

*ORDER SHEET***IN THE HIGH COURT OF SINDH AT KARACHI.****Revision Application No.39 of 2023**

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of Hearing	: 20 April 2023.
Petitioner	: Khan Enterprises through Muhammad Munsif Jan, Advocate.
Respondents	: Nemo.

ORDER

MOHAMMAD ABDUR RAHMAN, J. This Civil Revision Application has been maintained by the Applicant against a Judgment dated 29 March 2023 passed by the IVth Additional District & Sessions Judge Malir, Karachi in Civil Miscellaneous Appeal No. 02 of 2023 upholding an order dated 7 March 2023 passed by the VIth Senior Civil Judge Malir, Karachi in Civil Suit No. 308 of 2023 dismissing an application that had been filed under Order 39 Rule 1 & 2 of the Code of Civil Produce 1908 in Suit No.308 of 2023 by the Applicant.

2. The Applicant has maintained Suit No.308 of 2023 before the VIth Senior Civil Judge Karachi Malir being a Suit for Cancellation of a notice dated 3 February 2023 and for the recovery of the construction amount for building and for permanent injunction. It seems that the plaintiff had entered into a tenancy agreement with the Respondent No.3 for the establishment of a “canteen” on Plot No.18, Phase 2 of the Export Processing Zone Authority, Phase-II at Karachi against a monthly rent of Rs.100,000/- commencing from 1st January 2013. The terms on which construction was raised were as follows:

- “ ...
1. That this Tenancy Agreement deemed to be effect from 01.01.013, and shall remain in force for a period of five (05) years only which may be extended for further period of as may be decided by and between the both parties.
 2. That the Second Party will establish, Construct, develop, and Build a Canteen on the demised rent premises in EPZA Phase-II, and runt he Canteen upto five years, the entire monthly rent will be adjusted in account of the Establishment, Construction and Buildup of the Canteen, the First Party will not

receipt Rent from the Second Party till the expiry of Five years from the date of execution and/or sign of this Tenancy Agreement. After expiry of period of this Tenancy Agreement, the entire Structure and/or Fixture on the demised Rent Premise will be Property of the First Party.”

3. The Tenancy Agreement was renewed by the respondent No.3 on the 1 January 2018 on the following terms:

- “ ...
1. That this tenancy Agreement deemed to be effect from 01.01.018 and shall remain in force a period of Five (5) years only which may be extended for further period of as may be decided by first party (Authority) or otherwise.
 2. That it merits to mention this tenancy Agreement is continuity of the previous Tenancy Agreement dated 01.01.2013, therefore, the Second Party established, constructed, developed, and Built a Canteen on the demised premises in EPZA Phase-II according to previous Agreement, the entire monthly rend of the previous five years i.e. from 01.01.2013 to 31.12.2017 adjusted in account of the Establishment, Construction and buildup of the canteen as the First Party/EPZA had not collected the said Rent from the second Party, since this Tenancy Agreement, the entire structure and or fixture on the demised Rent Premise owned by First Party, by this Tenancy Agreement the first Party/EPZA is entitled to collect future rent as per clause 10 of this Tenancy Agreement.
 9. That either party may terminate this agreement by giving One-month prior notice. The second party bound to handover and vacate and peaceful physical possession of the demised premises to the first party on the expiry of one-month prior notice.”

4. Pursuant to clause 9 of the agreement dated 1 January 2018 the respondent No.3 has now issued a notice on 3 February 2023 whereby the tenancy was not extended stating that:

- “ ...
2. Your case has been examined and observed that first agreement of the said canteen was made on 1st July 2013 for an initially period of 05 years and second agreement was made on January 1, 2018 for another period of 05 years which has now been expired as Government Commercial Audit has already made an Audit observation on allotment of Canteen on designated plot earmarked for dump of industrial waste.
 3. You request for further extension has been examined and further extension in lease agreement is not appropriate hence you are given on month notice for handing over of KEPZ Canteen to EPZA and take of goods belongs to you under intimation to the Security Division.”

