

Phone: 9212310.

NO: Cr. Petition 36-K OF 2015
SUPREME COURT OF PAKISTAN

Karachi, the 2nd April, 2016

FORWARDED TO 2556
BRANCH CR
DATE 05/4/16
HIGH COURT OF SINDH
KARACHI

From:

The Senior Court Associate,
Supreme Court of Pakistan,
M.R. Kayani Road,
Karachi.

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:- CRIMINAL PETITION NO:36 - K OF 2015
(Muhammad Ismail Nizamani & others
Vs. Javed Iqbal @ Khalid Mehmood &
another)

On appeal from the Judgment/Order of
the High Court of Sindh, Karachi.
Dated:29-04-2015, in Cr. Rev. Appln. No.
145/2014.

I am directed to enclose herewith for information & necessary
action a certified copy of the Judgment of this Court dated:28-03-2016,
Dismissing the above cited Criminal Petition.

2. The receipt of this letter along-with its enclosure may kindly be
acknowledged.


(SYED ZAFAR ALI)
Sr. Court Associate

Encl:- Certified copy of Judgment.

29/4/15

S/Ry (L/S)

Pls see send to

file

c/o - 17/10/15

29/4/15

18/

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE FAISAL ARAB

MR. JUSTICE KHILJI ARIF HUSSAIN

CIMINAL PETITION NO. 36-K OF 2015

(On appeal against the judgment dated 24.4.2015
passed by the High Court of Sindh, Karachi in
Criminal Revision Application No.145/2014)

Muhammad Ismail Nizami and others

... Petitioners

VERSUS

Javed Iqbal and another

... Respondents

For the Petitioners: Mr. Sathi Muhammad Ishaque, ASC.
Mr. Ghulam Qadir Jatoi, AOR.

For the Respondents: Mr. Zafar Ahmad Khan, Addl. P.G.
Mr. Muhammad Tamor Khan
Advocate High Court with *person's name*

Date of Hearing: 28.03.2016

JUDGMENT

KHILJI ARIF HUSSAIN, J.- The petitioners impugns the judgment passed by a learned Single Judge in Chambers of High Court of Sindh at Karachi, whereby the learned Judge while remanding the case directed that the possession of the shop in question be handed over to respondent within 15 days either by the petitioners themselves and/or whoever is in possession of the demised shop through the petitioner and on their failure the Nazir of District Court (Central) Karachi with police aid put the respondent in possession.


ATTESTED

[Signature]
Senior Court Associate
Supreme Court of Pakistan
Karachi.

2. Brief facts to decide the instant petition are that the petitioners are owner/landlord of the shop situated at ground floor of Plot No.85/5 Chota Maidan, Nazimabad, Karachi (hereinafter referred to as the property in question) and the said shop was let on to respondent firstly ^{by} ~~to~~ their late father and after demise of their father the petitioners entered into tenancy agreement with respondent on 29th January, 2013. The petitioner alleged that the respondent under an agreement of tenancy was liable to pay rent and other utility charges which he failed to pay and that the respondent had executed an affidavit dated 7.1.2014 undertaking to pay the outstanding dues by January, 2015.

3. Learned counsel for the petitioners contended that on failure of the respondent to pay the rent and the utility charges the respondent left the shop and in these circumstances they occupied the same. On the other hand from the perusal of the record it appears that on the day petitioner took possession of the shop in question respondent filed a complaint with the concerned Police Station and after some time he filed an application under section 3, 4, 7 & 8 of the Illegal Dispossession Act, 2005. The criminal complaint filed by the respondent was dismissed by the 3rd Additional Sessions Judge, through his order dated 14.02.2014 on the ground that he himself admitted while annexing the affidavit regarding dues of utility charges and request for extension of time to pay the same and that application was not

ATTESTED


Senior Court Associate
Supreme Court of Pakistan
Karachi.

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maintainable as petitioners are owner of the shop in question. That order was impugned by the respondents by filing the Criminal Revision before the High Court which was accepted through impugned judgment.

4. Learned counsel for the petitioners contended that the petitioners are owner of the property in question and since the respondent who was tenant failed to pay the rent and left the property unattended as such they occupied the same.

5. On the other hand learned ASC for the respondent contended that it is admitted fact that the respondent was tenant in the shop in question and he categorically stated that he was dispossessed by using force by the petitioners and on the basis of available record the learned High Court rightly remanded the matter to the learned Trial Court to decide it afresh by granting relief under section 7(1) of the Illegal Dispossession Act, 2005.

