

ORDER SHEET
THE HIGH COURT OF SINDH, AT KARACHI
CP No.S-647 of 2019

Date Order with signature(s) of Judge(s)

For hearing of Priority Case

1. For orders on office objections
2. For orders on CMA No.2604 of 2019
3. For hearing of main case

31.03.2021

Mr. Iftikhar Javed Qazi, Advocate for the petitioner
Mr. Irfan Ahmed Arfani, Advocate for respondent a/w
Mr. Shahabuddin Channa, Advocate

-o-o-o-

This petition is filed against the concurrent findings of two courts below on the ground of default. Prima facie it appears that the petitioner was inducted in the premises as a tenant. It was the case of the petitioner that later they entered into an agreement to sale with the landlord which is available at page 71 with the petition. It was case of the petitioner before the trial court that the petitioner was not served with notice of eviction application which was allowed. Consequently, the petitioner moved an application u/s 12 (2) CPC which was dismissed, which order was maintained by the appellate court, hence this petition.

We have heard the learned counsel and perused available record.

In terms of order of trial court it is categorically observed that the petitioner was served through all modes including publication, hence, no fraud apparently was made out or committed with the court. Conclusive part of order is reproduced as under :

“After hearing the counsel of parties, I have found that after filing the rent case, the process was properly sent to the opponent through bailiff and other modes. As per report of bailiff dated 22.01.2018, the opponent himself received the notice of this rent case for his appearance on 23.01.2018 and also as per courier service/TCS confirmation report the opponent Abdul Sattar himself received the notice of this court. As per further report of bailiff, he affixed the notice on the address of opponent in presence of two witnesses. The process was also sent through registered AD and also opponent was duly served by way of publication in daily newspaper express dated 21.02.2018 and after satisfy, this court, the service was held good upon opponent on 13.03.2018 but opponent did not appear and contest the rent case. The opponent was properly served through all modes as per record. During arguments, the learned counsel for the opponent has not satisfied that the application under section 12(2) CPC is maintainable.”

Learned counsel submit that there are parallel proceedings pending before the civil court in the shape of suits bearing Nos.2008 of 2017 & 845 of 2018 filed by the respondent and the petitioner respectively. Part payment in sale agreement claimed to have been made through "pay order". Counsel for respondent contends that the petitioner was not inducted in the premises as tenant, hence he cannot retain such possession in lieu of part performance of agreement and so far as merit of this petition is concerned, no case of any interference is made out. He claimed that huge sum towards rent is outstanding.

I am of the view that the sale agreement is silent about possession being delivered in part performance hence the status of possession of petitioner at present is of a tenant. He may or may not succeed in establishing his case of specific performance but that will not disturb the impugned findings which are governed by special law.

At the conclusion of the arguments, counsel for the petitioner submits that counsel for the respondent is not pursuing the matter pending before the civil court which statement is not agreed by respondent's counsel. However, counsel for respondent is of the view that they would pursue the matter before the civil court more expeditiously. Hence, with the consent of all the learned counsel, I dispose of this petition as under :

1. The petitioner shall deposit arrears of rent of the premises w.e.f. August, 2017 till todate @Rs.9000/- per month in three weeks` time with the Nazir of rent controller.
2. It is agreed by all the counsel that above referred suits i.e. Suit Nos.2008 of 2017 for cancellation of agreement and 845 of 2018 for specific performance pending before the court of Vth Sr. Civil Judge, Karachi East shall be pursued by them vigorously without seeking any frivolous adjournment and the concerned court shall dispose them of expeditiously, preferably within a period of six [6] months` time.
3. The petitioner is allowed to retain possession as tenant for next eight months and shall continue to deposit rent in advance and shall vacate the premises soon thereafter subject to prior order of civil court in the aforesaid cases, which shall prevail.

4. In case the civil suits referred above are not decided, the petitioner then is required and shall vacate the premises in eight [8] months` time as agreed above provided the delay is not attributed to the respondent.
5. In case of failure of the petitioner to deposit the arrear of rent as observed above or in case of failure to pay advance future rent then the writ of possession without notice shall be issued alongwith police aid.

In the above terms instant petition stands disposed of a/w pending applications

J U D G E