

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

Suit No. 1709/2014

Date of hearing.	06-01-2015
Plaintiff No.1	Malik Muhamamd Riaz
Plaintiff No.2	Khalid Iqbal
	Through Mr. Muhammad Ali Waris Lari, Advoate.
Defendant No.1	Mrs. Farhat Imrana through Mr.Sabir Shah, advocate holding brief for Mr. Salahuddin Khan Ganda Pur, Advocate.
Defendant No.2	The Karachi Cantonment Borad, through Mr. Muhammad Aslam Choudry, Advocate (absent)

For order on CMA No.11886/2014 (U/o.XXXIX Rule 1 & 2 CPC)

**ORDER**

**NAZAR AKBAR, J.** This order will govern disposal of (CMA No.11886/2014) an application under Order XXXIX rule 1 & 2 CPC whereby the Plaintiff has sought restraining orders against the Defendant No.1 from claiming any rent of the property in dispute from the Plaintiff and to stay the proceeding of Rent Case No.10/2014 pending before Additional Controller of Rents Karachi Cantonment, Karachi. Defendant No.1 has already filed her counter affidavit and the Plaintiff has filed affidavit-in-rejoinder to the counter affidavit.

Precise facts for the purposes of disposal of this application are that the Plaintiff has taken over left portion of Plot No.D-128, Depot Lines, Sagheer Hussain Shaheed Road, Karachi (hereinafter called suit property) from Defendant No.1 under written tenancy agreement dated **16.11.2012**. He is still in possession of the suit property and has filed the instant suit for declaration, injunction and compensation with cost and damages to the tune of Rs.10,00,00,000/- against the landlady, the Defendant No.1 and Karachi Cantonment Board. This suit was filed by the Plaintiff on **8.9.2014** and by that time he had already stopped payment of rent to Defendant No.1 w.e.f **June 2013**. Defendant No.1 filed Rent Case No.10/2014 on **11.4.2014** for ejectment of Plaintiffs on the ground of non-payment of rent. The Plaintiff appeared in rent case through his counsel and under the cover of this suit claimed that the rent proceedings may be stayed and his such application is pending. The Plaintiff in the present suit has alleged some fraud played by Defendant No.1 in getting the agreement of tenancy executed by him and he has suffered losses on account of alleged fraud. Therefore, he has filed suit for damages to the tune of Rs.10,00,00,000/- and despite the fact that from his own showing the tenancy agreement was fraudulently got executed by Defendant No.1 he is still in occupation of the suit property under the same agreement. There is no dispute about the ownership of the property between Defendant No.1 and the Plaintiff and he admits that he is tenant. It is strange that tenant claims to

continue in possession of the tenancy and seek restraining orders against landlady from claiming rent. The Plaintiff is also aggrieved by the rent proceedings initiated against him. As long as the Plaintiff is in occupation of the premises and he claims that he is in lawful occupation of the suit property, he is bound by the terms and conditions of the tenancy agreement and the law governing the relationship of the Plaintiff and Defendant No.1 in terms of the said agreement. In case he denies rent of the suit property to the landlady he becomes an illegal occupant of the premises and therefore, in my humble view through a civil suit an illegal occupant of immovable cannot restrain the landlady from attempting to recover possession of the suit property by application of relevant law as landlord. Learned counsel attempted to argue that civil Court can also issue restraining orders against the Rent Controller. However, he has failed to place on record any case law whereby proceedings of Rent Controller have been regulated by the injunction orders of the Civil Judge. He has placed reliance on the following case law:-

**i) PLJ 1982 SC 4**

(Ismail Brothers ..Vs.. Keval Ram)

**ii) 1981 SCMR 193**

(Ghulam Rasul and others ..Vs.. Hajan Bakhtawar and another)

**iii) 1984 CLC 630**

(Mst. Popalzai ..Vs.. The District and Sessions Judge, Karachi).

None of these cases are relevant for the purpose of granting injunction as sought by the Plaintiff through

application under discussion. The facts of all the three cases are quite distinguishable. In **PLJ 1982 SC 4** the facts of the case were that the entire proceeding of the rent case have already been concluded at the level of the Supreme Court when the suit was filed and there was neither any prayer to restrain the Rent Controller nor such orders were passed. In **1981 SCMR 193**, the dispute was between the co-owner of a building which was in occupation of several tenants and co-owners were both beneficiary of rents from different set of tenants. The rent proceedings initiated by co-owner against those who were paying rent to other co-owner and the rent proceeding were not stopped. In **1984 CLC 630** the proceedings were arising out of rent orders and the proceedings were not arising out of civil suit, therefore, even this case law was out of context.

In view of the above, the Plaintiff has no prima face case to maintain injunction against the proceedings of the Rent Controller in accordance with law governing the relationship of the Plaintiff and the Defendant No.1 and request for the stay of rent proceeding is hit by **Section 56(a)(b)** of the Specific Relief Act, 1877. Consequently, the application is dismissed, with no order as to cost.

Karachi  
Dated:\_\_\_\_\_

**JUDGE**