

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
IInd Appeal No. 49 of 2019

Date: Order with signature of Judge

1. For orders on office objection
2. For hearing of MA No.2049/19
3. For hearing of main case

30.5.2019

Mr. Anwar Muhammad for petitioner
None present for respondent despite notice
.X.X.X.X.

This 2nd appeal is arising out of the concurrent findings of two Courts below. There was a relationship of landlord and tenant between the appellant and respondent NO.1.

Through earlier proceedings a rent case was filed by the respondent which according to the learned Counsel for the appellant was not contested and ejection application on the ground of default was allowed. The premises was handed over to the landlord approximately two years before as alleged. There were arrears of rent and since the appellant defaulted in payment of rent, eviction order was passed against him. The appellant in these proceedings himself filed certain documents which includes Memorandum of Understanding. This Memorandum of Understanding was acted upon as the possession of the premises was handed over to the landlord. Besides other issues, the memorandum alone relates to financial obligation which is to be discharged by the appellant. The rent was receivable by the respondent NO.1 in terms of the Understanding and payable by the appellant. The landlord in terms of SRPO, 1979 was entitled to receive rent for the time being in force as has been authorized under the law.

The solitary question raised by Mr. Anwar Muhammad is that under sections 42 and 56 of the Specific Relief Act, the respondent No.1 does not enjoy any authority to file a suit for recovery of the amount since the

property was owned by a private limited company known as “Maple Industries Pvt. Limited” .

I have heard the learned Counsel and have perused the material available on record. No one is in attendance on behalf of the respondents despite service.

These proceedings arising out of the concurrent findings of two Courts below. Section 42 of the Specific Relief Act deals in respect of status of the property. Respondent No.1 has exercised his right and authority under the rent laws and memorandum. Respondent No.1 had not filed any case claiming title over the property. It is only for the recovery of the rent which was agreed to be paid via terms incorporated in memorandum as an Agreement reached between the parties and hence this agreement is neither contrary to the SRPO, 1979 nor the Contract Act. The terms of this memorandum are binding on the parties as they were acted upon. This argument that the suit for recovery should have been filed by the private limited company, at this belated stage, after signing Memorandum of Understanding and after enjoying the possession of the premises through respondent, is misconceived. The appellant is liable to make payment to the respondent under the agreement which is, as stated above, is not contrary to law. The solitary contention does not require any indulgence. The 2nd appeal is therefore, dismissed along with pending applications.

Judge