

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**C.P-S No.316 of 2024**  
**[Naseeruddin and another v. Ziauddin and others]**

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Date	Order With Signature Of Judge
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- 1.For order on office objection
- 2.For hg of CMA No.2904/24
- 3.For hg of main case

12.09.2024.

Mr. Jahangir Kalhoro, advocate for the petitioners.  
Mr. Adil Rasheed, advocate for the respondents.

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**ORDER**

**MUHAMMAD IQBAL KALHORO, J:-** Basically this petition has been filed against the order dated 23.02.2024, passed by the executing court viz. V<sup>th</sup> Senior Civil Judge, Karachi-South in Rent Case No.157/2020, whereby he has allowed execution application No.14/2023 and has directed the office to issue writ of possession against the judgment debtor in respect of demised premises viz. Shop No.09, situated at Plot No. RC 4/19, Ghulam Mohiuddin Building, Ground Floor, Gazderabad, Ranchorelane, Karachi.

2. Learned counsel for the petitioners submits that in fact the petitioners are owners of the property and without joining them in the Rent Case No.157/2020, respondent No. 1 Ziauddin filed the case against the tenant, and obtained an order of eviction through fraudulent means. The record reflects that after passing of the eviction order by the Rent Controller dated 31.05.2023, no appeal was filed by the tenant and the order attained the finality. Thereafter, the petitioners filed an application under section 12(2) read with section 151 CPC on the above ground before the Rent Controller. This application was dismissed on 17.02.2024. However, the petitioners, thereafter, did not challenge the same before any forum, nor filed appeal before the District & Sessions Judge. In reply to a query as to whether against the order dated

23.02.2024 passed in execution application any remedy was availed by the petitioners before the District & Sessions Judge, learned counsel has replied that there is no remedy available in law; hence, he has filed this petition directly. When the Court asked him to show the law in this respect, he has failed to do so. His entire claim to defeat the execution application is based on the ground that petitioners are owners of the property and Ziauddin has got nothing to do with it. I have perused the order passed by the Rent Controller rejecting application under section 12(2) CPC. He has referred to such aspect and has concluded that under the rent proceeding title of the petitioner cannot be decided. Capacity of the respondent being landlord was never challenged by the tenant in the rent case and it was allowed. It is an admitted position that the petitioners have not filed any suit seeking declaration of their title before any civil Court in respect of the property. The order in the rent case has already attained finality. In the circumstances, I find no illegality either in the order rejecting application under section 12(2) CPC or in the order, whereby execution application has been allowed. In addition the petitioners have failed to avail the remedy before the District Judge and directly filed this petition, which prima facie is not maintainable, hence the same is hereby dismissed along with pending application.

JUDGE

HANIF