



agreement with sale consideration of Rs.21,00,000/- and paid Rs.20,00,000/- in advance but respondent No.2 failed to perform his part of contract rather he preferred a suit of specific performance, same was dismissed for want of evidence hence he preferred appeal that is also dismissed, resultantly he has filed Revision Application which is pending. It is further contended that order whereby property is sealed is illegal as there was no breach of peace or its immediate apprehension and admittedly there was no case of section 107 Cr.P.C. as well stay order was passed in civil suit. He has relied upon 1990 SCMR 1309.

3. Whereas learned counsel for respondent No.2 contends that Shop No.25 is owned by respondent No.2, applicant was partner of respondent No.2 and they were running business together, sale agreement is managed and false and on two forums applicant has lost his civil case and it would be in the interest of justice to hand over possession of Shop No.25 to the respondent No.2.

4. Admittedly, shop No.24 is owned by the applicant and shop No.25 is owned by the respondent No.2. The applicant is claiming that respondent No.2 was not partner but was an employee of the applicant whereas respondent No.2 is claiming himself to be partner of the applicant. Such *like* dispute (s) or *claim* (s) are not to be entertained and decided within meaning of Section 145 of the *Code* but, being *civil disputes*, are to be determined by the *competent* Civil Court (s). The *only* purpose and object of the provision of Section 145 of the *Code* is to prevent a *breach of peace* as well to maintain *status-quo* whereby enabling parties to have their respective *claims / disputes* determined by competent *Civil* Court. Reference may well be

made to the case of Chaudhary Munir v. Surriya & Ors (PLD 2007 SC 189) wherein it is observed as:-

“There can be no cavil with the proposition that the *prime* object of the proceedings under section 145 of the *Code* is to prevent a breach of peace and to maintain status quo till the controversy is decided by the civil Court of competent jurisdiction. The purpose of proceedings under section 145 Cr.PC is to meet an emergent situation in order to maintain peace and further to enable the parties to set the controversy at naught through civil court qua the title or claim of the property in dispute. It is mandatory requirement of section 145 Cr.PC, that there must not only a dispute but it is essential that a dispute is likely to cause breach of peace (*Fazal Haq v. Muhammad Latif* PLD 1985 SC 294), and in case the dispossession of property is not coupled with apprehension of breach of peace then the parties concerned should approach the civil court for the redressal of their grievance.”

In the instant matter, it is evident that at two courts of civil jurisdiction applicant has lost his case whereas Revision Application is pending (per counsel). The determination of question of *actul possession*, if any, being *summary* in nature must be completed within a *shortest* possible time (Section 145(4) of *Code*) which *however* was not claimed, so is evident from order under *challenge*. In a situation where the dispossession is not claimed couple with an *apprehension* of immediate breach of peace, the proper course is to approach the *civil court* and since there can be no denial to another well settled legal position that any such order would always be subordinate to order of competent *civil court* hence where parties have approached to *competent* Civil Court then it is always better to let the competent *civil court* to have the *status-quo* maintained, if required.

*Prima facie*, it is not claimed by either sides that during such period there had been any *untoward* incident hence *prima facie* the dispute, if any, was of *civil nature*. In such like situation, it has never been the requirement of law that property (*a place of business, in particular*) should be kept attached / sealed for an *indefinite* period. Further, title in respect of respective shops is not disputed by the parties therefore, it would not be in the interest of justice to keep both shops sealed for an indefinite period on *mere* apprehension of breach of peace when undisputedly there had not been any *untoward* incident during such period. It may well be added that keeping such like property (shops) *prima facie* amounts to prejudice legal right of business to earn the livelihood for their families. Since, the *legal* termination of *launched* civil litigation will also be an *answer* to **actual possession** therefore, applicant and respondent are entitled to have possession of their respective **titled** properties because it is settled principle of law that sale agreement is not a *legal* title but a right to seek enforcement thereof from competent court of law. Since status of *both* shops to be *independent* is not disputed hence by raising the wall between them would allow respective parties to continue with their businesses in accordance with law. However chattels available in shop No.25 shall be removed and to be handed over to the applicant except refrigerator. Respondent No.2 is ready to bear the expenses for the wall to be erected between the two shops.

5. Accordingly impugned order is set aside. Learned Magistrate concerned shall supervise this proceeding and ensure that this order is complied with. He would be competent to direct concerned police in case of apprehension of breach of peace and even

*otherwise* the course, provided by Section 107 of *Code* would always be available, if so found necessary by quarter concerned.

This Criminal Miscellaneous Application is disposed of in above terms.

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**J U D G E**