

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**

C.P. No.S-902 of 2019  
C.P. No.S-1237 of 2019

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Dated:            Order with signature of Judge(s)

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**C.P. No. S-902 of 2019**

1. For hearing of Office Objection
2. For hearing of CMA No. 3955 of 2019
3. For hearing of Main Case

Date of Hearing                    :        31 May 2023

Petitioner                            :        Alay Javed Zaidi through Mr. Ishrat Ghazali, Advocate

Respondents No.1                :        Habibullah through Iftikhar Javaid Qazi, Advocate

Respondent No. 2                 :        Nemo

Respondent No. 3                 :        Nemo

Respondent No. 4                 :        IVth Additional District Judge Karachi (East) through Imran Ahmed Abro, Assistant Advocate General

Respondent No. 5                 :        Vth Rent Controller Karachi (East) through Imran Ahmed Abro, Assistant Advocate General

**C.P. No. S-1237 of 2019**

1. For orders on Office Objection
2. For hearing of MA No.5893 of 2019
3. For hearing of Main Case.

Date of Hearing                    :        31 May 2023

Petitioner                            :        Ahmed Karim Soomro through Mr. Ishrat Ghazali, Advocate

Respondents No.1                :        Habibullah through Iftikhar Javaid Qazi, Advocate

Respondent No. 2                 :        IXth Additional District Judge Karachi (East) through Imran Ahmed Abro, Assistant Advocate General

Respondent No. 5 : Vth Rent Controller Karachi (East)  
through Imran Ahmed Abro, Assistant  
Advocate General

### **J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN, J.** These two Petitions have been maintained by the Petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as under:

- (i) CP No. S-902 of 2019 has been maintained as against a Judgement dated 24 July 2019 passed by the IVth Additional District Judge Karachi (East) in FRA No. 48 of 2019 that upheld an Order dated 25 February 2019 passed by the Vth Rent Controller Karachi (East) in Execution Application No. 21 of 2018 emanating from Rent Case No. 199 of 2017 on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 and
- (ii) CP No. S-1237 of 2019 has been maintained against an Order dated 30 October 2019 passed by the IXth Additional District Judge Karachi (East) in FRA No. 44 of 2019 that upheld an Order dated 23 January 2019 passed by the Vth Rent Controller Karachi (East) in Execution Application No. 37 of 2018 emanating from Rent Case No. 469 of 2017 on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908.

**A. CP No. S-902 of 2019**

2. Mr. Habibullah had maintained an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 as against a Mr. Nadeem and

a Mr. Alay Javed Zaidi, in his capacity as the landlord of the Ground Floor of Plots No.943-C, 944-C & 945-C, Block No.2, Pakistan Employees Cooperative Housing Society Karachi admeasuring 315 square yards (hereinafter referred to as the 'First Said Tenement').

3. The First Said Tenement was stated to have been let to Mr. Nadeem by the original owner Mst. Rubina Rahim alias Waltraut Rahim and which it has been stated had been sold by a Sale Deed dated 23 September 2016 to Mr. Habibullah. Mr. Habibullah had, after acquiring the First Said Tenement on 2 November 2016, sent a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to Mr. Nadeem informing him of the change of ownership of the First Said Tenement and directed Mr. Nadeem to pay rent to him from the month of October 2016 by the 5<sup>th</sup> day of every month.

4. As Mr. Nadeem did not comply with the notice dated 2 November 2016, Mr. Habibullah had instituted Rent Case No. 199 of 2017 before the the Vth Rent Controller Karachi (East) against Mr. Nadeem and Mr. Alay Javed Zaidi arguing that they had defaulted on their obligation to pay rent to Mr. Habibullah making them liable to being evicted from the First Said Tenement under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. In addition, it was stated that Mr. Habibullah wished to establish a business of a Car Showroom in the First Said Tenement and as such required the First Said Tenement for his personal use in good faith and also called for the ejectment of Mr. Nadeem and Mr. Alay Javed Zaidi under Clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

5. It seems that despite notices having been issued, the matter proceeded ex-parte before the Vth Rent Controller Karachi (East) in Rent

