

Ex parte order upheld on Ejectment

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No.S-1503 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hg. of case (priority) _____

1. For hearing of CMA No.6571/2015
2. For hearing of CMA No.6103/2015
3. For hearing of main case. _____

05.08.2024

None present for the Petitioner.
Mr. Shehryar Qazi, A.A.G.

MUHAMMAD KARIM KHAN AGHA.J., This constitutional petition has been lingering on since 2015. By order dated 31.1.2024 it was ordered that on the next date of hearing, the petitioner's counsel should proceed with the matter or it will be concluded. Today none has appeared for the petitioner without intimation.

Therefore, I proceed to decide this matter with the assistance of learned AAG who has already been put on notice.

The brief facts of the case are that Ms. Seema Begum the landlady of the property known as Shops No.28 & 29 situated on the Ground Floor of Building known as Seema Estate on Plot No.1-K-7, Nazimabad Karachi (the Property) had let the same to Syed Zahid Ali on a monthly rent. However the appellant / tenant Syed Zahid Ali had failed to pay the above rent and as such the landlord approached the Sr. Civil Judge & Rent Controller Karachi Central in Rent Case No.111/2014 seeking the ejectment of the tenant on the basis of non-payment of rent. It is apparent from the order dated 30.05.2014 the tenant was served in order to defend the proceedings against him, however he preferred to remain absent as is evident from order dated 30.5.2014. This led to him being debarred from filing written statement and ex parte order was passed against him dated 16.5.2014, whereby the landlady was granted an eviction order. It is

7

to be noted that the landlady led evidence as to ownership and non-payment of the rent and annexed various documents in this respect. It was noted in the order dated 30.5.2014 that the appellant had failed to appear and as such the contentions of the landlady remained un-rebutted. Hence the exparte order was upheld vide order dated 30.5.2014 and pursuant to that order the tenant was directed to handover the peaceful and vacant possession of the Property to the landlady and the ejection application was allowed.

This order was challenged before the IInd Sr. Civil Judge & Rent Controller Karachi Central, mainly on the basis that the tenant had not been served and he had been denied his right to be heard and as such the order dated 30.05.2014 should be set aside.

After hearing the parties the IInd Sr. Civil Judge Karachi Central in Rent Case No.111/2014 and Ex. No.27/2014 found that the tenant had been adequately served and upheld ejection order and order dated 20.2.2015 and in particular noted as follow:-

"I have heard the learned counsel for the parties and have gone through the material available on record. The applicant filed ejection application on 07.03.2014 against the opponent Muhammad Zahid. The title of the plaint showing the address of the defendant for service i.e. Shops No.28 & 29, Ground Floor, Seema Estate, Survey No.1-K-7, Nazimabad, Karachi which is also the demised premises for the eviction of which the applicant filed this rent case. The bailiff report dated 19.03.2014 shows that he went to the said address for service upon the opponent where one Muhammad Zahid disclosed himself to be the opponent and after reading the summons he refused to accept the same. Thereafter on 07.4.2014 the bailiff pasted the summons on the outer wall of the shops in question in the presence of two witnesses namely Muhammad Yousuf and Amjad Rafique whose endorsement also appear on the summons alongwith copies of their CNICs. Thereafter the notice was published in daily Express newspaper in subscription dated 04.04.2014 calling upon the opponent to appear in this court on 09.04.2014 for filing the written reply thus it seems that all modes of service

have been adopted including the courier service. The opponent has nowhere mentioned that the address on which summons were issued was a wrong address. The applicant has specifically mentioned that in R.C. No.13/2012 and in FRA No.50/2013 the same address of the opponent was shown which were contested by the opponent thus the applicant has given correct and proper address of the opponent for service upon him. The learned counsel for the applicant also pointed out that the opponent has filed Suit No.786/2014 against the applicant and in the title of the plaint he has mentioned the same address which has been mentioned in the title of this rent case. There is no suppression of facts, fraud or misrepresentation on the face of the record. Accordingly the instant application stands dismissed with no order as to cost."

Being dissatisfied with the two findings already against him the tenant moved yet another application before Court of IVth Addl. District Judge, Karachi Central, seeking setting aside of the aforesaid orders and execution application again on the grounds that he was not properly served and had the right be heard in this matter before an ex parte order was passed against him. After hearing both the parties the learned Addl. District Judge by judgment dated 28.8.2015 dismissed the appeal and in particular found as follows:-

"Learned counsel for appellant had failed to point out any illegality or infirmity in the impugned order dated 20.02.2015 and besides this the impugned order is speaking and sound thus sustainable under the law. As in the instant case, no any tangible material has been placed on record by the appellant to substantiate his claim and from the whole controversy I have found that the appellant has filed the instant appeal just to vex the respondents, so considering the all above mentioned circumstances, I am of the view that the impugned order dated 20.02.2015, do not require any interference, hence the same is upheld and appeal of the appellant is dismissed. There is no order as to costs."

I have gone through the record with the assistance of learned AAG and find that the tenant/appellant was adequately served in this case and that he avoided to appear in the initial ejection proceeding

on the basis of which had started on his failure to pay rent on time. He seems deliberately to have avoided service as he did not want to proceed with the matter due to reasons best known to himself. I find that both the reasons in the concurrent findings mentioned above to be sound and have no legal infirmity in this respect. I tend to agree with the observation made in judgment dated 28.8.2015 that the proceedings have been made just to vex the respondents and keep them out of the lawful possession of the property for years on end. Accordingly the petition is dismissed and judgment dated 28.8.2015 is upheld. It is noted that the status quo order has already been rescinded by this Court and as such appellant / tenant Syed Zahid Ali is directed to vacate the property and provide the same with vacant possession to the landlady or her legal representatives within 30 days of the date of this order. A copy of this order shall be sent by bailiff to Syed Zahid Ali for compliance.

Petition stands disposed of in the above terms.

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