

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-966 of 2018

Date	Order With Signature Of Judge
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Hearing / priority case

1. For hearing of CMA No.1942 of 2019.
2. For hearing of main case.
3. For hearing of CMA No. 4016 of 2018.

02.05.2019

Mian Mushtaq Ahmed, advocate for petitioner.

Mr. Muhammad Mushtaq Qadri, advocate for applicant/intervener.

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Through instant petition, petitioner has challenged judgment of the Rent Controller as well as Appellate Court, whereby the Rent Case No. 231 of 2016 was dismissed.

2. Precisely, relevant facts are that petitioner filed rent application No. 1075 of 2013 with regard to fixation of fair rent, accordingly, by order dated 08.01.2016 quantum of amount was allowed as Rs.50,000/-; that order was assailed upto apex Court, same was maintained, as well review application was dismissed. Petitioner filed eviction application on the ground of default as tenant failed to deposit fair rent, through impugned order the learned Rent Controller dismissed the rent application while holding that petitioner is not owner. In similar fashion learned appellate judge maintained that order dated 09.09.2017 by order dated 11.04.2018 "*that petitioner has failed to prove ownership*". Therefore, these resulted in filing of instant petition.

3. None is appearing for respondent No.1. Record reflects that Mr. Abdul Shakoor Memon filed Vakalatnama on behalf of Respondent No.1 but he failed to proceed with the case and sought dates on various occasions. By order dated 04.02.2019, matter was adjourned with a note of caution that

“matter shall be proceeded on the basis of material available on record irrespective of the counsel for the Respondent No.1 is present.” Again matter was listed on 12.02.2019, Mr. S.M. Raza, advocate appeared for respondent No.1 with the plea that *Mr. Abdul Shakoor Memon is out of country.*”, hence, matter was adjourned for 20.02.2019 and on that date respondent No.1 appeared, sought time to engage another counsel; time was allowed and matter was adjourned for 11.03.2019 but respondent No.1 failed to engage any counsel, however, as an indulgence and with last chance, matter was adjourned for 18.03.2019. Thereafter, Mr. Mushtaq A. Qadri, advocate for intervener filed application under Order 1 rule 10 CPC and notices were ordered to be issued; objections were filed including rejoinder; intervener claiming ownership of demised premises.

4. Again today, none is present for or on behalf of the respondent. It is needless to add that court is never bound to give indefinite hearing to the parties to have a right of hearing but this cannot be taken to undermine the absolute authority of the Courts to regulate the proceedings which includes, but not limited to, fair and speedy decisions. Reference is made to case of “Engineers Study Forum (Registered) & another v. Federation of Pakistan and others 2016 SCMR 1961 wherein it is held as:-

“4. ... The Court is not bound to give indefinite hearing to the counsel appearing for a party before it nor the counsel can claim privilege of hearing him by the Court to his heartfelt satisfaction. It is the function of Court to regulate hearing of the matters fixed before it and at the same time to ensure that it has given adequate time to the counsel for hearing in a given case. What is adequate time for hearing of a given case, it is not for the counsel appearing for a party before the Court to decide rather it is more a function of the Court. There is no concept in the Court of law of allowing a counsel for a party to hear infinitum or to his heartfelt satisfaction nor any rule in this regard was cited before us. It is true that

while hearing a case before it, the Court has to keep into consideration well enshrined and celebrated principle of *Audi Alteram Partem* (no man should be condemned unheard) and the Court was well informed of this principle while hearing a matter before it.

It is matter of record that numbers of opportunities have been provided even with riders of *last chances* but same have not been attended to. In such situation, it is better to proceed with the matter.

5. Learned counsel for the petitioner has argued that the question of ownership though is challenged by the legal heirs of principal owner (Intervener), which is subjudiced before the Civil Court but that was not the moot question to decide the eviction application as rent laws provides that any person who is authorized to receive the rent by owners has a right to file eviction application. Learned counsel for the petitioner further contends that in spite of direction in earlier rent matter though that order had attained finality to apex court, respondent No.1 failed to deposit the fair rent.

6. Learned counsel for the intervener contends that ownership is disputed; petitioner is not owner and such case is pending before the Civil Court, therefore, he cannot seek eviction; however, he has no objection with regard to deposit of fair rent with the Rent Controller.

7. Needless to mention that for filing eviction application, ownership is not requirement of law rather whole law revolves round the term '*landlord*'. Landlord is defined in Section 2(f) of Sindh Premises Ordinance, 1979 that *Landlord" means 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"*. Accordingly, any person authorized or entitled to collect / receive the rent can competently file the same. In this case, history reflects that fixation of fair rent was decided on the petition of present petitioner and that was not

disputed by any legal heir of original owner namely Mst. Taj Bagum Malik and even that order was contested by the respondent No.1 upto apex court. At this juncture, it would be conducive to refer paragraph No.3 of order dated 07.08.2018 passed by the apex Court in CP.No.99-K/2018, which is that:-

