

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR  
C. P. No S- 716 /17

PRESENTED  
06-04-2017  
46/4/17  
6/04

Aslam Pervez son of Farzand Ali  
Muslim, adult, by caste Rajput r/o  
Near Khushi Haveli, Habib Bank Ghotki Town  
Taluka Ghotki and District Ghotki .....Petitioner

VERSUS

01. Madarsa Anwarul-Islam Ghousia Faridia (Regd)  
Noor Masjid Ghotki through its Mohtamim Qari  
Muhammad Abdul Kareem Saeedi S/O Haji Ahmed Bux  
R/o Noor Masjid Taluka and District Ghotki.
02. Besham Lal S/o Ghono Mal  
Adult Hindu, Occupant of shop No.3,4& 5  
Of Madarsa Anwaul Islam Ghousia Faridia Noor Masjid Ghotki.
03. Rent Controller/Senior Civil Judge, Ghotki.
04. Province of Sindh through its Secretary  
Law Department to be served through  
Learned Additional Advocate General  
Sindh at Sukkur .....Respondents



WRIT PETITION: U/A 199 OF THE CONSTITUTION, ISLAMIC REPUBLIC  
OF PAKISTAN 1973 RWS & ALL OTHER ENABLING  
PROVISIONS OF LAWS

Humbly sheweth

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
C. P No. S-716 of 2017

Date

Order with signature of Judge

For katcha peshi  
For hearing of CMA 4997/17

27.04.2018

Mr. Jamshed Ahmed Faiz Advocate for the petitioners  
Mr. Abdul Salam Arain Advocate for respondent No.1  
Mr. Ahmed Ali Shahani AAG

IRSHAD ALI SHAH J; By way of instant constitutional petition, the petitioner has impugned an order dated 27.3.2017 of learned Senior Civil Judge/Rent Controller Ghotki, whereby he has been directed to deposit arrears and future rent at the rate of Rs.45,000/- per month, for three shops in his possession.

2. As per pleadings of the respondent No.1, the said shops were on rent with the petitioner at the rate of Rs.5500/-per month. It was enhanced to Rs.15000/-per month per shop. The petitioner, being employee of Market Committee Ghotki, without written consent and in violation of the tenancy agreement, sublet the said shops to the respondent No.2, at the rate of Rs.45000/-per month. On the basis of such pleadings the respondent No.1, sought for vacant possession of said shops from the petitioner and Sublette.

3. The petitioner in his written statement denied the existence of relationship of landlord and tenant between him and respondent No.1 by submitting that the said shops were rented out to him by late Qari Abdul Sattar Chishti, the then 'Muhtamam', Madersa Anwaarul Islam Ghousia Fareedya Noor Masjid Ghotki, at the rate of Rs.5500/-per month. It was denied by him that he has violated the terms of tenancy agreement or to have sublet the said shops to the respondent No.2. The respondent No.2 according to him is his Manager at his restaurant and is getting from him Rs.15000/-per month as salary.

4. In the meanwhile the respondent No.1 filed an application u/s 16 of Sindh Rented Premises Ordinance 1979 for issuance of direction to the petitioner to deposit arrears and future rent for the said shops at the rate of Rs.45000/-per month. It was objected by the petitioner by filing his written objections.





5. Learned Rent Controller, on hearing accepted the said application, thereby directed the petitioner to deposit arrears and future rent for the said shops at the rate of Rs.45000/-per month till further orders, by way of impugned order.

6. Learned counsel for the petitioner was called upon to satisfy this court as to whether the impugned order of learned Senior Civil Judge / Rent Controller Ghotki, can be examined by this court in exercise of its writ jurisdiction, as it is interim in nature?

7. In response to above, it was contended by learned counsel for the petitioner that order impugned is patently illegal as such it could be examined by this court in exercise of its writ jurisdiction. In support of his contention, he relied upon case of **Hukum Khan vs. Pakistan Steel and others**, which is reported at 1989 MLD 4436 and case of **Hassan Ali vs. Muhammad Farhan Ahmed and others**, which is reported at PLD 2009 Karachi 237.

8. In rebuttal to above, it was contended by the counsel for respondent No.1, that the order passed by Rent Controller being interim in nature could not be examined by this court in exercise of its writ jurisdiction. By contending so, he sought for dismissal of instant constitutional petition. In support of his contention he relied upon case of **Mst. Seema Begum vs. Muhammad Ishaque and others** which is reported at PLD 2009 SC 45 and case of **Muhammad Saeed Shah vs. Mst. Philpana and another** which is reported at 2012 MLD 783.

9. I have considered the above arguments and perused the record.

10. The provision of Section 21 of the Sindh Rented Premises Ordinance 1979 needs to be referred *first* for an **answer** to proposition, it reads as under:-



**"21. Appeal. (1)** Any party aggrieved by an order, **not being an interim order**, made by the Controller may, within thirty days of such order, **prefer an appeal** to the District Judge having jurisdiction in the area where the premises in relation to which the order is passed".

