

## IN THE HIGH COURT OF SINDH AT KARACHI

CP No.S-1275 of 2011

Petitioner : Syed Zafar Abbas Jafri,  
Through Mr.Sabir Hussain, advocate.

Respondent No.1 : Syed Abida Sultana

Respondent No.2 : Muhammad Farooq  
Through M/s.Ahmer Javed & Zain Athar  
Advocates.

Respondent No.3 : Ist Additional District Judge, Karachi  
(Central).

Respondent No.4 : IVth Rent Controller, Karachi (Central).

Date of Hearing : 23.04.2015

ORDER

**NAZAR AKBAR, J.** The Petitioner is aggrieved by findings of 4<sup>th</sup> Rent Controller (Central), Karachi, in Rent Case No. 107/2006, whereby, his application under **Order 1 Rule 10 CPC** has been dismissed by the rent controller by order dated **04.11.2010** and the appeal against dismissal of the said application by way of FRA No. 228/2010, was also dismissed by 1<sup>st</sup> Additional and Session Judge, Central, Karachi by judgment dated **05.10.2011**.

2. Briefly stated the facts of the case are that Respondent No.1 had filed a Rent Case No. 107/2006 before the Court of 4<sup>th</sup> Rent Controller (Central), Karachi, against Respondent No. 2 for his ejection from the premises bearing Flat No. B-304, 3<sup>rd</sup> Floor Arshi Shopping Mall and Heights, Block-7 F.B. Area, Karachi (the demised flat). The tenancy agreement was executed between Respondent No.1 and Respondent No. 2 through the Petitioner, who was then attorney of Respondent No. 1. However as he misused the power of attorney, Respondent No.1 revoked the power after notice to the petitioner and such revocation was also communicated to Respondent No.2 (the tenant) by Respondent No. 1 prior to filing Rent Case No. 107/2006 on the question of

default. The ejectment application was dismissed on the ground that Respondent No. 02 has denied the relationship of landlord and tenant and that order was upheld by the appellate Court in FRA No. **268/2006**. Respondent No. 1 assailed the findings of Rent Controller and First Rent Appeal before this Court through **C.P. No. S-49/2009**. The petitioner herein was not in the picture of dispute between Respondent No. 1 and 2 as he was not a party in the two Courts below i.e the Court of Rent Controller and the Appellate Court. The petitioner herein for the first time entered in these proceedings on **13.03.2009** by making an application under **Order 1 Rule 10 CPC** bearing **CMA No. 2159/2009** to be impleaded as a necessary party in Constitution Petition No. 49/2009, which was filed by Respondent No.1 against refusal of ejectment of Respondent No. 02 on the ground of denial of relationship of landlord and tenant. The Petitioner in his application bearing **CMA No. 2159/2009** in C.P. No. 49/09 has made the following prayer:-

*“That this Hon’ble Court may be pleased to join/implead the intervener as proper and necessary party in the above proceedings as the intervener/applicant/petitioner executed Tenancy Agreement with Muhammad Farooq S/o Abdul Ghani, Respondent NO. 03 and has serious interest therein hence the presence of the intervener in the above said proceedings is necessary in order to effectually and completely adjudicate upon and settle all the questions relating to the demise premises”.*

The aforesaid C.P. No. 49/2009 by order dated **31.3.2010** was disposed off in the following terms:

1. For hearing of CMA No. 2159/2009
2. For orders on office objection No. 2 a/w reply of advocate
3. For Katcha Peshi
4. For hearing of CMA No. 344/2009
5. For hearing of CMA No. 345/2009

31.03.2010

1. By consent, this application is allowed and the intervener is joined as respondent No. 04.

2to5. By consent of both the parties, the impugned order passed by IV Rent Controller Karachi (Central) in Rent Case No. 107/2006 dated 06.11.2006 and judgment dated 20.10.2008 passed by III Additional District and Sessions Judge, Karachi (Central) in FRA No. 268/2006 are set-aside and the matter is remanded to the learned Rent Controller in view of the position that petitioner had acquired ownership and title in the C.P. No. D-1084/2007, which was even not

