

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. 237 /2004

Date	Order with signature of Judge
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- 1) For orders on CMA No. 49/2014.
- 2) For hearing of CMA No. 6722/2013.
- 3) For orders on CMA No. 7/2014.
- 4) For hearing of CMA No. 6723/2013.

4.1.2014

Mr. Muhammad Ali Lakhani for petitioner.

1) This is an urgent application moved on behalf of the petitioner. On 1.1.2014 similar type of urgent application was filed on behalf of the petitioner which was dismissed by this court as not pressed. On 3.1.2014 another urgent application was moved on behalf of the petitioner which was also dismissed as the learned counsel appearing for the petitioner was unable to satisfy this court for grant of the same. Today this listed application has been moved and the learned counsel for petitioner submits that subsequent to the dismissal of the above mentioned two urgent applications, the petitioner has received through bailiff, an order of the Executing Court, whereby the writ of possession has been issued and order for Break open Lock and Police Aid have been passed by or before 5th of January 2014. In view of the above this urgent application is allowed.

2) This is an application filed under Order IX Rule 8 read with Section 151 CPC whereby it has been prayed to restore the instant petition which was dismissed on 22nd October 2013 for non-prosecution. Learned counsel for petitioner has referred to order dated 9th September 2013 whereby the office was directed to issue a direct notice to the petitioner for the next date of hearing i.e. 24.9.2013. The record shows that though notice was issued to the petitioner directly, but there is no report by the office or the bailiff as to whether such notice was duly served upon the petitioner. Thereafter on 24.9.2013 none was present before the court including the respondents and the matter was adjourned. On 22.10.2013 the instant petition was dismissed for non-prosecution; however, it seems that no further notice was issued to the petitioner directly vide order dated 9.9.2013 nor there is any report on record to such effect. Thereafter notices were ordered to be issued on the restoration application on 9.11.2013 and the matter was adjourned to 3.12.2013. On 3.12.2013 the matter was discharged. Learned counsel submits that till such time the notices were ordered on the restoration application, no writ of possession was issued by the executing court therefore, no urgency was shown by the petitioner till 1.1.2014 and on subsequent dates thereafter. Let notice be repeated to the respondents on this application for 15.1.2014.

3 & 4) Notice to the respondent. Since an interim order was already operating in the matter and so also for the fact that the

ejectment application filed by the respondent was dismissed by the rent controller, the executing court is restrained from proceedings any further with the writ of possession issued on 21.12.2013 till next date. However, if for any reason the case is not proceeded for on behalf of the petitioner on any future date the restraining order passed today shall stand vacated without any further notice. Adjourned to 15.1.2014.

ARSHAD/

JUDGE