

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No. S – 607 of 2021**

Date	Order with signature of Judge
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For hearing of CMA No.3740/2021 (Stay) :

For hearing of main case :

**12.10.2021 :**

Mr. Taj Fareen Khan, advocate for the petitioner.

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**NADEEM AKHTAR, J .** – Respondent No.1 / landlord filed Rent Case No. 142/2020 against the petitioner / tenant seeking his eviction on the ground of default in payment of monthly rent and utility bills. Vide order dated 16.03.2021 passed by the learned Rent Controller, the defense of the petitioner was struck-off under Section 16(2) of the Sindh Rented Premises Ordinance, 1979, due to non-compliance of the tentative rent order dated 02.11.2020 passed under Section 16(1) of the said Ordinance, and he was directed to vacate the demised premises within thirty (30) days. FRA No.42/2021 filed by the petitioner against the aforesaid order was dismissed by the learned appellate Court vide judgment dated 15.07.2021. The above concurrent findings have been impugned by the petitioner through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. It was observed by the learned Rent Controller in the impugned order dated 16.03.2021 that the petitioner had failed to deposit the arrears of rent for the period April 2017 to November 2020 by 30.11.2020 and also to deposit future monthly rent on or before the tenth day of every month, as directed vide tentative rent order dated 02.11.2020. The only justification offered by the learned counsel for the petitioner for not complying with the tentative rent order is that the demised premises were purchased by him from respondent No.1 whereafter he was not liable to pay rent. It was conceded by him that the title of the demised premises was never transferred in favour of the petitioner through a registered instrument, nor has any decree in respect of the demised premises been passed in his favour by a civil Court. This contention of the learned counsel cannot be accepted in view of the law laid down by the Hon'ble Supreme Court in the following cases :

I. In Haji Jumma Khan V/S Haji Zarin Khan, **PLD 1999 SC 1101**, 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.

II. In Kassim and another V/S S. Rahim Shah, **1990 SCMR 647**, 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.

III. In Muhammad Iqbal Haider and another V/S V<sup>th</sup> Rent Controller/Senior Civil Judge, Karachi Central and others, **2009 SCMR 1396**, 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.

IV. In Syed Imran Ahmed V/S Bilal and another, **PLD 2009 SC 546**, 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.

V. In Abdul Rasheed V/S Mqbool Ahmed and others, **2011 SCMR 320**, 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 exercise by deciding such relationship. The order passed by the Rent Controller was maintained by the Hon'ble Supreme Court.

3. It would be seen that it has been consistently held by the Hon'ble Supreme Court that if the tenant asserts that he is no more a tenant as he had purchased the property, even then he has to vacate the property and file a Suit for specific performance of the sale agreement, and he would be entitled to possession of the property in accordance with law only if he succeeds in his Suit. It is also well-settled that till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, landlord would be entitled to recover rent. In the present case, it is an admitted position that compliance of the tentative rent order was not made by the petitioner, therefore, the Rent Controller had no option, but to strike off his defence as held by the Hon'ble Supreme Court in Safeer Travels (Pvt.) Ltd. V/S Muhammad Khalid Shafi through legal heirs, **PLD 2007 S.C. 504**. The impugned orders are in accord with the law laid down by the Hon'ble Supreme Court. Accordingly, the petition and listed application are dismissed in limine with no order as to costs.

J U D G E