ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-444/2021

Date Order with signature of Judge

- 1. For hearing of CMA No.2829/2021
- 2. For hearing of main case.

03.03.2022

M/s. Nausheen Khan Tajammul and Tajjamul H. Lodhi advocates for petitioner.

Mr. Laeeq Ahmed advocate for respondent No.1.

Syed Mohsin Raza, AAG.

Heard and perused record.

- 2. Learned counsel for petitioner contends that respondent No.1 filed Rent Case No.931/2019, service was held through different modes including substitute service viz. publication and thereafter that Rent Case was decreed against Muhammad Yousuf Allah Ditta as per exparte judgment dated 30.09.2020, thereafter legal heirs of Muhammad Yousuf moved application under section 12(2) CPC contending herein that Muhammad Yousuf died earlier to the eviction application and thus eviction application was not maintainable. They produced NADRA certificate and other documents as evidence however trial court (rent controller) dismissed their application under section 12(2) CPC on the plea that they have failed to appear before trial court within time and they were under legal obligation to bring on record legal heirs. That order was challenged before appellate court that dismissed the appeal. Learned counsel for respondent No.1 contends that proper service was effected upon Muhammad Yousuf.
- 3. Record reflects that Muhammad Yousuf was not alive at relevant time. Referred exparte judgment against a dead person or

eviction application against a dead person cannot be considered as lawful. Accordingly application under section 12(2) CPC filed by the legal heirs that was dismissed on the plea that legal heirs failed to place on record legal heirship certificate within time is not justifiable as respondent being landlord was required to join the legal heirs who were/are in possession of the demised premises; hence impugned exparte judgment recorded by trial court, order on application under section 12(2) CPC as well order passed in appeal, are set aside. Case is remanded back. Legal heirs of Muhammad Yousuf Allah Ditta would be competent to file written statement and case shall be decided on merits, preferably within three months.

JUDGE