

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No. S – 902 of 2017

Petitioners : Mst. Zahida Perveen and Adnan,
through Mr. Abdul Naeem Advocate
along with Mr. Faisal Naeem Advocate.

Respondents 1 & 2 : Iftikhar Hussain and Abdul Raheem, through
Mr. Manoj Kumar Tejwani Advocate.

Constitutional Petition No. S – 903 of 2017

Petitioners : Muhammad Nasir Siddiqui, Muhammad Suhail,
Muhammad Kamran, Mst. Tahira and Mst. Fozia,
through Mr. Abdul Naeem Advocate
along with Mr. Faisal Naeem Advocate.

Respondent No.1 : Muhammad Qasim, through Syed Bahadur Ali Shah
Advocate.

Dates of hearing : 21.05.2018 and 01.06.2018.

J U D G M E N T

NADEEM AKHTAR, J. : Both these Constitutional Petitions have been filed by the petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, challenging separate orders passed therein on 10.04.2017 by the learned 1st Rent Controller Sukkur in their Rent Applications No. 07/2016 and 30/2016, whereby the applications filed by them under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, (**'SRPO'**) in their aforesaid rent applications seeking direction against the respondents to deposit arrears of rent, were dismissed. Since both these petitions involve common questions of law and fact, they were heard together with the consent of learned counsel for the parties and are being disposed of by means of this common judgment.

2. Rent Applications No. 30/2016 and 07/2016 were filed by the petitioners in Constitutional Petitions No.S-902/2017 and S-903/2017, respectively, against the respondents therein for their eviction on the grounds of default in payment of monthly rent and personal bonafide need. The main questions involved in these petitions are whether the impugned orders, being interlocutory orders passed on applications under Section 16(1) of SRPO, could be challenged by the petitioners ; and, whether the learned Rent Controller was justified in refusing to pass a tentative rent order on

the ground that the Suits filed by the respondents / tenants for specific performance of alleged sale agreements was sub judice.

3. The case of the petitioners in C.P. No.S-902/2017, as averred in the rent application, was that petitioner No.1 was the owner / landlady of a double storey building comprising shop bearing C.S. No.D-1324 on the ground floor and residential portion bearing C.S. No.D-1322/A on the upper floor, situated at Muqam Road, Sukkur ; petitioner No.2 was the son and attorney of petitioner No.1 ; respondents in the said petition, who were father and son inter se, were the tenants of petitioner No.1 in respect of both the above portions at a monthly rent of Rs.32,000.00 ; originally respondent No.1 in the said petition was the tenant of petitioner No.1 in respect of only the ground floor shop by virtue of rent agreement dated 21.08.2006 which was extended with the mutual consent of the parties from time to time ; subsequently with the consent of the parties the upper residential portion was also rented out by petitioner No.1 to the respondents, however, no separate agreement was executed in respect thereof as the parties were on good terms at the relevant time ; monthly rent was paid by the respondents to petitioner No.1 in respect of both the portions at the agreed rate till March 2016 whereafter they failed to tender the same and as such committed default with effect from April 2016 till August 2016 (five months) when the eviction application was filed ; before letting out the upper residential portion to the respondents, petitioner No.1 used to live therein along with her family, and when the same was rented out to the respondents, the petitioners shifted to Lahore and were residing in a rented premises ; and, since they could not settle in Lahore and petitioner No.2 was jobless, the petitioners decided to return to Sukkur for better prospects, and for this reason they required both the portions in good faith for their personal need i.e. ground floor shop for starting the business of a general store and the upper floor residential portion for their residence. In the above background, Rent Application No.30/2016 was filed by the petitioners in C.P. No. S-902/2017 for eviction of the respondents therein on the grounds of default in payment of rent and personal bonafide need.

4. Similarly, it was the case of the petitioners in C.P. No.S-903/2017 before the learned Rent Controller that they were the owners / landlords of composite properties constructed on Plots No. C.S. No.B-245 and B-246, consisting of a three storey building comprising two shops and three go-downs on the ground floor and two upper floors for residential purposes, situated at Tipu Sultan Road, Sukkur ; the respondent in the said petition was inducted as a tenant of the petitioners in respect of one big shop facing Tipu Sultan Road initially at a monthly rent of Rs.2,500.00 vide rent agreement dated 01.08.2005, which was extended twice by enhancing the monthly

rent to Rs.4,500.00 and then to Rs.6,000.00 by mutual consent ; monthly rent was paid by the respondent to the petitioners in respect of the demised shop at the agreed rate till February 2015 whereafter he failed to tender the same and as such committed default with effect from March 2015 till January 2016 (eleven months) when the eviction application was filed ; the petitioners were carrying on the business of selling readymade bridal, embroidered and fancy suits in a shop at Shahi Bazar Sukkur and they used to purchase the same from Karachi ; and, since the above arrangement was not feasible for and suitable to them, they decided to make the above garments at their own property in Sukkur by employing skilled workers, and to establish and expand their said business in their hometown, and as such they required the demised shop in good faith for their personal need. Rent Application No.07/2016 was filed by the petitioners in C.P. No.S-903/2017 in this background for eviction of the respondent therein on the grounds of default in payment of rent and personal bonafide need.

