

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 First Appeal No. 34 of 2020
 (Muhammad Hanif Versus M/s. B.R.R. Guardian Modarba and others)

Dated	Order with signature of Judge
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Present:
 Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing/priority

1. For hearing of CMA No. 931/2021 (U/O 22 R 4 C.P.C.)
2. For Order on office objection a/alongwith reply as at A
3. For order on CMA No. 1105/2020 (Limitation)
4. For order on CMA No. 1316/2020 (Exemption)
5. For order on CMA No. 1317/2020 (O 39 R 4)
6. For hearing of Main Case
7. For hearing of CMA No. 1107/2020 (stay)

Dated 06.03.2024

Syed Fazal-ur-Rehman, Advocate for the Appellant

M/s. Shahab Sarki and Abid Hussain Advocates for the Respondent
 No1

Syed Muhammad Kazim Advocate for the Respondent No.5

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Muhammad Shafi Siddiqui, J.- This appeal impugns an Order dated 06.04.2020, whereby, an application of the occupant claimed himself to be a tenant was dismissed.

2. It is Appellant's case that he was/is in occupation of a ground floor being a tenant, which is described as a shop. He claimed to have acquired the tenancy rights by virtue of an agreement called "Pagri Agreement", which purportedly executed on 15.10.2004. An application under Order XXI Rules 36 and 96 C.P.C. read with Section 151 C.P.C., as filed by the Appellant, was taken into consideration and a comprehensive impugned order was passed after discussing all facts and law.

3. We have heard the learned counsel for the Appellant, learned counsel for the Respondent No.1 as well as Respondent No.5/Auction Purchaser and perused the material available on record.

4. Mr. Shahab Sarki, learned counsel for the Bank/Respondent No.1 has taken us to Section 15 (7) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 ("F.I.O") within frame of which the Banking Court exercised its jurisdiction. The relevant portion of Section 15 (7) of the F.I.O. is reproduced as under:-

“15. Sale of mortgaged property.-

(7)

Explanation. Where the lease is created after the date of the mortgage and it appears to the Banking Court that the lease was created so as to adversely affect the value of the mortgaged property or to prejudice the rights and remedies of the financial institution, it shall be presumed that the lease is not *bona fide*, unless proved otherwise.”

The core issue is the bonafide occupation of the Appellant. The explanation of subsection 7 of Section 15 provides that where a lease is granted after creation of a mortgage, as it has in this case, the Banking Court shall decide the controversy as to the occupation presuming it to be not bonafide, unless a permission duly provided by the Bank, which has not been provided in the instant case. The property was mortgaged in the year 2003, whereas, lease on which the appellant has relied upon, was granted in the year 2004 and thus by virtue of application of law, appellant was/is not bonafide occupant as otherwise the Appellant would have provided a permission of the Bank to keep it as being a tenant. Rights after the mortgage of the property were then deemed to have been vested with the Bank. The law presumes such occupation as not being bonafide, the status of the Appellant was rightly adjudged, consequently the application was dismissed.

5. In view of above, we do not find any reason to interfere in the order passed by the learned Banking Court. The instant appeal is dismissed alongwith listed applications.

JUDGE

JUDGE

Anjad PS