

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
C.P. No.D-718 of 2009**

Before;

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah.

Petitioner: Muhammad Ishaque son of Ali Muhammad Lakho,
through Mr. Muhammad Arshad S. Pathan Advocate.

Respondent No.1 Legal heirs of Abdul Khalique Memon
through Mr. Khalid Mustafa Shoro, Advocate.

Respondent No.2. Nemo.

Respondents No.3&4. Mr. Allah Bachayo Soomro, Additional Advocate
General, Sindh.

Date of hearing: 17.11.2020

Date of decision: 17.11.2020

JUDGMENT

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant petition per petitioner are that he after obtaining loan from House Building Finance Corporation, constructed the demised premises and then let it out on rent to respondent No.2. It was not sold out by him to anyone else. Subsequently, respondent No.1 claiming himself to be owner of the demised premises having purchased the same, sought for ejectment of the respondent No.2 from the demised premises by making such application before learned Rent Controller at Sehwan, it was allowed. The appeal preferred against such ejectment order was also dismissed by learned District Judge Jamshoro. On coming to know of such facts the petitioner filed an application under section 12(2) C.P.C before District Judge Jamshoro, it was disposed off by him with an advice to the petitioner to file the same before learned Rent Controller at Sehwan. In pursuant to such direction, the petitioner filed an application under

section 12(2) C.P.C before learned Rent Controller at Sehwan. It was allowed by him vide his order dated 24.04.2008, but such order was set-aside on filing of revision application by respondent No.1 by learned Additional District Judge Kotri District Jamshoro vide his order dated 17.08.2009, which is impugned by the petitioner before this Court by way of instant petition.

2. It is contended by learned counsel for the petitioner that the petitioner is being denied his legitimate right of landlord/ownership over the demised premises by the respondent No.1 by practicing fraud and making misrepresenting of the facts, therefore, he has every right to be in Rent proceedings before learned Rent Controller at Sehwan to unearth such fraud and misrepresentation of the facts. By contending so, he sought for setting aside of the impugned order being illegal and having been passed without lawful jurisdiction. In support of his contention, learned counsel has relied upon the cases of ***Zahurul Hasan Vs. Mst. Ruqqia Begum and 4 others (PLD 1981 Supreme Court 112)***, ***United Bank Ltd. Vs. Muhammad Rafi and another (2005 S.L.J.1428)***, ***Mamoor Khan Vs. Nasiruddin alias Nasir Muhammad (1985 CLC 130)***, and ***Mst. Seema Begum Vs. Muhammad Ishaq and others (PLD 2009 Supreme Court 45)***.

3. Learned Additional Advocate General, Sindh did not support the impugned order. However learned counsel for legal heirs of respondent No.1 by supporting the impugned order has sought for dismissal of instant petition, by contending that it is incompetent.

4. We have considered the above arguments and perused the record.

5. The order dated 24.04.2008 whereby application under section 12 (2) C.P.C of the petitioner was allowed by learned Rent Controller at

Sehwan obviously was interim in its nature and was subject to final decision in very rent proceedings. Interim order is not subject to its challenge. If it is believed that it was subject to challenge even then it was not subject to its examination by an Additional District Judge in exercise of its revisional jurisdiction. Article 10-A of the Constitution of Islamic Republic of Pakistan 1973 prescribes chance of fair trial to every citizen for determination of its civil/criminal rights and obligations. In these circumstances, the impugned order is set-aside with direction to learned Rent Controller at Sehwan to dispose off the very Rent Application pending before him expeditiously by providing chance of hearing to all the concerned preferably within three months after receipt of copy of this order.

6. Above are the reasons of short order dated 17.11.2020, whereby the instant petition was allowed.

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