5. In both the rent applications, the respondents filed their written statements denying the relationship of landlord and tenant between the parties by claiming that the demised premises had been purchased by them from the petitioners. However, it was not denied by any of the respondents that they were originally inducted as tenants and they had paid agreed rent to the petitioners till the execution of alleged sale agreements in their favour. The petitioners filed applications under Section 16(1) of SRPO before the learned Rent Controller in both the rent applications praying that the respondents be directed to deposit the arrears of rent in Court. The said applications were contested by the respondents mainly on the ground that in view of execution of sale agreements in their favour, they were not liable to pay any rent to the petitioners. In the impugned orders, it was observed by the learned Rent Controller that the petitioners were relying on tenancy agreements and the respondents were denying such agreements on the basis of sale agreements. It was held that no conclusive opinion can be expressed in this regard without providing the parties an opportunity to lead evidence in support of their respective pleadings and inquiring into the genuineness of the documents relied upon by the respondents ; and, the question of relationship of landlord and tenant is the most crucial point in this case, therefore, accepting the tenancy agreement as genuine and summarily rejecting the opponent's plea and consequently directing him to deposit alleged arrears of rent would amount to deciding the said point in favour of the applicant. In view of the above observation and findings, the applications filed by the petitioners under Section 16(1) of SRPO were dismissed by the learned Rent Controller.

6. Mr. Abdul Naeem, learned counsel for the petitioners in both these petitions, contended that it was not disputed by the respondents in their written statements that rent agreements were executed by them in respect of the demised premises and also that they had paid the agreed rent in respect thereof to the petitioners, therefore, the relationship of landlord and tenant between the parties was not disputed before the learned Rent Controller. It was argued by the learned counsel that it is settled law that execution of a sale agreement in respect of demised premises in favour of the tenant does not confer ownership rights in his favour ; it is well-established that once a person is prima facie shown to have been inducted as a tenant of the demised premises, he cannot claim any exemption from payment of rent even if he has instituted a Suit for specific performance against the landlord ; it is also settled law that relationship of landlord and tenant is not severed even if the execution of a sale agreement is admitted, and even in such a situation the tenant is not absolved of his responsibility of compliance of the order passed by Rent Controller under Section 16 *ibid*, and such an order and/or an order for his eviction can be passed by the Rent Controller even if a Suit filed by the tenant for specific performance of the sale agreement is pending ; under Article 115 of the Qanun-e-Shahadat Order, 1984, (**'Qanun-e-Shahadat'**) during the continuance of the tenancy, the tenant of an immovable property or any person claiming through him cannot be permitted to deny the title of the landlord in respect of such immovable property which the landlord had at the beginning of the tenancy ; in view of the above legal position, the respondents / tenants were estopped from disputing the title of the petitioners ; and, the impugned orders passed by the learned Rent Controller are against the provisions of Section 16(1) of SRPO, Section 115 of Qanun-e-Shahadat and Section 55(4)(a) of the Transfer of Property Act, 1882, and also against the law laid down in this context by the superior courts, particularly by the Hon'ble Supreme Court. The learned counsel also submitted that the learned Rent Controller not only failed to appreciate and apply the law laid down by the superior courts, but also failed to discuss or even mention in the impugned orders the case-law cited and relied upon on behalf of the petitioners. It was prayed by him that the impugned orders be set aside in view of his above submissions.

