

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No. 43 of 2012

M/s Al-Fiza Glas ower

Versus

Mst. Humera Mateen

Date: Order with signature of Judge

1. For orders on MA No.1793/18
2. For hearing of main case
3. For hearing of MA No.999/17

23.1.2020

Mr. M.R. Sethi Advocate for the appellant
Mr. Muhammad Zahid Advocate for the respondent
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I have heard the learned Counsel and perused the material available on record.

The grievance of the appellant is that though in the written statement respondent has asked for possession of the disputed premises however being allottee she has not asked for specific performance of the agreement/contract. It is claimed that the respondent has belatedly submitted the Court fee on 16.4.2010 whereas the written statement was filed on 07.7.2009 where counter claim for possession was raised. An issue to the extent of possession was framed by the trial Court and they were held to be entitled for possession. The question as raised is as to whether the defendant/respondent was entitled for specific performance of the agreement/contract or not. Prima facie the answer is negative as without having title and locus standi, possession should not have been handed over. Mr. Muhammad Zahid learned Counsel for the respondent submitted that they had made counter claim and the trial Court has molded the issue.

There is no cavil that the trial Court may have molded such issue but an issue ought to have been framed before judging the entitlement of possession. Thus the appellant reluctantly conceded that insofar as the specific

performance is concerned and an issue to that extent only be framed. In case there is question of limitation, the same may also be framed by the trial Court and parties are allowed to adduce evidence to the aforesaid extent. Thus the main judgment to the extent of allotment is concerned that has reached its finality and now it is up to the respondent to establish his claim by adducing evidence on this limited issue.

Consequently the appeal to the extent of above issues is remanded to the trial Court for its expeditious disposal within four months.

The appellant is at liberty to challenge any document including the receipt as he deems fit and proper in the circumstances.

Learned Counsel for the respondent submits that he would file an application for interim relief and till such time the aforesaid issues are decided by the trial Court, no 3rd party interest be created. Let such interim order prevail for 10 days whereafter the trial Court would pass appropriate orders on the application for interim relief, if moved by the learned Counsel for the respondent.

The appeal along with pending applications stands disposed of in the above terms.

Judge