Case No. 199 of 2017 and whereby an order dated 27 September 2017 the Vth Rent Controller Karachi (East) in Rent Case No. 199 of 2017 was pleased to direct for the eviction of Mr. Nadeem and Mr. Alay Javed Zaidi from the First Said Tenement. Thereafter Execution Application No. 21 of 2018 was instituted by Mr. Habibullah before the Vth Rent Controller Karachi (East) and in which Mr. Alay Javed Zaidi maintained an application under Sub-section (2) of Section 12 of the Code of Civil Procedure, 1908 on the basis that:

- (i) a relationship of landlord and tenant as between Mr. Habibullah and Mr. Nadeed or as between the Mr. Habibullah and Mr. Alay Javed Zaidi did not exist.
- (ii) rent was being deposited by Mr. Alay Javed Zaidi in MRC No. 39 of 2017 before the Vth Rent Controller Karachi (East) and therefore no question of him having defaulted on his obligation to pay rent under Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 could arise.

6. The application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 was heard by the Vth Rent Controller Karachi (East) and who by an order dated 25 February 2019 was pleased to dismiss the application stating that Mr. Alay Javed Zaidi had been correctly served and therefore the allegation that notice had not been properly served on the Petitioner could not be considered as a basis for maintaining an application under Sub-section (2) of Section 12 of the Code of Civil Procedure, 1908 in rent case No. 199 of 2017.

7. Mr. Alay Javed Zaidi thereafter maintained FRA No. 48 of 2019 before the IVth Additional District Judge Karachi (East) and who by a

Judgement dated 24 July 2019 was pleased to dismiss the subject appeal stating that no ground of fraud and misrepresentation had been made out in the application that has been filed by Mr. Alay Javed Zaidi under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 in Execution No. 21 of 2018 emanating from Rent Case No. 199 of 2017.

**B. C.P. No. S-1237 of 2019**

8. Mr. Habibullah had also maintained an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 bearing Rent Case No. 469 of 2017, stating that he had purchased a flat located on the second floor of Plot No.493-C, Block No.2, Pakistan Employees Cooperative Housing Society Limited, Karachi, (the 'Second Said Tenement') from Mst. Rubina Rahim alias Waltraut Rahim by a Sale Deed dated 23 September 2016. He stated that thereafter he had served a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to Mr. Ahmed Karim Soomro stating that from the month of October 2016 the rent for the Second Said Tenement should be paid to him. He stated that Ahmed Karim Soomro failed to pay rent to him and which had compelled him to maintain Rent Case No. 469 of 2017 before the Vth Rent Controller Karachi (East) claiming that Mr. Ahmed Karim Soomro has defaulted on his obligation to pay rent and rendering him liable to being evicted under Clause (ii) of Sub-Section 2 of Section 15 of the Sindh Rented Premises Ordinance, 1979 and that he required the Second Said Tenement for his personal use.

9. Rent Case No. 469 of 2017 proceeded ex-parte before the Vth Rent Controller Karachi (East) and who was pleased to pass a Judgement dated 28 April 2018 directing for the eviction of Mr. Ahmed Karim Soomro from the Second Said Tenement. Mr. Habibullah thereafter maintained

Execution Application No. 37 of 2018 and in which Mr. Ahmed Karim Soomro maintained an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 seeking to set aside the ex-parte decree alleging that:

- (i) there existed no relationship of landlord and tenant as between Mr. Habibullah and Mr. Ahmed Karim Soomro;
- (ii) Mr. Habibullah had maintained a Rent Case No. 470 of 2019 against Mr. Ahmed Karim Soomro and in which the matter was being contested on merits, and as such it was clear that there had been a fraud perpetuated in respect of the service of summons on Mr. Ahmed Karim Soomro as it cannot be that he would not contest Rent Case No. 469 of 2017 while contesting Rent Case No. 470 of 2019 before the same Court.

10. The application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 was heard by the Vth Rent Controller Karachi (East) and who by an order dated 23 January 2019 was pleased to dismiss the application stating that Mr. Ahmed Karim Soomro had been correctly served and therefore the allegation that notice had not been served properly on Mr. Ahmed Karim Soomro could not be considered as a basis for maintaining an application under Sub-section (2) of Section 12 of the Code of Civil Procedure, 1908.

