whereas, the Society has not been joined in instant proceedings as the owner of the Suit premises.

In view of hereinabove discussion, I deem it appropriate that in the interest of justice, and to safeguard the interest of all, the defendant shall deposit the charges at the rate of Rs.70,000/- per month for the period commencing from September, 2014 up to date, and shall continue to pay the same on monthly basis to the Nazir of this Court, who upon receiving the same shall invest the amount in some Government Profit bearing Scheme.

Application listed at Serial No.4 stands disposed of in the above terms.

J U D G E

Ayaz P.S.