

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

High Court Appeal No.407 of 2023

Asif Agencies
Versus
Muhammad Anwar Mianoor & others

| Date | Order with signature of Judge |
|------|-------------------------------|
|------|-------------------------------|

1. For orders on CMA 5096/23
2. For orders on office objection a/w reply as at "A"
3. For orders on CMA 5097/23
4. For hearing of main case
5. For orders on CMA 5098/23

Dated: 16.11.2023

Mr. Ehsan Malik for appellant.

-.-.-

Heard the counsel.

In a suit for performance, a decree was passed in respect of the subject property, perhaps in the "absence" of occupant/tenant therein (appellant herein). It is urged that a time-frame was also given by the seller to the buyer and in terms of the compromise decree a physical possession was agreed to be given to buyer. This understanding, per learned counsel, has apparently caused prejudice to the appellant/tenant who independently moved an application under section 12(2) CPC, which was dismissed via impugned order as no fraud and misrepresentation apparently found or otherwise disclosed.

The compromise, which was entered into between buyer and seller, is an independent act of the parties to the suit and those terms shall not cause any prejudice to the rights, which the tenant/occupant (appellant herein) enjoys in respect of the premises. The compromise could only bind parties agreeing to such term and not the outsiders such as one before us. The appellant has otherwise independently moved an

application under order XXI Rule 58 CPC for protection of his rights in the execution application as he (proprietor) apprehends issuance of writ of possession against him. The same shall be seen by learned Single Judge in executing decree to the effect whether any due process of law is required and/or has been taken and/or to be followed to seek possession of the subject premises in occupation of tenant on his own/independent right and whether the decree mandates issuance of writ of possession or require independent proceedings for evicting the tenant. All these questions likely to be answered by the executing Court while deciding above pending application.

In view of above, instant High Court Appeal requires no interference, which has arisen out of an order on application under section 12(2) CPC, which has a different frame. The same is accordingly dismissed along with listed applications.

Judge

Judge