11. Mr. Ahmed Karim Soomro thereafter had maintained FRA No. 44 of 2019 before the IXth Additional District Judge Karachi (East) and who by Judgement dated 30 October 2019 was pleased to dismiss the subject appeal stating that no ground of fraud or misrepresentation had been made out in the application that has been filed by Mr. Ahmed Karim Soomro under

Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 in Execution No. 37 of 2018 emanating from Rent Case No. 469 of 2017.

**C. The Arguments in C.P. No.S-902 of 2019 and C.P. No.S-1237 of 2019**

12. Being aggrieved and dis-satisfied by the Judgement dated 24 July 2019 passed by the IVth Additional District Judge Karachi (East) in FRA No. 48 of 2019 up-holding the order dated 25 February 2019 passed by the Vth Rent Controller Karachi (East) in Execution No. 21 of 2018 emanating from Rent Case No. 199 of 2017 and also being aggrieved and dis-satisfied by the Order dated 30 October 2019 passed by the IXth Additional District Judge Karachi (East) in FRA No. 44 of 2019 that upheld an Order dated 23 January 2019 passed by the Vth Rent Controller Karachi (East) in Execution Application No. 37 of 2018 emanating from Rent Case No. 469 of 2017, Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro have respectively maintained C.P. No.S-902 of 2019 and C.P. No.S-1237 of 2019 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Mr. Ishrat Ghazali appeared for both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro and has contended that:

- (i) Mr. Habibullah had maintained two rent cases as against Mr. Nadeem and Mr. Alay Javed Zaidi and also as against Mr. Ahmed Karim Soomro. He contends that Rent Case No. 182 of 2017 and Rent Case No. 470 of 2019 had each been maintained by Mr. Habibullah under Section 8 of the Sindh Rented Premises Ordinance, 1979 before the Vth Rent Controller Karachi (East) and in which Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro had appeared and duly contested those applications. He thereafter stated that Rent Case No. 199 of 2017 and Rent Case No. 469 of 2017 were instituted before the same Court and in which notices were purportedly issued and in which Mr. Alay Javed Zaidi and

Mr. Ahmed Karim Soomro were each declared ex-parte. He further stated that despite the fact that the Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro was actively pursuing Rent Case No. 182 of 2017 and Rent Case No. 470 of 2019 before the Vth Rent Controller Karachi (East), the same Court made no efforts to inform either Mr. Alay Javed Zaidi or Mr. Ahmed Karim Soomro or for that matter the counsel for Mr. Alay Javed Zaidi or Mr. Ahmed Karim Soomro as to the fact that Rent Case No. 199 of 2017 and Rent Case No. 469 of 2017 were proceeding ex-parte as against each of them. He states that this tantamount to judicial dishonestly and relied on the decision reported as **Major Retd. Ahsan ul Haque vs. Muhammad Ejaz**<sup>1</sup> to state that the remedies of enhancement of rent and ejection of a tenant could be sought independently one of the other.

- (ii) He further contended that he had challenged the Sale Deed dated 23 September 2016 in Suit No. -206 of 2019 before this Court and in which he had alleged that the basis of which Mst. Rubina Rahim alias Waltraut Rahim claims to be the owner i.e. having inherited the First Said Tenement from husband cannot be sustained as she was non-Mulsim. In this regard he relied on the decision of the Supreme Court of Pakistan reported as **Muhammad Lehrasab Khan vs. Mst. Aqeel-un-Nisa**<sup>2</sup> in which it was stated that this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 had the jurisdiction to re-examine evidence recorded before the trial court if it was found that there was jurisdictional defects in the form of the misappreciation of the evidence by that court. He also relied on the decision reported as **Babu Din vs. Civil Judge/Rent Controller, Multan**<sup>3</sup> in which it was held that where the

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<sup>1</sup> 2011 SCMR 487

<sup>2</sup> 2001 SCMR 338

<sup>3</sup> 2006 CLC 926



relationship of a landlord and tenant had not been established a rent case could not be maintained. Furthering this argument, he contended that in the decision reported as **Sh. Muhammad Siddiq vs. Khurram Gulraiz**<sup>4</sup> it was held that where a tenant had become a co sharer in the property the relationship of landlord and tenant ended and rent proceedings would no longer be maintainable as against the tenant;

