

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.357 of 2007

[Muhammad Junaid Makhumi vs. Muhammad Iqbal and others]

Muhammad Junaid Makhumi (Plaintiff)	:	None present.
Defendant No.1 (Muhammad Iqbal)	:	Present in person.
Defendant No.3 (M/s. Mind Share)	:	Through Mr. M. Saif Malik, Advocate
		Nemo for Defendants No.2, 4 and 5.
Date of hearing	:	<u>19.02.2019</u>
Date of Judgment	:	<u>19.02.2019</u>

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has filed this suit, primarily for Recovery of Possession of a Unit / Office No.205, situated in a multistoried building, namely, ‘*The Forum*’, Clifton, Karachi (*the ‘demised premises’*), from the Defendants, with the following prayer clause_

“It is respectfully prayed that this Hon’ble Court may be pleased to pass Judgment and Decree in favour of the Plaintiff against the Defendants as under:

- A. Direct the Defendant No.1 to handover the peaceful possession of the office premises bearing No.205, The Forum, Clifton, Karachi, along with equipments installed in the office.*
- B. Restrain the Defendant No.1, from handing over the possession of the above said office to Defendant No.3.*
- C. Restrain the Defendant No.5 from disconnecting electricity and other utilities.*

D. Cost of the suit.

E. Any other relief(s) which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Upon service of summons, the Defendants No.1 to 4 have contested the claim of Plaintiff by filing their respective Written Statements.

3. The Defendants No.1 and 2 are the joint owners of the demised premises and crux of their pleadings / Written Statement is that the Plaintiff was evicted from the demised premises due to breach of covenants committed by the Plaintiff as well as default in payment of rent; whereas, the Defendant No.3 being the present tenant in the premises has controverted the claim of Plaintiff, besides enclosing a Lease Agreement dated 01.02.2007 as Annexure "A" with the Written Statement, which Agreement appears to have been entered between the Defendants No.1, 2 and 3, whereby, *inter alia*, the latter (Defendant No.3) was inducted as tenant for a period of three years. This Lease Agreement has been registered with the concerned Sub-Registrar-II, Clifton Town, Karachi, and thus is a public document in terms of the Qanoon-e-Shahadat Order, 1984.

4. The Defendant No.4 has disputed the claim of Plaintiff on different grounds, but has categorically mentioned the fact that the Plaintiff since January, 2005, was not in possession of the demised premises and the same was in possession of Defendant No.4, who has handed over the same to the Defendants No.1 and 2.

5. From the plaint it appears that earlier also the present Plaintiff has instituted a Suit No.1075 of 2006 in the Court of learned VIII Civil Judge, Karachi South, but has not disclosed the fate of the above proceeding. The Plaintiff has also sought a mandatory and permanent injunction against the Defendant No.1 from handing over the possession to Defendant No.3. So far as

the injunctive relief is concerned, the same has become infructuous in view of the fact that a registered Lease / Tenancy Agreement has already been entered into between the Defendants, as mentioned in the forgoing paragraphs. All the Defendants have raised the question of maintainability of present *lis*.

6. On 21.12.2009, following Issues were settled by the Court_

- “1. Whether Defendant No.1 forcibly dispossessed the Plaintiff from the suit property along with equipments installed therein?***
- 2. Whether Defendant No.3 was rightly inducted in the suit property by Defendants No.1 and 2?***
- 3. Whether the goods, equipments, furniture, computers, air conditioners fixed in the subject premises are the properties of Defendant No.3 or the Plaintiff?***
- 4. What should the decree be?”***

7. Today, Defendant No.1 is present and for identification he has produced his original CNIC having No.42301-9927830-5; original whereof is returned to him and copy is retained in the record.

8. After settlement of Issues, the matter was adjourned for want of evidence. On 26.10.2018, intimation notice to the parties as well as their counsel was issued but Plaintiff or his counsel have not come forward to proceed with the matter. On 17.01.2019, despite intimation notice, no one was present on behalf of the parties, except the learned counsel for Defendant No.3; therefore, the matter was adjourned to 11.02.2019 with direction to the Office to repeat notice to the Plaintiff directly for the next date of hearing, that is, 11.02.2019. On the said date, no one was present on behalf of Plaintiff, thus the case was again adjourned to 19.02.2019, but with a note of caution that if on the next date of hearing, Plaintiff's side fails to lead the evidence then besides closing his side, appropriate orders will follow. Today, in the first round no one was present on behalf of Plaintiff, therefore, the matter was kept

aside to be taken up after Tea Break; where after the matter was against called but no one is present.

9. The Plaintiff has neither pursued the matter diligently nor has come forward to lead the evidence, *inter alia*, at least Plaintiff should have examined himself, but he did not. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as is the present case, in view of the above discussion.

10. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In the present case, despite providing ample opportunities, the Plaintiff has not come forward to testify and discharge the burden of proof about his claim. The reported decision of Hon'ble Supreme Court handed down in the case of Rana Tanveer Khan v. Naseer Khan-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendants, thus the former (Plaintiff) is not entitled to any relief.

11. Consequently, this suit is dismissed, with no order as to costs.

JUDGE

Dated 19.02.2019

M.Javid.PA