

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CP NOS.S-1113/2019 AND S-242/2020**

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Date    Order with signature of Judge  
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CP NO.S-1113/2019:

1. For order on office objection.
2. For hearing of main case.

CP NO.S-242/2020:

1. For order on office objection.
2. For hearing of CMA No.1158/2020
3. For hearing of main case.

**04.11.2020**

Mr. Haseeb-ur-Rehman advocate for petitioner.  
Mr. Khalil Ahmed advocate for respondent No.1.

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**SALAHUDDIN PANHWAR, J.** Heard learned counsel for respective parties. Learned counsel for respondent relied upon 2009 YLR 1238, PLD 2009 SC 546, PLD 2003 Karachi 444, 1981 SCMR 752, 2020 SCMR 1029, 2020 SCMR 832, 2019 CLC 1925, 1997 CLJ 113, 2005 YLR 1347, 2009 MLD 1033, SBLR 2020 Sindh 405, 2003 CLC 278, PLD 2004 Karachi 502, 1999 MLD 2137 and PLD 2020 Sindh 68.

2.                          Precise facts of the case are that petitioner is tenant and during tenancy both parties entered into sale agreement with sale consideration of Rs.1,90,00,000/-, though paragraph No.13 of the sale agreement categorized that in case of failure of the vendee regarding payment of sale amount within six months vendor would be entitled to receive the rent of demised premises, however after completion of payment of sale consideration amount paid towards the rent would be adjusted. Thereafter respondent (landlord) filed eviction application No.223/2010 and execution application No.35/2011. In similar way petitioner (tenant) filed suit for Specific Performance of Contract, such litigation ended by way of compromise through order

dated 07.11.2012 whereby both parties agreed to withdraw their respective civil suit No.1701/2009 and execution application No.35/2011. All terms of said agreement were incorporated however time period with regard to payment was extended by this court whereby petitioner (tenant) was required to pay remaining sale consideration. That order (*compromise*) was not acted upon, plea of learned counsel for petitioner is that he was ready to perform his part of contract but vendor was avoiding to perform his role.

3. Learned counsel for petitioner has emphasized over different eviction applications filed by the landlady in district South and district East, according to learned counsel in one proceeding order on application under section 16(2) SRPO 1979 was deferred and in another eviction application, application under section 16(1) SRPO 1979 was allowed. In similar way earlier execution application though was dismissed but fresh application was preferred, same was allowed which has been assailed in captioned C.P. No.S-242/2020.

4. In contra, learned counsel for respondent contends that landlady was not at the fault to conceal the facts and in fact eviction applications were filed with new cause of action and change of territorial jurisdiction resulted in pendency of two eviction applications in two different districts hence respondent (landlady) availed the proper remedy; petitioner being tenant cannot take benefit of that complexity when it is a fact that two eviction applications were filed on default and personal bonafide need. Besides, learned counsel for respondent has taken plea that petitioner failed to pay the utility bills. To that learned counsel for petitioner contends that he partially made payment of utility bills and further he intends to take benefit of incentive launched by K-electric.

5. Candidly, it is a matter of fact that petitioner has failed to pay the rent for a long time, though it was agreed between the parties that rent would be adjusted if total sale consideration is paid. Record reflects that petitioner failed to take any step with regard to remaining payment of sale consideration which he (petitioner) could have easily done by depositing the remaining sale consideration in court in terms of order as referred to above and only then he (petitioner) would have been justified in complaining about *failure* or *negligence* on part of respondent (landlady). Needless to add that such opportunity was always available with him. Here, it is advantageous to add that if something is dependent upon actions from both sides then one would not be entitled for an advantage while referring to omission of other party when he *himself* did nothing towards what he *himself* was required to do. The legal position, being so, would suffice to plea of the petitioner. It is also matter of record that petitioner failed to pay the rent for a long period till filing of captioned petition which, per settled position, was never relaxed but adjustment thereof with sale consideration was subject to payment of remaining sale consideration in time which, *prima facie*, is not a matter of record, therefore, *default* and *failure* on part of the petitioner is quite evident which, per grounds for seeking eviction, is one of the sufficient grounds for ordering eviction.

6. There is also an admission that petitioner intends to avail incentive given by K-electric which shows that petitioner was even defaulter with regard to utility bills. Here, it is worth adding that I am quite conscious of the legal position that term '**rent**' is defined by the Ordinance as:

**“2(i). “rent”** includes water charges, electricity charges and such other charges which are payable by the tenant **but are unpaid**”.

Thus, it needs no further discussion that *legally* such charges (utility charges) do include in the term **‘rent’** hence default towards such liability would be a **default**, if it is not claimed that such charges were *specifically* agreed to be paid by landlord/landlady, as the case may. In the instant matter, it is not so pleaded rather by taking plea of *partial* payment is *itself* an admission that such charges are part of term **‘rent’**.

7. As regard plea of the different attempts of landlady by choosing different forums, it would suffice to say that grounds of **‘default’** and **‘personal bona fide need’** have been the main grounds of eviction proceedings. Both such grounds are not stagnant but changes and developments in circumstances may result in making a *regular* tenant as *defaulter*; similarly changes / developments of the affairs of the *landlord* may change his / her today’s position. Thus, I would be quite safe in concluding that failure of earlier attempt of landlord would not be of much *significance* where the fresh application for eviction is being filed on fresh / changed circumstances, justifying fresh move though on same ground because the **grounds**, once defined shall not change, but circumstances does. Further, forums (placing of suing), if are changed, due to changes in territorial jurisdiction then same would not be of any significance. The fresh application would be required to be filed at the place where, per such time, the jurisdiction is vested. The respondent’s justification for filing application (s) because of such reason is not challenged. Even otherwise, it is settled principle of law that on technicalities no one can be denied from justice nor

choosing a wrong forum would be a legal justification from denying him / her the legitimate right by approaching proper and legal forum at later stage, particularly when such plea (wrong forum) is not likely to prejudice the eviction application, being filed on fresh and developed circumstances, while pleading the same as ***fresh cause***.

8. There is, *prima facie*, failure on part of the petitioner (tenant) towards his obligations hence he is not entitled to continue his possession under any such pleas, including that of *bona fide* purchaser, which, per settled law, needs different treatment by a different forum (civil court). Accordingly, both captioned petitions are dismissed. The petitioner shall evict the premises within two months from today, however petitioner would be at liberty to pursue his remedy with regard to sale agreement if law so provides.

**J U D G E**