

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P. No. S - 522 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
-------------	---------------------------------------

1. For orders on CMA No.2711/2022
2. For orders on CMA No.2712/2022
3. For orders as to maintainability.

10th May, 2022

Mr. Shaukat Ali Rajpar, Advocate for petitioner.
Syed Mohsin Shah, A.A.G.

=====

Omar Sial, J: Brief facts of the case are that Asif Mehdi was the owner of a shop bearing number 22 on the ground floor in a building situated in Anarkali Bazaar, Block 16, Water Pump, F.B. Area, Karachi. Abdul Aziz was a tenant in the property when Mehdi purchased it from its previous owner Chaudhry Noor Mohammad. Mehdi filed an application under section 15 of the Sindh Rented Premises Ordinance 1979 seeking eviction of Aziz on grounds of personal bonafide need and default in the payment of rent. The same was allowed by the learned 1st Rent Controller, Karachi Central vide order dated 04.12.2019. Aziz preferred an appeal against the said order however the same was also dismissed by the learned 6th Additional District Judge, Karachi Central on 27.02.2020.

2. Learned counsel in these proceedings has argued that both, the learned trial court as well as the learned appellate court did not appreciate the fact that Aziz had filed a civil suit bearing number 243 of 2016, which is still pending adjudication, in which Aziz has claimed that the previous owner i.e. Chaudhry Noor Mohammad had sold the property in question to Aziz and thus Aziz has sought specific performance of an agreement to sell dated 09.01.2004 purportedly entered into between him and Chaudhry Noor Mohammad. In this regard he has read out section 52 of the Transfer of Property Act 1882 to support his argument that Aziz could not have been evicted during pendency of the civil suit. The impugned orders directing eviction were therefore both illegal. Learned counsel while stressing in the foregoing aspect has also argued that the alleged default in the payment of rent was not correct that since the year 2006 he had

not been paying rent due to the fact that the previous owner had agreed that he will not take rent from him and that they also never demanded any rent.

3. During these proceedings the learned counsel for Aziz admitted that he had no title document to show that he had purchased the property in question from the previous owner Chaudhry Noor Mohammad; he admitted that he had no evidence to show that he had paid any rent from September 2006 to date after he had come in as a tenant in the property and after he had been paying rent at the rate of Rs. 5,000 per month up till September 2006; he did not deny that before the learned trial court, Aziz had admitted that he had come in as a tenant of the late Chaudhry Noor Mohammad; he did not deny that even after the eviction proceedings were initiated by Mehdi he did not pay rent; he did not deny that Mehdi had purchased the property in question through a duly registered sale deed from the heirs of Chaudhry Noor Mohammad on 04.05.2016. Learned counsel has also been unable to distinguish the judgment of the Honorable Supreme Court reported as **Abdul Rashid vs Maqbool Ahmed and others (2011 SCMR 320)** where the Court held that:

“It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement where after he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877).”

4. The judgments passed by both the learned trial court and appellate court have exhaustively covered all the issues raised by the petitioner and have also given cogent reasons for the same. No ground has been raised by the learned counsel that would merit interference with the judgments impugned.

5. Above are the reasons for the short order dated 26-4-2022.

JUDGE