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**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.S-538 of 2010
C.P No.S-153 & 154 of 2011

Petitioners : Through Mr. Shamsuddin Memon,
Advocate

Respondent No.1 : Kamal Ahmed in Person.

Date of Order : 06.12.2019

For orders on

CMA No.2477/2019

CMA No.2478/2019

CMA No.2479/2019 :

ORDER

ADNAN-UL-KARIM MEMON, J:- This Court vide order dated 22.12.2017 disposed of the above cited petitions and remanded the matters to learned Rent Controller to first frame the issue of relationship between the parties and only in case positive findings coming forth thereof shall proceed with the matter in accordance with law. However, respondent No.2 namely Dr. Itefaq Hussain assailed the aforesaid findings of this Court before Honourable Supreme Court in Civil Petitions No.73-K, 74-K, & 545 to 547 of 2018 which were dismissed vide order dated 21.03.2018, with the following observations:-

“Petitioner appearing in person states that as being the co-owner of the property, he is also a co-landlord and resultantly as a relationship exists, the eviction petitions were maintainable. Reliance in this regard has been placed on the judgment reported as Muhammad Hanif and another Vs. Muhammad Jamil Turis and 5 others (PLD 2002 SC 429). Suffice it to say that it is settled law that being a co-owner of the property by itself does not entitle the co-owner to be the landlord of the property. This is very clear from the definition of landlord given in the Sindh Rented Premises Ordinance, 1979 which defines a landlord as the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises. Resultantly, the petitioner only being co-owner of the property could not maintain the eviction petitions and resultantly has not relationship to claim for the possession under the special law. Therefore, these petitions have no merit, which are accordingly dismissed.”

2. He being aggrieved by and dissatisfied with the above decision of Hon'ble Supreme Court as preferred Civil Review Petitions No.306 of 2018 in C.P No. 545 of 2018 which too was dismissed vide order dated 05.7.2018. However, learned Rent Controller after receiving the order of Honorable Supreme Court, opined vide order dated 23.10.2019 that since there is no relationship of applicant and

tenant, thus the present Rent Application has become infructuous and is disposed of. Respondent No.1 namely Kamal Ahmed being aggrieved by and dissatisfied with the decision of learned Rent Controller has filed applications under Section 151 CPC read with Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (CMA No.2477, 2478 & 2479/2019) praying therein to set aside the order dated 23.10.2019 passed by learned 1st Senior Civil Judge and Rent Controller, Hyderabad in Rent Applications No.54, 55 & 56 of 2007 on the premise that the decision taken by learned Rent Controller is not in accordance with law and the findings given by this Court vide order dated 22.12.2017.

3. Respondent No.1 present in person has submitted that this Court vide order dated 22.12.2017 remanded the matter to learned Rent Controller along with 05 other rent petitions with specific directions to frame the issue of relationship of land lord and tenant between the parties; that learned Rent Controller commenced the proceedings and recorded the evidence of Respondent No.1; that during evidence learned Counsel, Mr. Shamsuddin Memon, filed statement with distortion of facts and obtained order dated 23.10.2019 from learned Rent Controller by misrepresentation of facts that Hon'ble Supreme Court dismissed the CPLA No.545/2018 filed by Respondent No.1 and Dr. Itfaq; that due to above impression learned Rent Controller observed as under:-

“In view of above findings of Hon'ble Supreme Court of Pakistan there is no relationship of applicant and tenant in the present Rent Application, thus the present Rent Application has become infructuous and disposed of accordingly.”

He next submitted that he did not file any appeal before the Hon'ble Supreme Court, thus his right cannot be compromised and learned Rent Controller ought to have adjudicated the matter as directed by this Court vide order dated 22.12.2017; that the order dated 21.3.2018 passed by Hon'ble Supreme Court, simply dismissed CPLA No.545/2018 and order of this Court has not been set-aside, thus he has approached this Court for enforcement of orders dated 22.12.2017 passed by this Court merged in order dated 21.3.2018 passed by the Hon'ble Supreme Court.

4. During the course of arguments, I queried from him as to how the listed application is maintainable in disposed of matter, second that if he is aggrieved by and dissatisfied with the order dated 23.10.2019 passed by learned Rent Controller in Rent Applications No.54, 55 & 56 of 2007, he still have the remedy of Rent Appeal before the Competent Forum and not before this Court. He replied that no order can be passed on the basis of statement of Counsel of the party, thus the impugned order is void; that learned trial Court has committed grave illegality by not framing the issue with regard to relationship between the parties; that since the evidence has been recorded, therefore, the Rent Application ought to have been decided on merit. He lastly prayed for setting aside the impugned order dated 23.10.2019 passed by learned Rent Controller.

5. I have heard the Respondent No.1, Kamal Ahmed, who is present in person and have perused the material available on record.

6. Perusal of record shows that the aforesaid petitions were disposed of by this Court vide common order dated 22.12.2017, with the following observations:-

“These constitution petitions arising out of the rent proceedings, wherein it is contended that the relationship of the tenants and landlord was not in existence as the tenants were making payment to their landlord who was co-sharer, whereas the proceedings were filed by the other co-sharers. Resulting thereby, the orders have been passed, prejudicing the said co-sharer. It is contended on the part of the learned counsel for the petitioners that in these proceedings before the learned rent controller as well as learned Appellate Court, the circumstances were the same; however, the learned Appellate Court in one of the proceedings has dismissed the same on account of failure of establishing relationship. It is also contended on part of the learned Counsel for the petitioner that the rent cases were not proceeded on merits and were passed in a unilateral proceedings. The respondents on the other hand contended that these were proper proceedings and the learned rent controller has passed the order in accordance with law. I had called upon the respondents to show the element of the alleged relationship existing between the parties before the start of these rent proceedings, to which no satisfactory reply came found. In the circumstances, these matters are remanded to the learned rent controller wherein it is required on part of the rent controller to first frame the issue of relationship and only in case positive findings coming forth thereof shall proceed with the matter in accordance with law.”

7. The aforesaid order was merged in the order of the Hon'ble Supreme Court, however, the findings of learned Rent Controller that there is no relationship of landlord and tenant between the parties and disposed of Rent Application being infructuous. Prima-facie, the aforesaid findings explicitly suggest that he has taken the decision in the light of order passed by Hon'ble Supreme Court; therefore, the applicant ought to have availed the remedy as provided under Sindh Rented Premises Ordinance 1979 and not before this Court, in a disposed of matter.

8. In view of the above, the listed applications bearing CMA No.2477, 2478 & 2479 of 2019 are not maintainable under the law which are accordingly dismissed, leaving the applicant/ respondent No.1 to approach the proper forum in accordance with law.



JUDGE

Fahad Memon