

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

R.A. No.279 of 2017.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA-2098 of 2017.
2. For hearing of main case.

10.01.2019.

Mr. Niaz Ahmed Jatoi, Advocate for the applicant.

Mr. Habib-ur-Rehman Jamali, AAG.

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Learned counsel for the applicant / plaintiff states that all modes of service have been exhausted on respondent No.1 including publication in the newspaper daily "Kawish" Hyderabad dated 16.09.2018, copy provided.

2. Per learned counsel for the applicant, the background of the case is that the applicant through rent agreement dated 13<sup>th</sup> August, 2008 was admitted as a tenant in respect of shop bearing No.1, situated in Citizens' Cooperative Housing Society, Hyderabad at the rate of Rs.1,500/- per month. Learned counsel states that the applicant through private arrangement handed over the possession of the said shop to respondent No.1 to setup a beauty parlor, which continued upto 2010. However, when the applicant tried to takeover possession of the said shop; alongwith approaching the landlord, she also made appropriate application to SHO P.S Bhitai Nagar and concerned Mukhtiarkar. Being faced with these challenges, respondent No.1 filed suit bearing No.365/2010 seeking declaration and permanent injunction against the private and official respondents. The trial Court after framing appropriate issues while reaching to the conclusion that plaintiff had no right or tenancy arrangement in respect of the shop in question, partly dismissed the suit; however, allowed issue No.6 by holding that the due process of law must be followed to evict the plaintiff. Against the said judgment and decree, an appeal was preferred, which was decided vide judgment dated 29.08.2017, whereby the appellate Court after going through the record and submissions, did not find any reason to interfere with the order of the trial Court but confirmed that the respondent No.1 should be ejected in accordance with law.

3. Learned counsel for the applicant states that the said beauty parlor business came to halt and the subject shop has been lying vacant, but due to existence of the aforementioned two judgments, neither the applicant nor the Society (Citizens' Cooperative Housing Society Limited, Hyderabad) is in position to claim the possession thereof and he requests that now the respondent No.1

having relocated to Dadu and even having been divorced by her husband namely, Mukhtar Ahmed, who had taken responsibility for paying maintenance of the said shop to the Society, the valuable property of the Society is rotting. He requests that the interest of justice would be met by handing over the possession of the said shop to the Society, which, in accordance with law, be able to further let out the said shop as per their Rules, and at that instance, the applicant's tenancy request be considered in priority.

4. Learned AAG submits that the dispute is private in nature and he supports the submissions made by learned applicant's counsel that due process be followed while taking over the possession of the subject shop.

5. Heard the learned counsel for the applicant, learned AAG and perused the record.

6. Admittedly, the subject shop is lying vacant and the respondent No.1 has relocated to Dadu with whom the Society has no rental agreement. Its also a fact that Respondent No.1 has neither appeared in person nor through a counsel. It is also an admitted position that none of the Courts below made any adverse determination as to the title of the said shop and only directed that due process of the law should be followed for Respondent No.1's eviction.

7. In the circumstances at hand, when the property is being frustrated; neither available to the Applicant, nor to respondent No.2, the instant revision is allowed with direction to respondent No.2 to confront the respondent No.1 as to her intention of using the said shop and pass a speaking order after affording an opportunity to the respondent No.1 and the applicant, and if no effective representation is made by the respondent No.1, be at liberty to repossess the said shop in accordance with law, and if the Society intends to further sublet the said shop, it should consider the present applicant in priority over others, if the former agrees to pay matching rents.

JUDGE

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