

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

CP No.D-826 of 2023
(Syed Erum Fatima vs. Muhammad Aslam Shah Khan & others)

Date	Order with signature of Judge
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Hg. of case/Priority

1. For hg. of CMA No.5925/2023
2. For hg. of main case

06.08.2024.

Mr. Mehmood Hussain, Advocate for the Petitioner
Mr. Muhammad Amin, Advocate for Respondent No.1
Mr. Basam Ali Dahri, Advocate for Respondent No.2

ORDER

MUHAMMAD IQBAL KALHORO J: Respondent No.1, the landlord of premises, namely, Meena Bazar Extension, situated at Plot No.ST-1/E, Block-3, KDA Scheme-16, Federal 'B' Area, Karimabad, Karachi, filed a rent application against respondent No.2, the tenant, in respect of same property on the grounds of irregular and default in payment of rent and subletting the property to someone else. Notices were issued to respondent No.2 through all modes of service but she failed to record her appearance in the Court. Hence she was proceeded against as exparte, and vide order dated 21.09.2021, learned Rent Controller accepting merit of both the grounds allowed the rent application and ordered respondent No.2 to hand over vacant and peaceful physical possession of the demised premises to respondent No.1.

2. When the direction was not complied with, an execution application was filed and notices were issued. In reply to the notices, petitioner recorded her appearance before the learned Rent Controller by filing an application under Section 12(2) CPC, order 1 Rule 10 r/w Section 151 CPC claiming that in fact she is the tenant of the subject premises, was not made a party in the rent proceedings, was never served with any notice. The ejectment order was obtained through fraud and misrepresentation of facts. This application was heard and dismissed on 30.07.2022 by the Rent Controller holding, among others, that petitioner was sublet the premises by the respondent No.2, herself a tenant, without a valid and legal authority by the landlord. After failing to impress, learned Rent Controller with merit of her case, petitioner filed FRA No.159/2022 before IV-Additional District Judge, Karachi (Central) against the order passed by the learned Rent Controller. Petitioner, here also has failed and her appeal has been dismissed vide impugned order dated 11.08.2023.

3. Learned counsel for the petitioner has not disputed the fact that petitioner is a sublettee and not the original tenant and that she was given demised premises by respondent No.2, herself a tenant and not by respondent No.1, the landlord of the premises. However, the only ground to assail both the adverse judgments against her by the petitioner is that the landlord had been accepting the rent from petitioner, which shows his implied consent to subletting of the property in her favour. In response to various queries by the Court, learned counsel has failed to show any document to reflect consent/permission of the original owner to respondent No.2, to sublet the property to the petitioner. Even at the time of moving application u/s 12(2) CPC, petitioner had failed to file affidavit of any person before whom any such oral consent / permission was given by the landlord to respondent No.2 sublet the property to the petitioner. The whole case filed by respondent No.1 for ejectment was based on two grounds; default / irregular payment in rent and subletting the property. The petitioner being the sublettee having failed to establish consent or permission of respondent No.1 to respondent No.2 to sublet the property to her is on weak wicket to maintain this petition. She must therefore fail.

4. Further, there are concurrent findings against the petitioner, which, she has not brought up any material to show are a result of any mis-appreciation of facts and law. This being the position, I find no merit and dismiss this petition along with listed application.

Petition stands disposed of above in above terms.

JUDGE

Rafiq/P.A.