## ORDER SHEET THE HIGH COURT OF SINDH, KARACHI

## C.P No.S-1329 of 2019

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Date

Order with signature of Judge

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## Hearing/Priority Case

- 1. For Orders on CMA No.3281/2020
- 2. For Hearing of CMA No.6248/2019.
- 3. For Hearing of Main Case.

16<sup>th</sup> September, 2020.

Mr. Bhajandas Tejwani advocate for the petitioner

Mr. Mukesh Kumar G. Karara advocate for respondent No.1

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The case of the petitioner is that he is in occupation of demised premises i.e. Commercial Shop No.8, located on ground floor, having covered area of 560 Sq. Feet situated in Falcon Terrace, Plot No. COM-2/A, situated in Block No.4, Clifton, Karachi since 20 years. Respondent was his friend and who purchased this property through the petitioner, however, there was understanding/partnership between the petitioner and respondent No.1 whereby petitioner was authorized to run the business and keep share of 70% whereas, 30% share was to be paid to the respondent by the petitioner. Accordingly, he was in possession and in 2019 respondent No.1 filed eviction application while taking the plea that petitioner is tenant. Learned counsel for the petitioner while relying case laws i.e. 1992 SCMR 1149, 1999 MLD 3031, 2001 MLD 12, 2007 YLR 360, 2009 MLD 154 and 2013 CLC 1770. He contends that tenancy agreement between the parties there is specific denial of relationship with regard to tenancy amount has paid by the petitioner was profit earned by him in pursuance of partnership deed. He is also disputed the alleged receipt with regard to monthly payment as claimed by the respondent No.1.

In contra learned counsel for respondent No.1 relying upon the case laws i.e. PLD 2018 SC 35, PLD 2009 SC 445, 2018 SCMR 1720, 2016 MLD

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624, 2012 MLD 783, 2018 YLR 313 and 2019 YLR 2013 as well he submits FIR bearing crime No. 148/2019 whereas, eviction application was preferred after that FIR. He contends that many cheques were issued in favor of respondent No.1 and lastly cheque issued by the petitioner was bounced. According to learned counsel for respondent No.1 mere denial of relationship is not sufficient and order of the learned trial court on 16(1) of SRPO 1979 is in accordance with law whereby directions have issued to pay rent and he undertakes that whatever amount is deposited in pursuance of interim order (impugned) he will not withdraw the same until and unless the case is decided on merits including the issue of relationship between the parties.

I have examined the case law in *juxta-position*, contention raised by learned counsel for the respective parties. There is no cavil in the proposition that while deciding the issue under Section 16(1) of SRPO 1979 tentative assessment is to be made and conduct of the parties is very material here. Petitioner is claiming partnership whereas, respondent is claiming tenancy. In both position petitioner is required to pay the amount and has been practice in the last seven years. Admittedly there is no denial that after 2017 there is any single payment made by the petitioner in favor of respondent No.1, hence, under these circumstances when the petitioner is required to pay the amount as tenant or as partners directed to deposit that amount is not illegal. Accordingly, instant petition is dismissed alongwith listed applications

M.Zeeshan

JUDGE