7. In support of his above submissions, learned counsel for the petitioners relied upon (1) *Muhammad Iqbal Haider and another V/S Vth Rent Controller/Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396*, (2) *Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320*, (3) *Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 S.C. 1101*, (4) *Kassim and another V/S S. Rahim Shah, 1990 SCMR 647*, (5) *Muhammad Nisar V/S Izhar Ahmed Shaikh and others, PLD 2014 S.C. 347*, (6) *Syed Imran Ahmed V/S Bilal and another, PLD 2009 S.C. 546*,

(7) Waheedullah V/S Mst. Rehana Nasim and others, **2004 SCMR 1568**, (8) Madriisa Darul Uloom Al-Baqiat-ul-Salehat Registered V/S The Additional District Judge (Appellate Court) and another, **PLD 1992 S.C. 401**, (9) Iqbal and 6 others v/s Mst. Rabia Bibi and another, **PLD 1991 S.C. 242**, (10) Wajid Ali Khan V/S Sheikh Murtaza Ali and 2 others, **2003 SCMR 1416**, (11) Imam Bux V/S Senior Civil Judge/Rent Controller, District Malir, Karachi and others, **2002 CLC 876**, (12) Amir Ali Khan through legal heirs and others V/S Masoodur Rehman Farooqui and others, **2008 CLC 1134**, (13) Miss Shaisata Shams V/S Mst. Seema Begum through constituted Attorney and 2 others, **PLD 2008 Karachi 424** and (14) Merajudin Ghoury V/S Muhammad Aslam and others, **PLD 2008 Karachi 160**.

8. Mr. Manoj Kumar Tejwani, learned counsel for respondents 1 and 2 in C.P. No. S-902/2017, at the outset raised an objection regarding maintainability of this petition on the ground that as the impugned order is an interlocutory order, this petition is not maintainable. In reply to the submissions made on behalf of the petitioners, he contended that the relationship of landlord and tenant between the parties has all along been denied by the said respondents by claiming that they became the owners of the demised premises when the same were sold to them by petitioner No.1. He further contended that it was an admitted position that rent agreement was executed by the parties only in respect of the ground floor shop and there was no such agreement in relation to the residential portion on the upper floor, therefore, the claim of the petitioners had no basis in respect of any portion, particularly the residential portion on the upper floor. He submitted that the actual sale agreement, which was filed by the said respondents along with their counter affidavit, was suppressed from this Court by the petitioners and the sale agreement filed and relied upon by them was a forged and fabricated document. He pointed out that in the actual agreement, the parties had specifically agreed that upon execution of the sale agreement the tenancy will come to an end and the rent agreement will stand cancelled. Learned counsel argued that in view of the material available on record and the law cited by the parties, it was rightly held by the learned Rent Controller that no conclusive opinion can be expressed by him with regard to the existence or otherwise of the relationship of landlord and tenant between the parties without allowing them opportunity to lead evidence. In addition to the above, he submitted that since no affidavit-in-rejoinder has been filed by the petitioners in the said petition to rebut the above submissions made by the said respondents in their counter affidavit, the said submissions made by them should be deemed to have been admitted by the petitioners.

9. To fortify his above submissions, learned counsel for respondents 1 and 2 relied upon (1) Mst. Miskina Jan V/S Rehmat Din, 1992 SCMR 1149, (2) Mst. Seema Begum V/S Muhammad Ishaq and others, PLD 2009 S.C. 45, (3) Muhammad Umar Malik V/S Federal Service Tribunal, PLD 1987 S.C. 185, (4) Iqbal Ahmed V/S Muhammad Nasir and another, 2016 MLD 624, (5) Abdul Farooque and another V/S Maqsood Ahmed and another, 2015 CLC 663, (6) Habib Bank AG Zurich and another V/S Nazir Ahmed Vaid and another, 2011 CLC 648, (7) Faiz Ahmed and another V/S Mst. Qudsia Khatoon, 1991 MLD Karachi 1051, (8) Usman Khan through attorney V/S Aisha Naz and 2 others, 2010 CLC Peshawar 475, (9) Zahid Hussain Rathore and 18 others V/S President All Pakistan Women Association and 6 others, 2013 YLR Peshawar 2247, (10) Mrs. Jumana Khursheed V/S Ist ADJ Karachi East and 2 others, 2007 YLR Karachi 363, (11) Muslim Raza V/S Mst. Saghira Bano, 1987 MLD Karachi 3269, (12) Abdul Hameed and others V/S Haji Muhammad Javed, 1999 MLD Karachi 3031, (13) Engr. Inam Ahmed Osmani V/S Federation of Pakistan and others, 2013 MLD Karachi 1132, (14) Jehan Khan V/S Province of Sindh and others, PLD 2003 Karachi 691, (15) Mrs. Syeda Tahira Mubashir V/S Mst. Zakia Khan and another, 2007 CLC Karachi 1961, (16) Syed Muhammad Akhtar Shah (Molvi Fazil) V/S Federation Pakistan through Secretary Establishment Division Islamabad and 3 others, PLJ 2014 Karachi 293.