*“4. These very submissions of learned ASC for the petitioner have been considered by all the three courts below who have non-suited the petitioner by giving sufficient and cogent reasons **and in this respect legal aspect of the matter has also been examined.** Learned ASC for the petitioner has conceded before us that respondent No.1 had filed Suit for specific performance of the agreement to sell and such Suit had been decreed in favour of respondent No.1. learned ASC for the petitioner has also admitted that **after getting the decree, the respondent No.1 has become landlord of the premises.** This very submission of learned ASC for the petitioner does not provide any help to the petitioner’s cause rather it tends to negate the case of petitioner for that in the first place respondent No.1 has served the notice under Section 18 of the Ordinance and it has come in evidence that **previous owner has delegated his authority to respondent No.1 to collect rent and in our view such aspect entitled to respondent No.1 to file such application against the petitioner and further such right of respondent No.1,** as admitted by learned ASC for the petitioner, has also matured by obtaining decree in Suit for specific performance. No ground has been made before us to interfere with the impugned order. The petition is, therefore, dismissed and leave refused.”*

(bolding and underlining is mine for emphasis)

The above referral, *prima facie*, shows that competence of petitioner was not only questioned but was attended to by honourable Apex Court thereby competence in filing rent-petition was answered in *positive*. Here, a referral to relevant portion of the case of *Nazar & Ors v. Member (Judicial-II)* BOR 2010 SCMR 1429, being relevant is made hereunder:-

“It is also settled proposition of law that Courts would not allow a judgment of the Supreme Court to be challenged even on a ground which was not taken before the Supreme Court. See State v. Mujibur Rehman Shami and 2 others PLD 1973 Lahore-1. The question of law as been settled down by this Court after considering provisions of Section 11 of CPC and Articles 189 and 201 of the Constitution that civil Court or any other authority had no jurisdiction whatsoever to entertain any application or any civil suit qua the subject matter which

had already been set at right by the Supreme Court as per law in the following judgments:

- i) Abdul Majid's case PLD 1992 SC 146
- ii) Murad Khan's case PLD 1983 SC 82

Thus, neither respondent no.1 nor the lower courts were ever competent to question competence of petitioner for filing the rent-petition while the *interveners* admittedly were not parties at such time. At this juncture, counsel for the intervener/legal heirs contends that now they have approached before this Court directly. At this juncture, it would be conducive to refer last portion of the impugned order whereby eviction application was dismissed, which states that:-

*"25. It is transpired that applicant preferred suit No. 495/2015 Specific Performance against defendants (the legal heirs of original owner Mst. Taj Begum of the subject tenement and as well as legal heirs of Bilal A Malik (deceased) who was also one of legal heir of Mst. Taj Begum and was also co-sharer/co-owner of the subject tenement which was later on decreed in his favour vide judgment dated 05-11-2016. It appears from the record that applicant claiming himself as owner of the subject tenement on the basis of sale agreement dated 27.09-2012 and it is admitted fact that only sale agreement does not confer any right or title of the subject property nor any relation of the landlord and tenant is created. It is also appears that applicant has not filed any valid title documents, which shows that he is owner of the subject tenement. **The applicant is only relying on Ex-parte decree passed in his favour in respect of sale agreement dated 27-09-2012 executed by Bilal A. Malik (deceased) who was not the exclusive owner of subject tenements but only one of legal heir of Mst. Taj Begum and one of co-owner/co-sharer.** It appears that applicant himself admitted that as per record the original owner is still Mst. Taj Begum (deceased). It is, therefore, suffice to hold that at the time of filing of rent case in hand on 17-02-2016 in civil suit No.495/2015 in his favour, which does not create a concrete findings in his favour due to sole reason that decree is still subjudice and valid title of ownership has yet not been acquired by the applicant and admittedly he is claiming himself as owner but he has not filed any valid title documents. Under such circumstances, I am of the view that neither the applicant is owner nor has any further status of rent controller therefore he does not come in ambit of landlord as described in section 2 (f) of SRPO-1979.*

*26. Upshot of the above discussion is that nothing is available on record to read in isolation, therefore, upon consideration of applicant's case from all fours, assessment of evidence brought on record and evaluation of arguments of both the counsel, **I am of humble opinion that at this stage applicant failed to lead trustworthy and confidence inspiring evidence which shows that he is landlord***

of demised premises and has failed to establish his relationship with the opponent as landlord and tenant together with this he failed to establish himself as owner. The case laws cited by the learned counsel for the applicant is on different footings from the facts of the present case. In view of above discussion the preliminary issue No.1 framed by this court about relationship of landlord and tenant is answer as negative."

8. The manner, in which, the learned Rent Controller declared the petitioner as *incompetent* is neither in line with definition of **landlord** nor other settled principles of law, including, but not limited to settled principle of law that one of sharer can *independently* file rent case. Therefore, orders of both the two Courts below, being completely against settled principles of law, cannot sustain. It may also be added here that an order, passed in rent-proceedings, can never be a conclusive proof of '**ownership**' or allied rights and interests. This has been the reason that right to file rent-petitions is not limited to '**owners**' nor such proceedings ever permit determination of such dispute.

9. In view of what has been discussed above, I am of the clear view that findings of both courts below with regard to ownership are unwarranted under the law, hence, impugned orders recorded by the both the Courts below are set aside; case is remanded back to the Rent Controller with direction to the respondent No.1 to deposit fair rent as referred above in the present rent petition within 30 days as well continue to deposit future rent before 10th of each calendar month. In case of failure, Rent Controller would be competent to proceed against respondent No.1 in accordance with law. At this juncture, counsel for the intervener contends that the rider may be imposed that petitioner will not withdraw the same till disposal of that rent matter, which is not objected by the petitioner.

Instant petition stands disposed of.

JUDGE