

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1122 of 2012

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For further proceedings:

12.11.2018.

Mr. Ghulam Rasool Tunio for Defendant No.2 NICH, Karachi.  
Mr. Muhammad Aslam Choudhry, Advocate for Defendant No.3.  
Ms. Mehmooda Suleman, Counsel for State.

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1. The defendant No.2 claims to have filed written statement in 2012, however, the same is not available on file. On the contrary, there is statement dated 21.05.2014 on file, wherein the counsel for the defendant No.1 has sought to rely upon and adopt the written statement filed by the defendant No.2. The officer present on behalf of defendant No.2 submitted another copy of the written statement, which is taken on record and in pursuance thereof there is no further need for ex-parte orders against defendant Nos. 1 and 2.

2. An application, being CMA 9058 of 2012, was preferred to sustain the plaintiff's occupation of Govt. accommodation, being the suit property. Ad interim orders were passed on 06.09.2012 and thereafter it appears that thereafter the plaintiff lost interest in the proceedings. The diary records that on numerous dates none appeared on behalf of the plaintiff and the same is the case today. The Court has issued numerous notices to the plaintiff, notwithstanding the trite law that a party is obliged to be vigilant and is solely culpable for the consequences of failure in respect thereof. Reliance in such regard was placed on the judgment in the case of *Abdul Hamid vs. Abdul Qadir* reported as *PLD 2001 SC 49*. While this may be a

fit case for dismissal on the ground for non-prosecution, it was considered just and proper to advert to the relevant record and decide the application under consideration on its merit.

It is observed from the documents annexed by the plaintiff along with his pleadings that the plaintiff retired from the Government service w.e.f: 01.02.2012 and was served a notice to vacate the official accommodation dated 13.8.2012. Notwithstanding, the admitted fact that the plaintiff has retired from service over six years ago, he remains in occupation of the Government accommodation / suit property and has employed orders passed herein to sustain such occupation. The pleadings as well as the record annexed by the plaintiff do not demonstrate any entitlement of the plaintiff to continue in occupation of Govt. accommodation.

The defendant No.2 has demonstrated that the plaintiff does not have any right to occupy the suit property and the same is also manifest from the affidavit dated 30.05.2012, wherein the plaintiff had undertaken to vacate the suit property on account of having retired from service. Learned counsel also referred to an earlier undertaking provided in such regard by the plaintiff, copy whereof is annexed as Annexure-E to the written statement filed by the defendant No.2.

It is apparent from the record that the plaintiff is not in possession of any subsisting right to occupy or retain the official accommodation. The only reason the plaintiff was in residence at the suit property was because he was in the employ of the Govt., and the said employment admittedly ended back in 2012. No vested right to continue in occupation of the suit property has been demonstrated by the plaintiff and hence this application is prima facie devoid of merit. A Division Bench of this Court has rendered a judgment dated 16<sup>th</sup> July, 2018 in C.P. No.D-2110 of

2009 being the case titled *Mohammad Tariq Qasmi vs. Federation of Pakistan and Others* (“*Tariq Qasmi*”), wherein it was maintained that in the absence of any demonstrable right for the occupation of government accommodation, such occupation could not be sustained. The judgment in *Tariq Qasmi* had also relied upon an earlier judgment of a Divisional Bench of this Court dated 03.05.2018 in *C.P. No.D-3433 of 2015* (“*C.P. No.D-3433 of 2015*”) wherein it was maintained that in the absence of any subsisting rights to occupy to a property, proceedings to sustain such occupation would be misconceived and the Court would not pass any orders to perpetuate the illegal occupation of such property. The ratio of the aforesaid judgments was also followed in the subsequent Division Bench judgment dated 30.08.2018 in the case of *Saqib Ali Shaikh vs. Government of Sindh and Others* being *CP No. D-5329/2018* (“*Saqib Ali Shaikh*”).

In view of the foregoing, it is prima-facie apparent that there is no entitlement of the plaintiff, apparent from record, for him to sustain the occupation of the suit property, hence, the present application is hereby dismissed.

3. It is noted with concern that recent orders of this Court with regard to issuance / pasting of notice have not been complied with by the Bailiff Branch. On 23.10.2018 this Court had directed for the issuance of notice and had also directed that copy of said notice be pasted at the property subject matter of the present suit. The bailiff report dated 03.11.2018 stated that the bailiff was unable to find either the plaintiff or the suit property, which is official accommodation in the Staff Colony of Jinnah Post-Graduate Medical Center (“JPMC”). On 05.11.2018 reissuance of notice was ordered and the following direction was issued:

“Be that as it may, as a final indulgence, office is directed to issue notice to the plaintiff through the first three modes and the office is also directed to ensure that a copy of the said notice is pasted at

Quarter No.7, Barrack No.1, Staff Colony of JPMC Karachi. The Head Bailiff is directed to ensure that compliance of this order takes place and the same is demonstrated from the Report to be filed by the Bailiff’.

Today no bailiff report with respect to the order dated 05.11.2018 was available on the record. Upon summoning the concerned staff from the Bailiff Branch a bailiff report dated 12.11.2018, which is today, was placed before this Court and once again it was stated that the bailiff was unable to locate the property which is subject matter of the suit, hence, the pasting did not take place. It is noted with much concern that official accommodation located within JPMC, particulars whereof were expressly delineated in the order dated 05.11.2018, could not be located by the relevant Bailiff. The lack of supervision in this regard by the Head Bailiff, despite the Orders dated 05-11-2018, is also observed with concern. Therefore, office is directed to issue show cause notices to Head Bailiff as well as Haroon Khan, Bailiff respectively.

The matter is adjourned to 19.11.2018, for framing of issues, when it shall be taken up at 11 am. Office is directed to issue notice to the plaintiff through the first three modes and the office is also directed to ensure that a copy of the said notice is pasted at Quarter No.7, Barrack No.1, Staff Colony of JPMC Karachi.

Judge