

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-309 of 2020

Date _____ Order with signature of Judge _____

1. For orders on CMA No. 3475/2020 (Contempt).
2. For orders on office objection as at "A".
3. For hearing of main case.
4. For hearing of CMA No. 1528 of 2020 (Stay).

18thSeptember 2020

Mr. Muhammad Ashfaq Sathi, advocate for petitioner.
Mr. Nisar Ahmed, advocate for respondents No. 1 and 2.

Heard learned counsel for the respective parties.

Admittedly, demised premises is in possession of petitioner and he is running hotel with name of Karachi Darbar Hotel, whereas, in the eviction application the address was shown as Barbar Hotel. After completing all the formalities, the petitioner was declared *exparte*, hence, he preferred an application under Section 12(2) CPC as well as FRA against the said *exparte* order, but both were dismissed. Petitioner is claiming that he is owner of that premises and there is no tenancy agreement between the parties. Further he contends that he may be heard on merits. Whereas, learned counsel for the respondents claiming lease in their favour, however, he states that at present they are not in possession of tenancy agreement.

It is pertinent to mention that it is settled principle of law that *normally* no one can be knocked out on technicalities rather administration of justice always insists decision of the *lis* on merits. I would take no exception to *legal* obligation of the parties to present its pleading well within time however when penal action is subject to the word '**may**' then the Court (s) *normally* are to make effort avoiding penal action unless it appears that this is being *exploited*. Keeping the facts of matter, I am of the view that penal action (meaning deprivation of guaranteed right of fair trial) by the Rent Controller was harsh one and such aspect should have been considered by the appellate Court, which has failed to do so. In the present case, the matter also involves the question of relationship between the parties, which cannot be decided without giving an opportunity of hearing.

Accordingly, both orders are set aside; case is remanded back to the Rent Controller, who shall decide the relation between the petitioner and respondents as landlord and tenant as well as decide the fate of the case on merits within two months. Needless to mention that no further time shall be granted to any party.

Instant petition stands disposed of in the above terms along with pending applications.

SAJID

J U D G E