

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.14 of 2022

Date

Order with signature of Judge

Before:

Aqeel Ahmed Abbasi, J
Abdul Mobeen Lakho, J

Hearing / Priority Case:

1. For orders on CMA No.713/22
2. For order on office objection
3. For hearing of main case.
4. For hearing of CMA No.60/22

23.05. 2022

Mr. Ashraf Yar Khan, advocate for appellant.

Mr. Shajee Siddiqui, Advocate for respondent.

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O R D E R

Through instant High Court Appeal, the appellant being aggrieved by the impugned order dated 14.12.2021, passed by the learned Single Judge in Suit No.2452/2021 along with J.M. No.11/2011, J.M. No.12/2021 and J.M. No.27/2021 to the extent whereby, the J.M. No.27/2021 has been dismissed and Nazir has been directed to take over possession of the subject tenement in possession of the appellant.

2. Mr. Ashraf Yar Khan, learned counsel for the appellant submits that through impugned order while deciding the fate of other J.M.No.11 & 12 of 2021 relating to other property i.e. Petrol Pump, the J.M.No.27 of 2021 filed by the appellant in respect of different tenement, has also been dismissed, which has adversely effected the right and entitlement of the appellant, who is admittedly, tenant/licensee of the respondent in respect of land admeasuring 135 Sq. Yards, which is adjacent to the land on which the petrol pump is constructed, and was not even subject matter of dispute between the parties in Suit No. 2452 of 2017, wherein, which the impugned

order has been passed. According to learned counsel, a separate High Court Appeal No.343 of 2021 has been filed against the same impugned order by the appellant in respect of different premises on which Petrol Pump has been constructed. According to learned counsel for the appellant, pursuant to orders passed in the aforesaid suit and the connected J.Ms the Nazir of the Court has also sealed the premises of the appellant alongwith the Petrol Pump, inspite of the fact that the claim of the appellant holding possession of land admeasuring 135 sq. yards as a tenant of respondent is duly acknowledged by the respondent in para No.24 of the plaint of Suit No.2452 of 2017 which is reproduced hereunder for reference:-

“24. That the defendant No.1 is not only occupying the Petrol Pump site of plaintiff admeasuring 650 sq. yards, but occupying an additional portion of the same land about 135 Sq.Yards (which was leased out to one Mr. Abdul Sattar Khan vide agreement dated 01.12.1993), and is annexed it to the petrol pump, which is also occupied by the Defendant No.1, and this fact is evident from the Evaluation report of Iqbal A. Nanjee & Co. dated 03.06.2015.

3. Learned counsel for the appellant submits that though the subject property has been subsequently de-sealed by the orders of the Court, however, submits that the appellant will be satisfied and will not press instant High Court Appeal provided the respondent may be directed not to take any adverse action against the appellant pursuant to impugned order or the proceedings in the Suit No.2452/2021 in respect of Petrol Pump admeasuring 650 Sq. Yards, as the property/tenement in possession of the appellant is different and not subject matter of above suit.

4. While confronted with hereinabove submissions of the learned counsel for the appellant, learned counsel for the respondent submits that the subject property of the appellant was not sealed pursuant to court's

order, which is still in possession of the appellant, therefore, instant high Court appeal is misconceived and not maintainable. It has been, however, contended that instant High Court Appeal may be disposed of in the aforesaid terms as argued by the learned counsel for the appellant, however, such disposal of instant High Court Appeal in the above terms shall be without prejudice to the right, interest or the claim of the respondent in respect of the subject property, which is being claimed by the appellant as a tenant/licensee.

Accordingly, instant High Court Appeal No.14 of 2022 is disposed of in the aforesaid terms alongwith listed applications.

J U D G E

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Imran/Nadeem