10. Syed Bahadur Ali Shah, learned counsel for the petitioners in C.P. No.S-903/2017, by adopting the arguments advanced by learned counsel for the petitioners in C.P. No.S-902/2017, also prayed for dismissal of the said petition. He, however, conceded that the plaint of F.C. Suit No.315/2015 filed by the respondent in C.P. No.S-903/2017 for specific performance of the alleged sale agreement of the demised premises in his favour has been rejected by the learned trial Court.

11. Exercising his right of rebuttal, Mr. Abdul Naeem, learned counsel for the petitioners in both these petitions, vehemently argued that these petitions against the impugned orders are maintainable in view of the law laid down by the Hon'ble Supreme Court in Utility Stores Corporation of Pakistan Limited V/S Punjab Labour Appellate Tribunal and others, PLD 1987 S.C. 447 and Muhammad Anwar and others V/S Mst. Ilyas Begum and others, PLD 2013 S.C. 255, and also in view of Haji Muhammad Alam Baluch V/S Pakistan Steel and another, 1989 MLD 2294 and Muhammad Riaz V/S Mst. Begum Jan and another, 1984 CLC 2970.

12. I have heard learned counsel for the parties at considerable length and with their able assistance have also closely examined the material available on record, the law cited by them at the bar and written synopsis submitted by learned counsel for petitioners in both the petitions and respondents in C.P. No.S-902/2017. The main

thrust of the arguments advanced by learned counsel for the respondents was that the respondents had ceased to be the tenants of the petitioners upon execution of the sale agreement in view of the specific stipulation contained therein and since the petitioners had “*sold*” the demised premises to them and they had “*purchased*” the same from the petitioners, there was no relationship of landlord and tenant between the parties. According to him, the respondents were not liable to pay any future rent after execution of the sale agreement in their favour and thus could not be subjected to deposit the rent, and in such circumstances the dismissal of the petitioners’ application for deposit of rent was fully justified. It is clear from his submissions and written synopsis that his entire case rests on the presumption that the demised premises were sold by the petitioners to the respondents and the latter had purchased the same. It may be noted that the petitioners did not deny execution of the sale agreement, but the petitioners in C.P. No.S-902/2017 have strongly disputed the sale agreement filed and relied upon by the respondents in the said petition containing a stipulation that upon execution thereof the tenancy will come to an end and the agreement will stand cancelled. Learned counsel for the respondent in C.P. No.S-903/2017 has already conceded that the plaint of the Suit filed by the said respondent for specific performance of the alleged sale agreement of the demised premises in his favour has been rejected by the learned trial Court. The petitioners have strongly asserted that they are still the owners of the demised premises for all legal intent and purposes. It is not the case of any of the respondents that they have paid full sale consideration to the petitioners or sale of the demised premises was completed in their favour or the petitioners had actually transferred the demised premises in their favour through a registered instrument. The admitted position that emerges from the above is that title of the demised premises is still in the name of the petitioners and it has not been transferred in favour of any of the respondents. Therefore, it cannot be said or claimed that the petitioners have sold the demised premises to the respondents or the latter have purchased the same from the petitioners.

13. My above view is supported by the very fact that the Suit filed by respondents in C.P. No.S-902/2017 for specific performance of the sale agreement in respect of the demised premises is admittedly subjudice before the learned trial Court. Even the said respondents cannot claim with conviction that they will succeed in their said Suit as specific performance cannot be claimed as a matter of right and it is the discretion of the Court to grant it or not which discretion is exercised by the Court keeping in view the facts and circumstances of each case. Accordingly, the said respondents are not entitled in law to claim ownership of the demised premises till a decree to this effect is passed in their favour and such decree attains finality. This being the legal

position, mere pendency of the Suit filed by respondents in C.P. No.S-902/2017 for specific performance, will not change the position. The above aspect has not been appreciated by the learned Rent Controller. Needless to say that the respondent in C.P. No.S-903/2017 cannot even take such plea as the plaintiff of his Suit for specific performance has already been rejected. The above views expressed by me are further fortified by the following authorities cited and relied upon by learned counsel for the petitioners :