- (iii) He submitted that the original owner of the Said Property was a Dr. Rahim who was a Muslim, while his wife Mst. Rubina Rahim alias Waltraut Rahim was a non Muslim and could not have inherited either the First Said Tenement or the Second Said Tenement from Dr. Rahim and as such the capacity of Mst. Rubina Rahim alias Waltraut Rahim to sell the First Said Tenement or the Second Said Tenement was in dispute. He maintained that Suit No. (-206) of 2019 had been instituted before this Court and was pending and until this issue was decided the Rent Controller lacked the jurisdiction to entertain a Rent Case as clearly the relationship as between Mr. Habibullah and Mr. Alay Javed Zaidi or Mr. Ahmed Karim Soomro could not have been established and relied on the decision reported as **Mian Ikram ul Haque vs. Dr. Shahdia Hasnain**<sup>5</sup> in support of his contention.
- (iv) He concluded his arguments by stating that both the Courts had incorrectly decided the application under Subsection (2) of Section 12 of the Code of Civil Procedure, 1908 and which orders were liable to be set aside and the matter to proceed on evidence.

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<sup>4</sup> 1998 MLD 624

<sup>5</sup> 2016 SCMR 2186.

13. Mr. Ifrikhar Javed Qazi, Advocate appeared on behalf of Mr. Habibullah and contended that notices under Section 18 of the Sindh Rented Premises Ordinance, 1979 had been duly served on Mr. Nadeem and thereafter the notice of Rent Case No. 199 of 2017 and Rent Case No. 469 of 2017 had also been duly served on Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro and no fault can be attributed either to Mr. Habibullah or on the Vth Rent Controller Karachi (East) for not having directly informed the counsel of Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro of the pendency of Rent Case No. 199 of 2017 and Rent case No. 469 of 2017 during the hearing of proceedings in Rent Case No. 182 of 2017 and Rent Case No. 470 of 2019 and that there remained no basis to maintain either CP No. S-902 of 2019 or CP No. S-1237 of 2019 and which should be dismissed. He relied on the decision reported as **Zulfiqar Ali Sajid vs. Khawaja Kaleem Yousaf**<sup>6</sup> to state that where there had been improper service on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 would be maintainable. He has clarified that notice had been properly served and as such there was no question of any fraud or misrepresentation having been committed. Relying on the decisions reported as **Mst. Ulme Kalsoom vs. Zahid Bashir,**<sup>7</sup> **Amiran Bibi vs. Muhammad Ramzan,**<sup>8</sup> and **Mrs. Amina Bibi vs. Nasrullah**<sup>9</sup> he clarified that where there was no question of either a fraud or a misrepresentation having been committed, a court need not frame issues for recording of evidence on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908.

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<sup>6</sup> 2006 SCMR 1960

<sup>7</sup> 1999 SCMR 1696

<sup>8</sup> 1999 SCMR 1334

<sup>9</sup> 2000 SCMR 296

**D. The Opinion of the Court on CP No. S-902 of 2019 or CP No. S-1237 of 2019**

14. I have heard the Counsel for Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro and the Counsel for Mr. Habibullah and have perused the record. It is apparent that there are in essence two main contentions that have been maintained by Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro in these Petitions:

- (i) that there is no relationship as of a landlord and tenant as between themselves and Mr. Habibullah as the capacity of Mst. Rubina Rahim alias Waltraut Rahim to sell the First Said Tenement and the Second Said Tenement to Mr. Habibullah was contentious as being a non-Muslim, she could not have inherited to the estate of her husband and which entitlement has been impugned in Suit No. (-206) of 2019; and
- (ii) that as Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro had not been properly served notice of Rent Case No. 199 of 2017 and Rent Case No. 469 of 2017, the ex-parte decree as passed against each of them in those cases should be set aside.

