

## ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI  
Suit No.2525 of 2016

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Date Order with signature of Judge

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For hearing of CMA No.16681/16 ((U/O 39 Rule 1 & 2 CPC)

15-12-2016.

Mr. Mayhar Kazi, Advocate for Plaintiff.  
Ms. Rizwana Ismail, Advocate for defendant.

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**Muhammad Junaid Ghaffar J.-** Learned Counsel for the defendant requests for further time to file counter affidavit, whereas, Counsel for plaintiff was confronted as to how instant Suit is maintainable before this Court as admittedly the plaintiff and defendant are tenant and landlord and on such issue he was directed to come prepared on the next date. He, however, submits that since there is grave urgency in the matter, he is ready to assist the Court right now as to maintainability of instant Suit, as objected to by this Court.

2. Learned Counsel submits that by virtue of an Agreement dated 24.06.2011; the plaintiff was inducted as a tenant in the Suit Property, on which a School is being run. He submits that the agreement was for a period of 57 months which stands expired on 20.06.2016. However, since the defendant has received rent in respect of subsequent months, the plaintiff has become a statutory tenant and cannot be dispossessed without due process of law. He submits that on 24.10.2016, a notice was issued by the defendant, showing inability to continue further with the arrangement after expiry of the agreement. Learned Counsel further submits that earlier, the Banglore Cooperative

Housing Society Ltd. had attempted to dispossess the plaintiff from the Suit premises against which a Suit bearing No.1289/2013 was filed before this Court and vide Order dated 11.10.2013, the Society was directed to maintain status-quo, which still continues. As to maintainability of instant Suit, learned Counsel submits that the Suit is very much competent and the relief sought can be granted under Section 42 of the Specific Relief Act as the tenancy rights are legal rights of the plaintiff. He further submits that though the plaintiff is also seeking its remedy under the Sindh Rented Premises Ordinance, 1979 (The Ordinance), however, the Rent Controller has no jurisdiction to pass an injunctive order for restraining the defendant from dispossessing the plaintiff, hence instant Suit. In support of his contention, learned Counsel has relied upon the cases reported as **1999 MLD 1413 (Mrs. Shahnaz Jumani v. Mrs. Naheed Zia and others)**, **PLD 1963 (W.P.) Karachi 213 (Khalilur Rahman v. Deputy Commissioner, Larkana and others, 2003 YLR 1547 (PK Muhammad v. Karachi Building Control Authority)**, **1999 MLD 2137 (Sharfuddin v. Riazuddin)**, **1999 SCMR 2771 (Faiz Sons v. Hakim Sons (Impex) Private Ltd.)**, **1994 SCMR 1012 (Muhammad Rafique v. Messrs Habib Bank Limited)** and **PLD 1988 Supreme Court 190 (Mrs. Zarina Khawaja v. Agha Mahboob Shah)**.

3. I have heard the learned Counsel on the point of maintainability of instant Suit and perused the record. At the very outset, the learned Counsel was confronted as to how the main prayer being sought through instant Suit for getting a declaration that the agreement stands renewed for a further period of 57 months commencing from 20.06.2016 can be

granted, to which the learned Counsel could not satisfactorily respond. However he has contended that plaintiff is a bonafide tenant and cannot be dispossessed from the subject property except in accordance with law. Learned Counsel was further confronted as to what exactly is the cause of action accrued to the plaintiff as apparently no unlawful means have been adopted so far by the defendant to dispossess the plaintiff as it is only a notice not to extend the rent agreement in question, to which again the learned Counsel could not satisfactorily respond. However, submits that they may be restrained from taking any action except in accordance with law.

4. Insofar as, the relationship between the plaintiff and defendant is concerned, there is no dispute that they are tenant and landlord pursuant to agreement in question and their relationship is to be governed by a Special law i.e. the Ordinance. Section 2(j)(i) of the Ordinance defines a "Tenant" as any person, who continues to be in possession or occupation of the premises after the termination of his tenancy, whereas, Section 13 of the Said Ordinance provides that no tenant shall be evicted from the premises in his possession except in accordance with the provisions of the Ordinance. A combined reading of both these provisions clearly reflects that once it is admitted that the relationship between the parties is of tenant and landlord, then the tenant cannot be ejected without taking due course of law as provided under the Ordinance. It is a Special Law and the relationship has to be governed by such law, whereas, for this no declaration is required to be made by the Courts. It also appears to be an admitted position that as of today, no unlawful action has been taken by the defendant nor

the learned Counsel for the plaintiff could point out any, and it is only a notice to the effect that the agreement in question cannot be renewed further which has prompted the plaintiff to file instant Suit. Therefore, in all fairness there does not seem to be any cause of action for the plaintiff to have filed instant Suit seeking remedy under the Specific Relief Act.

5. It is also an admitted position that the Tenancy Agreement stood expired on 20.06.2016, whereas, through prayer clause "A", the plaintiff seeks renewal of its agreement for a further period of 57 months. I am afraid that such declaration cannot be granted by a Civil Court as it is between the parties to enter into an agreement for a certain period and the remedy, if any, is available only in the form of a rent case to be filed before the concerned Rent Controller under the Ordinance and not by way of this Suit. Further if instant Suit is entertained and any injunctive order is passed by this Court, it could seriously prejudice the case of defendant, if they intend to seek remedy under the Ordinance by invoking the provision of Section 15 of the Ordinance.

6. Insofar as the case law relied upon by the learned Counsel for the plaintiff is concerned, barring the case of ***Mrs. Shahnaz Jumani, Khalilur Rahman & PK Muhammad, (Supra)***, all are in respect of Appeals arising out of rent case and hence not relevant to the objection raised by this Court. Whereas, in all the other cases, the impugned actions were without due process of law and the tenants were either dispossessed or were being dispossessed by using unlawful means. In the instant matter as already noted it is only a notice by the defendant not to extend

the agreement any further, meaning thereby, the defendant accepts and admits the relationship of plaintiff as tenants, therefore, the tenant can only be evicted in accordance with the Ordinance as provided under Section 13 *ibid*.

7. Though no specific application for rejection of plaint has so far been filed on behalf of the Defendants, however, this Court can always raise and address such objection at any stage of the proceeding(s) as it is a settled proposition of law that a still born Suit must be buried at its inception and it is the primary duty of the Court to examine and see that whether the Suit is maintainable and the relief(s) being sought can be granted by the Court or not. Rather the Court is under an obligation to reject the plaint in such Suit(s) without any formal application from the party. Reliance in this regard may be placed on the case of ***Raja Ali Shan v. Essem Hotel Limited* (2007 SCMR 741)**, ***Haji Abdul Karim and Others v. Messrs Florida Builders (Pvt.) Limited* (PLD 2012 SC 247)**, ***Haji Abdul Mateen Akhunzada & another v. District Co-ordination Officer / Deputy Commissioner, Quetta & 5 others* (PLD 2012 Baluchistan 154)** and ***Burmah Eastern Ltd., v. Burmah Eastern Employees Union and others* (PLD 1967 Dacca 190)**

8. In view of hereinabove facts and circumstances of the case, I am of the view that neither any cause of action has accrued to the plaintiff nor the Suit is maintainable in law, rather is barred under the law, therefore, the plaint in the instant matter is hereby rejected under Order VII Rule 11 CPC.

JUDGE