- A. In Haji Jumma Khan supra, it was held inter alia by the Hon'ble Supreme Court that till the time that the tenant is able to establish his claim for specific performance on the basis of alleged sale agreement, the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy ; genuineness or otherwise of alleged sale agreement and its consequential effect will be independently determined by the Civil Court ; and, ejectment proceedings could not be resisted by taking shelter under Section 53-A of the Transfer of Property Act.
- B. In Kassim and another supra, the Hon'ble Supreme Court was pleased to hold that till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, landlord was entitled to recover rent.
- C. In Muhammad Iqbal Haider supra, it was held inter alia by the Hon'ble Supreme Court that Article 115 of the Qanun-e-Shahadat lays down that during the continuance of the tenancy, no tenant of immovable property shall be permitted to deny the title of his landlord ; once a person 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 cancellation of sale deed ; the relationship of landlord and tenant is not severed even if the execution of an agreement to sell is admitted ; and, institution of two Civil Suits by the tenant one for specific performance of the agreement and the other for cancellation of sale deed in favour of the landlord, per se would not be sufficient to refuse compliance of an order passed by the Rent Controller under Section 16(1) of SRPO pending final determination.
- D. In Syed Imran Ahmed supra, it was held inter alia that a sale agreement in favour of a tenant does not itself create any interest or even a charge on the property in dispute ; and, till such time that a person suing for ownership of property obtains a decree for specific performance in his favour, he cannot be

heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the said property.

E. In Abdul Rasheed supra, it was held inter alia by the Hon'ble Supreme Court that it is settled law that where in a case filed for eviction of the tenant by the landlord, the tenant takes up a position that he had purchased the property and hence is no more a tenant then he has to vacate the premises and file a Suit for specific performance of the sale agreement and if he succeeds, he would be given easy access to the premises ; and, relationship between the parties for purposes of jurisdiction of Rent Controller stood established and by passing tentative rent order, the Rent Controller had carried out summary exercised by deciding such relationship. The order passed by the Rent Controller was maintained by the Hon'ble Supreme Court.

14. With respect to the learned counsel for the respondents, the cases cited and relied upon by him cannot be applied in these matters mainly in view of the above-cited law laid down by the Hon'ble Supreme Court and also as the entire case of the respondents is based on the presumption that the demised premises were sold to them by the petitioners and they had purchased the same from the latter, which presumption is misconceived and untenable. In view of the above discussion and the settled law, it is clear that till date the respondents have not acquired any proprietary rights, title or interest in the demised premises. Therefore, relationship between the parties for purposes of jurisdiction of the Rent Controller stood established and as such the learned Rent Controller was duty-bound to pass a tentative rent order on the applications filed by the petitioners ; and, by not passing such an order, the learned Rent Controller failed in exercising the jurisdiction vested in him by law.

15. I shall now deal with the objection regarding the maintainability of these petitions against interlocutory orders. In Messrs Habib Bank Limited through authorized officers / attorneys V/S Messrs Victor Electronic Appliances Industries (Pvt.) Ltd. and another, 2011 CLD 1571, a learned Division I of this I was pleased to allow the Constitutional Petition against an interlocutory order passed by the Banking I, by holding that no appeal or Constitutional Petition is provided in the Financial Institutions (Recovery of Finances) Ordinance 2001 against an interlocutory order, but this I in its extraordinary jurisdiction has power to correct the wrong, particularly where no efficacious remedy is available to the aggrieved party. In Messrs United Bank Limited through authorized attorneys V/S Banking I III and 2 others, 2012 CLD 1556, wherein an interlocutory order passed by the Banking I for consolidation of two I was challenged, a Division I of this I held that Constitutional jurisdiction of this I can

be invoked by an aggrieved party who has no other remedy, and Constitutional Petition was maintainable as the Banking I had failed to exercise the jurisdiction which was vested in it by the Ordinance of 2001.

16. After carefully examining the above-cited cases decided by the learned Division I of this I and the settled law on the point of invoking Constitutional jurisdiction of High I against interlocutory orders, I am of the considered view that any order passed by a I or tribunal in excess of its jurisdiction or by not exercising the jurisdiction vested in it by law, can be challenged in the Constitutional jurisdiction of High I ; and, in such an event the mere fact that the impugned order is interlocutory shall not prevent the High Court from exercising Constitutional jurisdiction. It has been held time and again by the Hon'ble Supreme I and High Courts that the Superior Courts have inherent and Constitutional powers to remedy and correct the wrongs committed by subordinate courts. Having come to the conclusion that by not passing a tentative rent order the learned Rent Controller had failed in exercising the jurisdiction vested in him by law, I am convinced that these petitions are maintainable.

17. In view of the above discussion, both the impugned orders are hereby set aside. The respondents in both these petitions are directed to deposit arrears of rent within thirty (30) days and to deposit future monthly rent regularly till the final disposal of the rent applications filed by the petitioners. The amounts deposited by the respondents with the learned Rent Controller shall be invested in some profit bearing Government scheme and shall be paid / disbursed / released along with profit to the successful party. These petitions are allowed in the above terms with no order as to costs.

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