15. It is apparent that a challenge has been made to the status of Mr. Habibullah as the owner of the First Said Tenement and the Second Said Tenement on the ground that his predecessor in interest had no right, title or interest to either the First Said Tenement and the Second Said Tenement. It is however also noted that it is not contended by either Mr. Alay Javed Zaidi or by Mr. Ahmed Karim Soomro that the predecessor in interest of Mr. Habibullah i.e., Mst. Rubina Rahim alias Waltraut Rahim was not their landlady. In fact, MRC No. 39 of 2017 was instituted in the court of

the Vth Rent Controller Karachi (South) by Mr. Alay Javed Zaidi as against Mst. Rubina Rahim alias Waltraut Rahim and in which it had been admitted that Mr. Alay Javed Zaidi that he was tendering rent to the Mst. Rubina Rahim alias Waltraut Rahim. Similarly, Mr. Ahmed Karim Soomro has also in CP No. S-1237 of 2019 conceded that Mst. Rubina Rahim alias Waltraut Rahim was in fact his landlady and that he had been tendering rent to her. The obligation of a tenant to pay the rent to the landlord when the tenement is transferred or inherited during the subsistence of the tenancy are regulated by Section 18 of the Sindh Rented Premises Ordinance, 1979 and which clarifies that:

“ ... *Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of sub-section (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.*

As can be seen where the tenement is transferred or inherited during the subsistence of a tenancy, the tenant is absolved from his liability to pay the rent to the new owner of the tenement until he receives a notice informing the tenant of the change in ownership. The Supreme Court of Pakistan in the decision reported as **Shehzan Limited vs. Abdul Ghaffar**<sup>10</sup> has clarified the object of the Section by holding that:<sup>11</sup>

“ ... *20. The object of above section 18 of the Ordinance seems to provide protection to a tenant against the ground of default if he is unable to pay rent because of any change in the ownership of the rented premises on account of sale, gift, inheritance or by any other recognized mode of transfer. It is not uncommon that formalities to complete transfer of ownership in respect of an immovable property takes quite long period and sometime nobody accepts rent from the tenant during the inter-regnum till the completion of formalities. So above section makes it mandatory on the part of the new owner to serve a notice under registered post upon his tenant and if the latter, upon the receipt of such notice, pays rent due within thirty days from the date when the intimation should, in normal course, have reached the tenant he shall not be deemed to have defaulted. Since it is a beneficial provision, designed and intended for the benefit of tenants, it is to be construed liberally so that it may suppress the mischief aimed at, and may advance remedy. I am, therefore, of the view that a notice in terms of above section is mandatory even when a transfer of ownership pertains to a partial interest. I may also observe that if a new owner of a premises fails to serve*

<sup>10</sup> 1992 SCMR 2400

<sup>11</sup> *Ibid* at pgs.2418-2419

*above notice on his tenant and if the latter, without having knowledge of the transfer of ownership continues to pay rent to his previous landlord, he shall not be liable to pay rent to the new owner for the period, for which the tenant might have paid rent to the previous owner."*

As has been clarified by the Supreme Court of Pakistan, the purpose of this Section is to ensure that a tenant is not entrapped into defaulting on his obligation to pay rent to a landlord on account of a change in the ownership of a tenement. It is therefore mandatory on the part of the landlord to issue such a notice to the tenant so as to inform the tenant of his obligation to pay the rent to the new landlord.

16. That being said, under the provisions of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 it is a statutory obligation of every tenant to pay rent to the landlord failing which the tenant is liable to being evicted from the Said Tenement. Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 reads as under:

" ... (ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

*provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application"*

17. It is not the contention of either Mr. Alay Javed Zaidi nor the contention of Mr. Ahmed Karim Soomro that they did not receive the notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 much to the contrary in each of the Petitions it has been specifically contended that they did in fact receive such a notice. That being the case, Mr. Habibullah would have been entitled to receive rent from both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro within 30 days of the receipt of that notice and

that the rent having not been paid, it is apparent that the both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro having received the notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 are in default of their obligation to pay rent to Mr. Habibullah. It seems that having been established, both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro have attempted to challenge the title held by Mr. Habibullah to the First Said Tenement and the Second Said Tenement alleging that he had not acquired proper title to the Said First Tenement and the Second Said Tenement and so as to challenge the right of the Mr. Habibullah to institute Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017. I am of clear that this argument is not sustainable. Having admitted that Mst. Rubina Rahim alias Waltraut Rahim was their landlady and admittedly Mr. Habibullah having acquired his title to both the First Said Tenement and the Second Said Tenement through Mst. Rubina Rahim alias Waltraut Rahim, I am of the opinion that in fact both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro are estopped from raising such a plea. The Supreme Court of Pakistan in the decision reported as **Muhammad Iqbal Haider vs. Vth Rent Controller/Senior Civil Judge Karachi Central And others**<sup>12</sup> has held that:

