

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.No.S-731 of 2011.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of M.A-8474 of 2011.

11.12.2017.

Mr. Hakim Ali Siddiqui, Advocate for the petitioners.

Mr. Kazi Atif, Advocate for respondent No.1.

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Learned counsel for the petitioners states that the eviction proceedings in the matter were allowed by the learned trial Court and were also maintained by the learned appellate Court, which were filed on the ground of amendment and alteration alongwith subletting; learned counsel for the petitioners contends that the burden of proof was upon the landlord who had failed to discharge the same. It is further contended that the matter of possession and conduct of business are two distinguishable elements and were required to be so treated, failure of such treatment has been met by the two Courts below. In the present case part of the possession as required which is a mandatory requirement has not been proved. It is further contended on part of learned counsel for the petitioners that the eviction application was filed on the ground of parting of possession of whole of the premises, whereas it was wrongly considered by the learned Courts that only parting of possession of half of the premises was got established based upon which possession of whole of the shop was allowed. Learned counsel also contends that as to the alteration and amendment loss of value was not proved, which is also a mandatory requirement and that the learned Courts had misread the evidence as the portion of the evidence admitting subletting was, *prima facie*, a typographical error. Learned in this regard has relied upon the cases of **Saeeda Begum v. Shameem Ahmed (1994 SCMR 791)**, **Allah Din v. Habib (PLD 1982 SC 465)** and **Muhammad Saeed v. United Bank Limited (1993 CLC 1830)**. Learned counsel for respondent No.1 on the other hand contends that the requirement of eviction is not dependent upon the percentage of possession, which is immaterial. It is further contended on part of the learned counsel for respondent No.1 that separate receipts of signboards were brought up in the evidence and as such the learned trial Court as well as the learned appellate Court has rightly allowed the eviction. Learned counsel for respondent No.2 further contends that constitutional petition in rent matters is not maintainable and in this regard he relies upon the cases of **Shakeel Ahmed v. Muhammad Tariq Farogh (2010 SCMR 1925)**, **Abdul Wahab v. Muhammad Nafeez**

(2015 MLD 1077) and **Muhammad Saeed v. Bano Begum (2012 CLC 1195)**. Learned counsel for the petitioners in rebuttal, relies upon the difference between the statutes applicable for Sindh and majority of Pakistan i.e. Sindh Rented Premises Ordinance and West Pakistan Urban Rent Restriction Ordinance, contending that the description with regard to the matter of portion was available in the West Pakistan Urban Rent Restriction Ordinance. Learned counsel for the petitioners as to the maintainability of constitutional petition relies upon the case of **Muhammad Lehrasab Khan v. Aqeel-un-Nisa (2001 SCMR 338)**.

2. Having heard the learned counsels and with their assistance gone through the record, it may be observed that it is clear that two different business were being conducted. The tenant in the matter never alleged partnership as such in my humble understanding the tenant was unable to show that he was holding the possession in his own right and that the other business was also for his benefit and in the circumstances, the conduct of two separate businesses for which the material has been brought up was sufficient to acquire eviction.

3. Be that as it may, constitutional petition in rent matters is only available where the learned Rent Controller as well as learned Appellate Court had come to findings which does not come from the material present on record or can be, prima facie, considered to be perverse in law. No case of this narrow margin has been shown to interfere with the impugned orders, as such this constitutional petition stands dismissed, however, with no orders as to costs.

JUDGE