

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Rev. Application No. 261 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGES

1. For orders on MA No.12416/2021
2. For orders on MA No.12417/2021
3. For hearing of main case.

6th December, 2021

Mr. Abdul Waheed Siyal, Advocate for applicant.

=====

Omar Sial, J.: Shabana Munawar (“**Munawar**”) has impugned an order dated 18.9.2021 passed by the learned 8th Additional Sessions Judge, Karachi East. In terms of the said order the learned Court dismissed an application under section 7 of the Illegal Dispossession Act, 2005 moved by Munawar.

2. A background to the case is that Munawar initiated a complaint (I.D. Complaint No. 58 of 2019) in which she claimed that she purchased an apartment (Flat No. A-58) in a project named Noman Avenue from Shaukat Bano. She claimed that one Rustam had illegally dispossessed her from the apartment. While there were documents pertaining to the property that showed Bano as the owner, it was admitted that before the sub-lease of the apartment was executed, the builder of the project disappeared and hence the sub-lease could not be registered which would show Bano as the owner. During the hearing of the complaint, two other claimants of the property entered the picture, both claiming that it was them who was the real owner of the apartment. One of the claimants was named Muhammad Fayyaz whereas the other was Masood Zubair. The person against whom the complaint was filed i.e. Rustam perhaps was a fictitious character and therefore a charge was framed against Masood (who ostensibly claims that it is he who is in possession of the said apartment) for having illegally dispossessed Munawar. Soon after the framing of the charge, the application under section 7 of the Act of 2005 was filed.

3. On the very first date of hearing the learned counsel was asked as to what was his grievance against the order impugned. The only ground raised by the

learned counsel for Munawar is that Munawar has occupied the apartment from the year 2014 onwards contrary to what has been stated by Masood. I have heard the learned counsel and with his able assistance have also perused the record that he has filed.

4. For ease of reference, section 7(1) of the Act of 2005 is reproduced below:

If during trial the Court is satisfied that a person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession.

5. As mentioned above, the Munawar claims that a person by the name of Rustam has dispossessed her, however an inquiry in the matter conducted by the concerned SHO concluded that there was no person by the name of Rustam residing in the said apartment. While the ownership of the apartment, which appears to be disputed by at least two (if not more), persons is an issue that can only be decided by a competent civil court having jurisdiction in the matter, it is necessary in the present case that the learned trial court be satisfied completely that Munawar was in possession of the apartment on the date that she says she was and was illegally dispossessed by Masood. The record till now does not satisfactorily establish this very important aspect of the Act of 2005. To the contrary, the complaint reflects that the complainant's grievance of illegal dispossession was against one Rustam and not Masood. Proceedings under the Act of 2005 cannot be used as a substitute for proceedings necessary to determine title of a property. Be that as it may, the learned trial court has passed a comprehensive order which reflects that it is not satisfied at this preliminary stage that the relief envisaged by section 7(1) of the Act of 2005 can be extended to Munawar without recording evidence in the matter. Section 7(1) requires the satisfaction of the learned trial court before it exercises its discretion. In the circumstances of the case I tend to agree with the learned trial court that the controversy can only be adjudicated after evidence is recorded.

6. In view of the above no interference with the order of the learned 8th Additional Sessions Judge, Karachi East is called for. This criminal revision application therefore stands dismissed.

JUDGE