“ ... *Once the petitioner was prima facie, shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suits for specific performance and for cancellation of sale-deed. Article 115 of the Qanun e Shahdat Order, 1984 lays down that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that his landlord had a title of such property.*

Clearly having been introduced into the Said First Tenement and the Second Said Tenement by Mst. Rubina Rahim alias Waltraut Rahim and who has admittedly sold the Said First Tenement and the Second Said Tenement to Mr. Habibullah, both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro on receipt of the notice under Section 18 of the Sindh Rented

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<sup>12</sup> 2009 SCMR 1396

Premises Ordinance, 1979 are estopped from denying the title of Mr. Habibullah to the Said First Tenement and the Second Said Tenement or from relying on the pendency of Suit No. (-206) of 2019 to deny the relationship of landlord and tenant. I am therefore of the opinion that on the receipt of the notice under Section 18 of the Sindh Rented Premises Ordinance, 1979, the relationship of landlord and tenant had been established as between both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro and Mr. Habibullah in respect of the Said First Tenement and the Second Said Tenement respectively and that the Vth Rent Controller Karachi (South) was well within his jurisdiction to entertain both Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017.

18. It is left to be considered as to whether the service of the notice of Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017 had been properly affected on Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro. I have examined the record of the Vth Rent Controller Karachi South and clearly in both Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017, the Vth Rent Controller Karachi South had followed the correct procedure for affecting service of notice of Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017 on Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro and there is no evidence whatsoever that either the address of either Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro was misstated by Mr. Habibullah. The contention of the counsel for Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro that as they were actively contesting Rent Case No. 182 of 2017 and Rent case No. 470 of 2019 before the Vth Rent Controller Karachi (South) it was incumbent on the Vth Rent Controller Karachi (South) to have informed both Mr. Alay Javed Zaidi and Mr. Ahmed Karim Soomro of the pendency of Rent Case No. 119 of 2017 and Rent Case No. 469 of 2017 is misplaced. Firstly, it is clearly not within the scope of the procedure for affecting notice under Section 19 of the Sindh Rented

Premises Ordinance, 1979 and secondly such an initiative by the the Vth Rent Controller Karachi (South) would clearly have subjected that Court to an allegation of bias and which the Vth Rent Controller Karachi (South) correctly avoided. To my mind each of the Applications under Sub-Seciton (2) of Section 12 of the Code of Civil Procedure, 1908 were correctly decided by the Vth Rent Controller Karachi (South) in Execution Application No. 21 of 2018 emanating from Rent Case No. 119 of 2017 and Execution Application No. 37 of 2018 emanating from Rent Case No. 469 of 2017 were correctly decided.

19. For the foregoing reasons I find no illegality or infirmity in either the Judgement dated 24 July 2019 passed by the IVth Additional District Judge Karachi (East) in FRA No. 48 of 2019 that upheld an Order dated 25 February 2019 passed by the Vth Rent Controller Karachi (East) in Execution Application No. 21 of 2018 emanating from Rent Case No. 199 of 2017 on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 or in the Order dated 30 October 2019 passed by the IXth Additional District Judge Karachi (East) in FRA No. 44 of 2019 that upheld an Order dated 23 January 2019 passed by the Vth Rent Controller Karachi (East) in Execution Application No. 37 of 2018 emanating from Rent Case No. 469 of 2017 on an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908. Both CP. No. S-902 of 2019 and CP No. 1237 of 2019 were misconceived and are dismissed, along with all listed applications, with no order as to costs.

JUDGE

Karachi dated 30 August 2023.

Nasir P.S.