

C.P No.S-248 of 2023

Shalkh Nasiruddin & Others

Vs.

Ghulam Ali Kaderbhoy & others

HIGH COURT OF SINDH

Composition of Bench

Single.


Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 19-08-2024

Decided on : 19-08-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH AT KARACHI

S. 248
CONSTITUTION PETITION NO /202310-03-2023
Additional Registrar (Writ)

1. Shaikh Nasiruddin son of F. Shaikh, Muslim,
Adult, Shaikh Market S.No B-4/3-A,
Serai Quarters, Karachi since deceased
through his son Shaikh Najam ud din
muslim, adult, R/o Flat No 5,
Street Murrar, Pakistan
Chowk, Karachi.
2. Mst. Khursheed Begum D/o Shaikh
Ferozuddin, wife of Shaikh Noor Hussain,
Muslim, adult, residing C, C. G.H Khalid & Co.
Brandreth Road, Lahore
3. Manzoor Hussain S/o Shaikh Ferozuddin,
Muslim, adult, resident of 100 Railway Road,
Lahore.
4. Amanullah S/o Shaikh Ferozuddin
Muslim, adult, residing at Lahore.
5. Mst. Kulsum Akhtar D/O Shaikh Ferozuddin,
Wife of Muhammad Azmat Sabir, Muslim,
Adult, C/o Oriental Trade's Choti Qabar,
Patan, District Sahiwal.

3

All Muslim, Adult, residing at 45 Shabbirabad

Dawoodi Co-Operative Housing, Society Karachi.

7. Fakhruddin Ebrahimji ...Expired on 12.11.2009

8. Fizzabai D/o Ebrahimji.

9. Salma Bai D/o Ebrahimji.

10. Zeenat D/o Ebrahimji

11. Tasneem Alia as Zafreen D/o Ebrahimji

12. Zainab D/o Ebrahimji

All Muslims No:9 to 13 through their attorney

Fakhruddin Ebrahimji.

13.. M/s Kaderbhoy Karimji & Sons

A firm duly registered under the partnership

Act having its office at Herchand Rai Road,

Near Old Haji Camp. Karachi.

14. The VIIth Sr Civil Judge and Rent Controller

Karachi South.

15. The VIIth Additional District & Session

Judge South, Karachi.

All the respondents from 1 to 13 through respondent 7 since

deceased through his son Hasnain Fakhar ud din R/o Flat No CC-

7/6 Najmi Co operative Housing Society Block-8, Clifton Karachi

CONSTITUTION PETITION UNDER ARTICLE 199 OF THE

CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

51

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No.S-248 of 2023

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

1. For order on office objection.
2. For hearing of MA No.1947/2023
3. For hearing of main case. _____

19.08.2024

Mr. Muhammad Farooq, Advocate for the Petitioner.
Mr. S.M. Haider, Advcoate for the Respondent.
Mr. Sheheryar Qazi, & S. Arshad Hussain Naqvi, Addl.
A.G.

MUHAMMAD KARIM KHAN AGHA.J., The landlord Ghulam Ali Kader Bhoy has sought ejectment of the tenant from the Property bearing Survey No.B-4/3-A Survey sheet No.7 (new Survey No.2, new No.SR-VII, Serai Quarters Karachi (the Property). There are two concurrent findings against the tenant on account of default in payment of rent. It is noted that the appellate judgment dated 25.2.2023 upheld the impugned judgment largely based on the fact that the appeal has become infructuous because tenant has vacated the premises in the following terms which are set out below:-

Further, it is observed that during the proceedings of the present First Rent Appeal, the Judgment Debtors have passed the possession of demised rented premises to Appellant through process of Court and in attending circumstances, virtue happening of such event, the instant FRA becomes infructuous. The learned Counsel for the Respondent/landlord has filed statement to effect that on 13.02.2023 possession has been handed over to the respondent and execution application stands satisfied. In this regard, I lay reference to **1993 SCMR 2360**, wherein it has been held that "---S.15---Constitution of Pakistan (1973), Art. 185(3)---Delivery of Possession during pendency of appeal against ejectment of tenant before Supreme Court ---Effect---Possession of demised premises having been delivered to landlady during pendency of appeal by tenants, appeal became infructuous and was thus liable to be dismissed." I further, lay reference to **1991 CLC 999**, wherein Hon'ble High Court of Sindh has held that "Ss. 21 & 22 --- Appeal---

2

Maintainability---execution application from which appeal arose, having been disposed of, appeal became infructuous and was dismissed accordingly." Further reference in this regard can be placed on **2002 AC 823**. Thus for what has been discussed herein above, the instant FRA thus is not maintainable and order of the learned Trial Court does not require interference accordingly is hereby maintained resultantly, the First Rent Appeal, for above reasons, stand dismissed. All the pending application become infructuous and dismissed accordingly.

2. Even otherwise in the case of **Wadho Akhara Trust, Karachi ..Vs.. Ghafooran and others** (1993 SCMR 2360), it was held that delivery of possession during pendency of appeal against ejectment where the possession has already been delivered to the landlady by the tenant appeal became infructuous and was liable to be dismissed. This is the exact position in this case, where the tenant has already left the Property.
3. Accordingly this petition is dismissed under the constitutional jurisdiction of this Court where the tenant might have alternate remedy under law in the given circumstances.