6. We have taken into consideration the contentions raised by the learned counsel for the parties and with their assistance perused the available record. We intentionally not making any detailed comments on the issues of the matter so remanded by the High Court, however, with regard the interim relief granted by the High Court in exercises of his power conferred on Court under section 7(1) of the Illegal Dispossession Act of 2005 to hand over possession of the shop to the respondent pending disposal of the Criminal complaint

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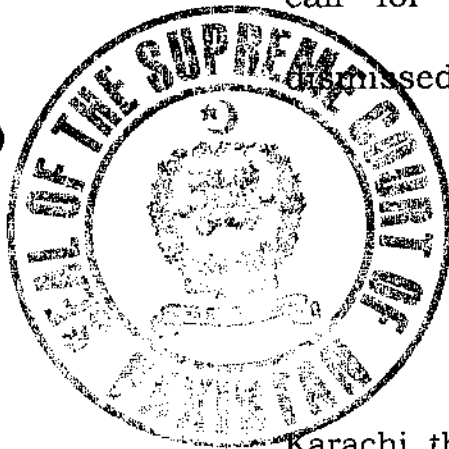

Senior Court Associate
Supreme Court of Pakistan
Karachi.

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by ADJ, we have noted that in the impugned judgment learned High Court itself noted that certain goods, immovable articles of the respondents were lying in the shop occupied by the petitioners and same were handed over to them vide order dated 13.1.2014 which support the contention of respondent that petitioner illegally occupied the shop in question.

6. In this view of the matter the impugned judgment call for no interference and accordingly the petition is dismissed and leave refused.

Sd/= Faisal Arab, J
Sd/= Khilji Arif Hussain, J



Karachi, the
28th of March, 2016
Not Approved For Reporting
Saeed Aslam

30/3

CERTIFIED TO BE TRUE COPY

[Signature]
4/4/16
Senior Court Associate
Supreme Court of Pakistan
Karachi.

Phone:99212310.

NO.Crl.P.36-K/2015-SCJ
SUPREME COURT OF PAKISTAN

KARACHI, the 13th June, 2015.

FROM:

The Officer Incharge,
Supreme Court of Pakistan,
M.R. Kiyani Road, Karachi.

To,

The Registrar,
High Court of Sindh,
Karachi.

SUBJECT:-

CRIMINAL PETITION NO:36-K OF 2015.
(Mohammad Ismail Nizami. Vs. Javed Iqbal,
@ Khalid Mehmood)

On appeal from the judgment and order of the
High Court of Sindh, Karachi dated 29-4-2015,
in Crl.Rev.A.No:145/2014.

I am directed to enclose herewith certified copy of the
Order of this Court dated **12-06-2015**, for information and
further necessary action.

2. The receipt of this letter alongwith its enclosure may
kindly be acknowledged.

(MOHAMMAD AMIN KHAN)
OFFICER INCHARGE

Encl: Certified copy of the Order

(A.R. Criminal)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Amir Hani Muslim
Mr. Justice Qazi Faez Isa

Criminal petition for leave to appeal No.36-K of 2015

Muhammad Ismail Nizami & others Petitioners

Versus

Javed Iqbal alias Khalid Mahmood
& another Respondents

For Petitioners: Mr. Sathi M. Ishaque, ASC

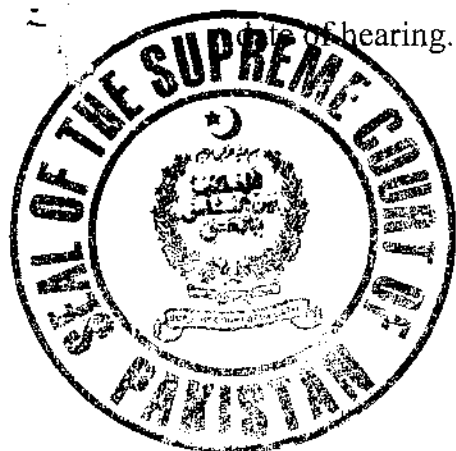
For Respondents: N.R.

Date of hearing: 12.6.2015

ORDER

The learned counsel for the Petitioners has brought further documents, which should be properly filed. Issue notice to the Respondents.

The Petitioner No.1 claims to be in possession of the suit property and according to him by impugned judgment he has been required to hand over the property to the Respondent No.1 by 20.6.2015. Since we are issuing notice, therefore, the impugned judgment is suspended till the next date of hearing.



Sd/s Amir Hani Muslim, J.
Sd/s Qazi Faez Isa.

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[Signature]
13/6/15
Superintendent
Supreme Court of Pakistan

Karachi,
12th June, 2015
Zahid*

[Signature]
12/6