

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
FRA No. 17 of 2020

Date	Order with signature of Judge
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1. For orders on CMA No. 2300 of 2020.
2. For hearing of main case.

16th December 2020.

Mr. Muhammad Ali Soomro, advocate for appellant.
Khawaja Shamsul Islam, advocate for respondent No.1.

Heard learned counsel for appellant at length.

At the outset, learned counsel for the appellant (tenant) has taken plea that eviction application was not filed competently as resolution filed is not reflecting mandate to file eviction application; appellant is being tenant is paying rent regularly, hence, no default was committed; eviction application filed at belated stage, hence, same was hit by Article 110 of limitation Act. Further, he contends that though appellant was tenant but he entered into sale agreement with the landlord (respondent) in 2002, hence, he has become owner of the property, as earnest money was paid through cash.

2. It needs not be reiterated that in rent matter (s), the plea of *purchasing* the premises, is not of any help for a *tenant* to avoid legal consequences of the rent law. A tenant, if subsequently, takes a plea of *purchaser* etc. would always be required to put the landlord into possession and then to *proceed* for enforcement of his rights which he claims to have arisen from subsequent document of sell etc. Reference may be made to *Abdul Rasheed v. Maqbool Ahmed & others* 2011 SCMR 320 wherein it is held as:-

5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.

In the present case, the sale agreement is also disputed by the respondent, hence, in order to enforce his right of ownership, the appellant

has to vacate the property and pursue the remedy of specific performance. Accordingly, instant FRA being not maintainable is dismissed. However, appellant shall vacate the property within two months.

J U D G E

SAJID