5. The Applicant moved an application under order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 before the VIth Senior Civil Judge Malir Karachi seeking interim injunctive relief to restrain the Respondent No.3 from acting on the notice dated 3 February 2023 whereby a tenancy agreement dated 1 January 2023, which had expired on 31 December 2022, was not being renewed by the

Respondent No. 3. The Applicant has contended that the letter dated 3 February 2023 was illegal and sought that the same may be suspended until the final disposal of suit. He asserted that he would suffer irreparable loss in the event that such injunctive relief was not granted as he has invested a huge amount for the construction of canteen and which was now being taken away from him. The application was dismissed by the VIth Senior Civil Judge Malir Karachi on the grounds that;

- (i) the agreement executed on 1 January 2018 for a period of five years and which had expired on 31 December 2022.
- (ii) Pursuant to the terms of the tenancy agreement the Respondent No.3 was required to give one month notice prior to evicting the appellant and which had been given.

6. Being aggrieved and dissatisfied by the order of VIth Senior Civil Judge Malir Karachi passed on the application under order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 in Suit No. 308 of 2023 the Appellant preferred Civil Miscellaneous Appeal No.02 of 2023 before the IVth Additional District Judge Malir Karachi. The appeal was also dismissed on the same grounds as raised by the VIth Senior Civil Judge Malir Karachi in Suit No. 308 of 2023.

7. Against the order dated 29 March 2023 passed by the IVth Additional District Judge Malir Karachi the Applicant has preferred this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 arguing that there is material irregularity in the proceedings inasmuch as both the VIth Senior Civil Judge Malir Karachi in Suit No.308 of 2023 and the IVth Additional District & Sessions Judge Malir Karachi in Civil Miscellaneous Appeal No.02 of 2023 have failed to appreciate that the Applicant has spent a vast sum of money on the construction of the canteen and which amount will not be recovered by the Applicant in the event that the injunction is not granted. He emphasised that the

entire investment that the Applicant had made in the construction of the Canteen would be lost if an injunction was not issued. The counsel for the Applicant did not rely upon any case law in support of his contentions.

8. I have heard the learned counsel for the Applicant and perused the record. It is apparent that as per clause 2 of the Tenancy Agreement dated 1 January 2013 it had been agreed as between the Applicant and the Respondent No.3 that after the expiry of the tenancy agreement "the entire structure and or fixture on the demised rent premises would be the property" of the Respondent No.3. It is also to be noted that as per clause 2 of the Tenancy Agreement for dated 1 January 2018 that tenancy agreement was to be in continuity of the previous tenancy agreement dated 1 January 2013 and the same term stating that the entire structure and or fixtures of the demised rented premises would be the property of the Respondent No.3 was reiterated.

9. Keeping in mind that the property that the Applicant is trying to injunct is, as per the terms of the tenancy agreement, prima facie the property of the Respondent No.3, it is difficult to appreciate how the Applicant can state that he has rights over the structure in which the canteen is housed. The Applicant has knowingly and willingly entered into the tenancy agreement and was well aware that on the expiry of tenancy agreement the structure of the building constructed thereon would be the property of Respondent No.3 and his investment in such structure would be lost. While understanding fully well that the investment would be lost at the time of the execution of both the Tenancy Agreements. , the applicant cannot now claim that he would be suffering irreparable loss when the tenancy agreement determines.

10. In addition, it is apparent that the Respondent No.3 has in conformity with clause 9 of the Tenancy Agreement dated 1 January 2018 given the Applicant one month notice prior to terminating the tenancy agreement dated 1 January 2018. It is therefore apparent that the Respondent No. 3 has and is at all times

acting in conformity with the provisions of the Tenancy Agreement dated 1 January 2013 and 1 January 2018 and there is therefore prima facie no illegality that can be attributed to the Respondent No.3 in issuing the letter dated 3 February 2023.

11. None of the ingredients that are required to exist for the grant of an injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure 1908 are apparent on the record and which has been correctly pointed out in the Judgement dated 29 March 2023 passed by the IVth Additional District & Sessions Judge Malir, Karachi in Civil Miscellaneous Appeal No. 02 of 2023 upholding an order dated 7 March 2023 passed by the VIth Senior Civil Judge Malir Karachi in Civil Suit No.308 of 2023 while dismissing the application under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908.

12. In the facts and circumstances, I see no material irregularity or illegality in either the Judgement dated 29 March 2023 passed by the IVth Additional District & Sessions Judge Malir, Karachi in Civil Miscellaneous Appeal No. 02 of 2023 which upheld an order dated 7 March 2023 passed by the VIth Senior Civil Judge Malir Karachi in Civil Suit No.308 of 2023 dismissing the application that had been filed by the Applicant under order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908 in Suit No.308 of 2023 and for which reason I had dismissed this Civil Revision application on 20 April 2023 as being misconceived and these are the reasons for the same.

JUDGE

Karachi dated 19 July 2023