## RDER SHEET IN THE HIGH COURT OF SINDH, AT KARACHI CP No.S-425 of 2021

Date

Order with signature(s) of Judge(s)

## Fresh Case

- 1. For orders on CMA No.2711 of 2021
- 2. For orders on CMA No.2712 of 2021
- 3. For hearing of main case
- 4. For orders on CMA No.2713 of 2021

## 27.05.2021

Mr. Muhammad Atiq Qureshi, Advocate for the petitioner

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- 1]. Urgency granted.
- 2]. Exemption granted subject to all just exceptions.
- 3-4]. This petition is arising out of concurrent findings of two courts below. The application of eviction was filed which was allowed by the rent controller. The appeal preferred by the petitioner was also dismissed. The petitioner being aggrieved by the order of rent controller dated 31.8.2020 and that of the judgment of the appellate court dated 22.4.2021 [available at pages 39 & 27 respectively] filed instant petition on the proposition that:
  - [a]. the petitioner was inducted in the premises not as a tenant but in part performance of the agreement of sale and
  - [b]. the appellate court refused to admit certain documents as additional evidence.

I have heard the learned counsel and perused the record available.

Apparently the agreement of sale that was relied upon by the petitioner [available at page 64 as Annexure P/5] is absolutely silent as far as possession of the petitioner is concerned. The petitioner was not given



possession in part performance of 10% of the alleged sale consideration. Hence, he has not proved to the satisfaction of rent controller as well as appellate court that he was given possession in part performance of the agreement.

Similarly, as far as second part of arguments [sub para `b` about s concerned, provisions of order 41 rule 27 CPC are not applicable as the trial court in response to order 41 rule 27 (a) never refused to accept or admit any evidence that could have been produced by the petitioner and secondly, in terms of aforesaid provision, the appellate court never required any documents to be produced or any witness to be examined. Hence, an unnecessary application under order 41 rule 27 CPC was filed which was rightly declined and the rent controller's order was maintained.

At this juncture, counsel for the petitioner requested that one [1] year time be given to the petitioner to vacate the premises. I deem it appropriate to provide only six [6] months` time to the petitioner to vacate the premises subject to payment of rent and utilities charges as and when become due for payment. In case of failure to make any of the payments, writ of possession shall be issued without notice with police aid.

The petition stands dismissed alongwith pending applications in the above terms.

Do matter

Do for order on Cmp No. 5719/2011 (veget APPlus)

D For orders on cmp No. 5720/2011 (Fatendron of time)

/J U D G E