

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-2775 of 2017

Date	Order with signature of Judge
------	-------------------------------

31st January 2020.

Mr. Muhammad Anwar Shahid, advocate for the Petitioner.
Mr. Ashfaq Rafique Janjua, advocate for respondent No.1.

Through the instant petition, the petitioner has challenged the impugned judgment dated 19.12.2017 passed in FRA No. 76/2017, whereby the learned Additional District Judge-VIII, Karachi West while allowing the said FRA dismissed the Rent Case No.39 of 2015, which was allowed by the learned III-Rent Controller, Karachi West vide judgment dated 26.07.2017. Hence this petition.

2. Heard learned counsel for the petitioner.
3. It would be conducive to refer last paragraph of the impugned judgment which is mentioned at page 51 of the file:-

“In other words, we can say that after 2005 when allotment of respondent was cancelled an independent right as of a direct tenant arose in favour of appellant and the only chance respondent would have to file this ejection application, was prior to expiry of his lease. From 2005 appellant had not treated the respondent No.1 as his landlord and rightly so because he was directly issued a license and he was also paid rent to the KPT. Although there is no document in favor of the appellant in shape of license or lease after expiry of one year in 2006, but since he had remained in possession since 1989 till date he had also right to claim license or lease till he had been rejected or ejected by the KPT. It is fact that till date no proceedings are started against him and his application of extension or renewal of lease is still pending decision before KPT authorities. Had it not been the case, then there was no reason why KPT would have agreed to consider the case of appellant for lease purposes and Honourable Supreme Court would have also directed for the same consideration along with case of respondent No.1 vide its order dated 19.10.2017. Although, learned counsel for the respondent No.1 have argued in such a fashion to give impression that in future he will be granted lease, but I am afraid, the order of Honorable Supreme Court does not give any special treatment to the respondent No.1 and had

directed the competent authority to consider cases of both parties for deciding question of lease and it is possible that anyone can get lease or both of them may fail. So no order can be passed in expectation of any future order. As of today, it is admitted fact that when this rent case is filed, there was no lease in favor of the respondent No.1 coupled with the fact that even during substance of the lease till June 2014, the respondent No.1 has not filed any ejectment application, therefore, I am of the view that there is no relationship of landlord and tenant between the parties. How come respondent claims rent from May 2005 when the rent is continuously being received by the owner of the property/KPT and if respondent had any claim to such rent, he can file suit against KPT for recovery of the same.”

4. Admittedly, there is no proof with regard to payment by the respondent; claim of the landlord (petitioner) is that due to his default in payment of rent with KPT, license of the demised premises was granted in favour of respondent, however such license was not renewed and respondent is in illegal occupation. Rent Controller recorded findings that tenant is defaulter and there is relationship between the petitioner and respondent as a tenant and landlord but appellate court reversed the findings. Perusal of findings and arguments as raised by the counsel admittedly there is no proof at all regarding relationship of tenant and landlord in the shape of tenancy agreement or rent receipt in any way. Whereas, there is admission on the part of the KPT and landlord (petitioner) that respondent No.1 is licensee. Accordingly, findings of the appellate Court are in accordance with law. However, in rent proceedings declaration with regard to title is unwarranted and only relationship is to be decided, whereas petitioner has failed to submit any proof that respondent No.1 was tenant, thus captioned petition is dismissed. Petitioner would be competent to approach the civil Court with regard to his declaration and possession in accordance with law and findings recorded by the appellate court with regard to title or competence of lease by the KPT will not come in the way of petitioner.

J U D G E