

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P. No.S-735 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For Katcha peshi.
For hearing of MA-9119/12.
For orders on MA-8252/14.

22.08.2014.

Mr. Noor Ahmed Memon, Advocate a/w petiotner.
Mr. Shamasuddin Memon, Advocate a/w Abdul Qadir.

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NAZAR AKBAR,J- This constitution petition has been filed by the petitioner / tenant of shop No.D-2469-7, situated at Habib Bank Chari, Resham Bazar, Hyderabad against the findings of appellate Court, whereby his ejectment was ordered by the Ist. Appellate Court by reversing the finding of the Rent Controller on the ground of relationship of landlord and tenant between the Petitioner and respondent No.1 dismissing the Rent Application No.20 of 2011. It is an admitted position that the order of Rent Controller at page-153 suggest that three points were drawn for determination with include the relationship of landlord and tenant, personal bonafide need of the respondent No.1 as well as default in payment of rent. However, Rent Controller by order dated 31.3.2012 refused to give any findings on the issues No.2 and 3 simply on the ground that he has decided the point No.1 regarding relationship against the respondent No.1. Respondent No.1 preferred an appeal before the IInd. Additional District Judge, Hyderabad bearing FRA No.20 of 2012. The said appeal was allowed by the appellate Court by order dated 25.9.2012 in absence of the counsel for petitioner /tenant and the learned appellate Court reversed the findings of the trial Court not only on the question of relationship but also decided the issues No.2 and 3, but decided the issues No.2 and 3 for personal bonafide use and default at his own without realizing that such findings were not given by the Rent Controller.

The petitioner has preferred this petition against the order passed by learned IInd: Additional District Judge, Hyderabad in FRA No.20 of 2012 on the ground that he has been condemned unheard since the petitioner counsel had filed application for adjournment which was turned down and the appeal of the Respondent No.1 was allowed.

Without going into the merits of the case whether the learned appellate Court has rightly turned down the application for adjournment of learned counsel for the Petitioner or not. The moot point in this petition is that issue No.1 has been decided by the Rent Controller while issues No.2 and 3 have not been decided by the said Court, which issues remained undecided at the initial stage, therefore, once the appellate Court has come to the conclusion that the finding on issue No.1 regarding relationship of landlord and tenant was incorrect and on reversing such finding, the appellate Court should have remanded the case for decision on merits by the Rent Controller on issue of personal bonafide use and default which was not decided by the Rent Controller.

In view of above factual and legal position, by consent of both the learned counsel for petitioner and respondent No.1, the case is remanded to the Rent Controller who should take up the Rent Application No.20 of 2011 and decide the issue of personal need and default afresh on the basis of evidence available with the Rent Controller. The issue of relationship of the landlord and tenant stands settled between the parties by virtue of the order of appellate Court. Even the petitioner who is present in Court admits that he is tenant of respondent No.1, therefore, without being influenced on the findings of the appellate Court on issues No.2 and 3, the Rent Controller should decide these issues. However, this case is pending since 2011 on the ground of personal bonafide use, therefore, the Rent Controller is specifically directed to decide the issues No.2 and 3 within a period of thirty (30) days from the date of receipt of this order on the basis of evidence already recorded by both the parties in the rent case. Both the learned counsel present in Court are directed to appear before the IIIrd. Senior Civil

Judge/Rent Controller, Hyderabad on 1.9.2014 in the Rent Application No.20 of 2011, on which date they will not seek any adjournment and address the Court.

In view of this order, no Court motion notice is required to be issued to the parties. In case of absence of tenant or his counsel, the Court of Rent Controller on 1.9.2014 imposed the cost of Rs.10,000/- upon the tenant. The case shall not be adjourned for more than three dates in any case whether the parties appear or not. The rent application No.20 of 2011 shall be reserved for orders by the Rent Controller on 10.9.2014 and he should deliver a comprehensive order with clear reference to the evidence of the parties on merits on or before 22.9.2014. In case of failure of the Rent Controller, he is directed to submit a detailed explanation of not delivering the judgment in the rent case on or before 22.9.2014 and if such explanation is not found satisfactory, I am afraid he should be taken to task.

This petition is disposed of in the above terms along with pending applications.

JUDGE.