*considered by Appellate Court though it was on the record of said Court.*

*The tenant i.e. respondent No. 3 denied the relationship of landlord and admitted to be tenant of Syed Zafar Hussain Jafri and that the present petitioner who was not owner of the property at that time.*

*Since this controversy has been resolved and the petitioner is owner and landlord for all the purposes, while respondent No. 03 is in possession of premises as a tenant and not in any other capacity, therefore the recording of fresh evidence, if necessary, in view of the changed situation within a period of three (03) months after service of notice on respondent No. 03/tenant.*

*The petition is disposed of in the above terms with no order as to costs, alongwith listed applications”.*

3. Since the Rent Controller and the First Appellate Court had dismissed the rent proceedings on denial of relationship of landlord and tenant, both the judgments of trial Court and Appellate court were set-aside by the above order and the case was remanded for a fresh decision on Rent Case No. 107/2006. It is pertinent to mention here that C.P. No. 49/2009 was decided with clear cut reference to the order passed by Division Bench of this Court in **C.P. No. 1084/2007** reported in **2008 YLR 1900**, which was filed by the Respondent No. 1 and in that C.P. the petitioner herein was Respondent No. 06 and that's why in the order reproduced above it has categorically been held by this Court that Respondent No. 1 had acquired ownership and title in the property by way of judgment dated **22.04.2008** passed in C.P. No. D-1084/2007, which was even not considered by the Appellate Court though it was on the record of the said Court. Therefore, on remand the Rent Case No. 107/2006 started again and the present petitioner had no role in the said rent proceedings. The petitioner herein despite having full knowledge of orders passed in **C.P. No. D-1084/2007**, in which he himself was a party and he has not preferred any appeal against the said orders, which were directly against him on the point of misuse of power of attorney by him. However on or about **19.07.2010**, he filed an application under **Order 1 Rule 10 CPC** in Rent Case No. 107/2006, during post remand proceedings by mis-interpreting the order of disposal of **C.P. No. S-49/2009** whereby rent case No.107/2006 was remanded. The learned Rent

Controller dismissed his application to become a party in Rent Case in the following terms:-

*“It is pertinent to mention here that the present intervener filed his affidavit-in-evidence as witness of Opponent and was duly cross-examined by the learned Counsel for the applicant. Whereas the Hon’ble High Court of Sindh at Karachi has been pleased to pass above Order in C.P. No. 49/2009, wherein the status of applicant remained as owner of demised premises and Opponent is inducted as a tenant, whereas the status of intervener is nothing in the matter. It seems that **the Intervener has no any right or interest in the matter and instant application is filed only to linger on the matter to harass the applicant so also waste the precious time of the Court**, therefore, there is no merits consideration hence, the instant application is hereby dismissed. In changed the circumstances of the case, the applicant in the light of order passed in C.P. No. 409/2009 has filed her afresh affidavit-in-evidence, here in meantime there is no need for further evidence. Now the matter be fixed for final arguments”.*

4. This finding of fact that the Petitioner herein has “no any right or interest in the premises”, which is subject matter of the rent proceedings, was upheld by the learned Appellate Court when even the learned Appellate Court, after referring to the judgment passed in **C.P No. D-49/2007** dismissed the FRA No. 228/2010 filed by the petitioner as follows:-

*“Moreover, it is conceded by the counsel for the appellant that the sale deed executed by the appellant on the basis of General Power of Attorney dated 20.07.2000 has been cancelled by the Hon’ble High Court of Sindh in C.P. No. 1048/2007, therefore, in such a situation when in C.P. No. 49/2009, the status of respondent No. 1 and 2 has been cleared as owner/landlord and tenant thus in such a situation learned counsel for appellant failed to point out illegality and infirmity in the impugned order, hence impugned order is sustainable under the law and this Court does not required interference in impugned order, hence points No. 1 and 2 are answered accordingly”.*

The counsel for the petitioner, however, by misinterpreting the orders in C.P. No. 49/2009, insisted even before this Court that the petitioner ought to have been joined as a party in rent proceedings.