From above, it is quite *evident* that the *Ordinance* has provided remedy of an *appeal* against an order of Controller but it does not include '*an interim order*' which (*interim*) is *normally* passed on interlocutory application (s). It must be observed here that *interim-order* is



always of limited duration which *legally* does not control the *final* adjudication rather the *interim* order stands merged into *final* order thereby becomes of no *value*. This has been the *reason* that *normally* the law does not require a *challenge* to an *interim-order* even by way of Constitutional Jurisdiction because if a *challenge* to an *interim* order is made permissible through the course of *constitutional jurisdiction* even, it may frustrate the intention of the *legislatures* whereby an *interim* order deliberately is not made *appealable*.

11. The status of *impugned* order to be *interim* in nature is not disputed which by *itself* neither determines the relationship between the parties nor could be referred as an *inference* at final determination of the *lis*, hence per the said *Ordinance*, no appeal lies against such order. It is why the petitioner has challenged such order before this court by way of instant constitutional petition. Things which the *law* itself has not provided would not be available even by attempting other *procedure*, including the *constitutional jurisdiction*.

12. In case of **Abdul Rasheed vs. Haji Mir Ahmed Khan and others** which is reported at **PLD 1993 SC 21**, it was held by Hon'ble Supreme Court of Pakistan that;

"Instead of raising the second jurisdictional question based on the status of the property, before the lower forum (where no other similar question was in fact raised regarding the status of the parties), and then pursuing the matter in First Appeal which was as a matter of right and of wider scope, petitioner sought to divert the normal remedial process provided by law, and invoked constitutional jurisdiction of the High Court. It could be exercised only on proof of non-availability of adequate remedy. This proof is not forthcoming in this case. The petitioner had a right of appeal if any final decision would have gone against him."



13. In cases of **Muhammad Saeed Shah and Mst. Seema Begum**, which are referred by learned counsel for respondent No.1, it was held by Hon'ble Sindh High Court and Hon'able Supreme Court of Pakistan that the constitutional petition on interim order of Rent Controller would be not maintainable at law.



14. *In the case of Iqbal Ahmed Vs. Muhammad Nasir & another, which is reported at 2016 MLD 624 Sindh*, Hon'able Sindh High Court has also dismissed the constitutional petition against the interim order of Rent Controller to be not maintainable with the following observation;

"A perusal of the above provisions of law clearly indicates that the legislature has specifically prohibited filing of an appeal against interim order. Thus, I am of the view that the legislature did not intend to make the interim order challengeable. Interim order is to merge in the final verdict which shall be appealable and going against that arrangement by exercising writ jurisdiction would not be proper because in that case the object of legislature shall be frustrated. This dictum is laid down in the case of *Mrs. Syeda Tahira Mubashar (supra) and Abdul Farooq and another v. Maqsood Ahmed and another*, which is reported as 2015 CLC 663.

15. On the basis of law, which is discussed above, the interim order of learned Senior Civil Judge / Rent Controller Ghotki, directing the petitioner to deposit arrears and future rent for the said shops could not be permitted to be challenged by the petitioner before this court by invoking its extra ordinary constitution jurisdiction.

16. The case law which is relied upon by the learned counsel for the petitioner could hardly support his contention. In case of *Hassan Ali*, (supra) it was held that the writ jurisdiction can only be invoked where it is shown that the order is perverse or learned trial court while passing such order has committed illegality or irregularity. In context of this authority it was contended by learned counsel for the petitioner that the order impugned is perverse as instead of Rs.5500/-per month, for all the three shops, the petitioner has been directed to deposit Rs.45000/-per month as a rent for the said shops. The contention so advanced by the counsel for the petitioner is rebutted by counsel for respondent No.1 by contending that the rent for the said shops was enhanced with passage of time. Be that as it may, if the contention of learned counsel for petitioner is taken into consideration, then it involves dispute of facts, which could not be resolved by this court in exercise of its constitutional jurisdiction. In case of *Hukum Khan*, (supra) the order directing the tenant to pay rent



beyond period of three years was set aside by Hon'ble High Court of Sindh, as it was passed without jurisdiction. In the instant matter the impugned order has been passed by learned Senior Civil Judge / Rent Controller Ghotki in proper exercise of its jurisdiction.

17. In view of the facts and reasons discussed above, the instant constitutional petition is dismissed being not maintainable at law.

CERTIFIED TO BE TRUE COPY

Sd/-  
IRSHAD ALI SHAH,  
JUDGE.



TYPED BY

COMPARED BY

READ BY

ASSISTANT REGISTRAR

1/10/18