5. The above facts clearly indicate that the Petitioner has unlawfully and illegally been interfering in the affairs of the demised flat, wherein respondent No. 02 was a tenant. He has caused a prolong delay in ejection of respondent No. 02 from demised flat despite Court orders. The Petitioner herein despite the order in C.P. No.S-49/2009, whereby, it was specifically declared that the Petitioner (Syed Zafar Abbas Jaferi) was not the owner of the demised flat, he

has frustrated the ejectment orders of the two Courts below against the Respondent No. 02 by obtaining the injunctive order against current findings of ejectment of respondent No. 02 on the pretext of dismissal of his application under **Order 1 Rule 10 CPC**. This is malafide and illegal interference of a stranger to the property in the rent proceedings.

6. Way back on 04.11.2010, the Rent Controller while dismissing his application to become a party in Rent Case No. 107/2006 has rightly observed that that the petitioner was making efforts **“only to linger on the matter to harass the applicant (Respondent No.1) so also waste the precious time of Court and it is also observed that he has no concerned with the demised flat”** and yet he not only preferred FRA but also on dismissal of FRA preferred this constitution petition against the current findings and on **27.04.2012** obtained interim order, whereby the judgments passed by learned Rent Controller and Appellate Court arising out of Rent Case No. 107/2006 was suspended. After arguing at length, Counsel for the petitioner realized that the instant petition is not maintainable, he insisted that he may be heard further. At his request, he was allowed to file written arguments by 10:30 a.m. next morning, if any, and the case was reserved for orders.

7. In written arguments, learned Counsel has not addressed the question of maintainability of petition against concurrent findings nor he has advanced any fresh arguments. However, the perusal of written arguments reveals that the petitioner is still preparing to cause further hurdles in the right of respondent No. 1 to obtain possession of the demised flat in terms of order of ejectment in Rent Case No. 107/2006. His such intention is spelt out from his written arguments in which the petitioner for the first time has stated that on **20.05.2009** the Respondent No. 02 has handed over possession to him. The petitioner had no right/authority to obtain possession from the Respondent No. 02 (tenant) if at all he has obtained it. The Petitioner had not claimed possession before the Rent Controller and Additional District and Sessions

Judge in FRA, who had dismissed his appeal to even become a party in the rent proceedings. Nor on **21.11.2011** when he filed the instant petition he disclosed that he is in possession of the demised flat and he got the ejectment orders in favour of Respondent No.1 stayed. Respondent No. 1 is entitled to the fruits of ejectment orders and whoever is in possession of the demised flat after the judgment in Rent Case and First Rent Appeal by execution of the ejectment order and whoever is found in possession of Flat No. B-304, 3<sup>rd</sup> Floor Arshi Shopping Mall and Heights Block-7 F.B. Area, Karachi, should be removed. This Court in C.P. No. D-1084/2007 and C.P. No. S-49/2009 has clearly declared that the Petitioner (Syed Zafar Abbas Jaferi) has no right/interest in the demised flat and yet by abuse of court process he has malafidely caused more than 6 years delay (from **13.03.2009** when he filed an application in C.P. No. 49/2009) in execution of ejectment order obtained by the respondent No. 1 on merit.

8. In view of the above facts and circumstances, this petition is dismissed with cost of Rs. 50,000/- in favour of Respondent No. 1. The cost should be deposited by the petitioner with the Nazir of this Court within 15 days which shall be given to respondent No.1. At the same time, while dismissing this petition, it is hereby ordered that respondent No.2 or the petitioner himself or whoever is in possession of the demised flat should vacate the same and hand over its peaceful possession to Respondent No. 1 within 15 days from the order herein and in case of default in handing over possession, Respondent No. 1 if not filed now may file execution proceedings before the Rent Controller (Respondent No. 04) and the Rent Controller should grant the same and direct the ejectment of respondent No. 02 or the Petitioner herein or whoever is found in possession with police aid without fresh notices to them and record satisfaction of ejectment orders within one month under intimation to this Court through M.I.T-II.

JUDGE