

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 895 of 2021

Date	Order with signature of Judge
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1. For order on office objections 18 & 27 :
2. For hearing of CMA No.5895/2021 (Stay) :
3. For hearing of main case :

10.12.2021 :

Petitioner Nisar Ahmed (CNIC No.41303-3879553-7)
present in person.

Mr. Muhammad Arshad Tariq, advocate for respondent No1.

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NADEEM AKHTAR, J . – Rent Case No.507/2018 was filed by respondent No.1 / landlord against the petitioner / tenant for his eviction on the grounds of personal need and default in payment of monthly rent. In the aforesaid case, a tentative rent order was passed by the learned Rent Controller on 19.09.2019 by directing the petitioner to deposit the future monthly rent at the rate of Rs.12,000.00 with effect from October 2019 by the tenth day of each calendar month. It was observed by the learned Rent Controller in his aforesaid order that respondent No.1 will not be entitled to withdraw the amount deposited by the petitioner in terms of the said order till the final decision of the rent case. It was further observed in the aforesaid order that the question of alleged arrears of rent claimed by respondent No.1 shall be decided on the basis of the evidence of the parties. It appears that an application was filed by the petitioner before the learned Rent Controller for the review of the aforesaid tentative order, which was dismissed vide order dated 11.12.2019. As compliance of the tentative order was not made by the petitioner, his defence was struck off by the learned Rent Controller through the impugned order dated 01.09.2021 with further direction to him to vacate the demised premises within thirty (30) days.

The petitioner, who is present in person, states that he had purchased the demised premises from respondent No.1 and due to this reason he was not liable to pay rent to him ; and, Suit No.155/2020 filed by him against respondent No.1 for specific performance is *subjudice* before the Civil Court. It is well-settled that if the tenant asserts that he is

no more a tenant as he had purchased the premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the premises in accordance with law only if he succeeds in his Suit ; till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover rent ; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a 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. The above view is fortified by Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller / Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another, PLD 2009 SC 546, and Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320.

In the present case, it is an admitted position that the Suit filed by the petitioner is still pending and no decree has been passed therein in his favour up till now. It is also 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 order is in accord with the law laid down by the Hon'ble Supreme Court and as such does not require any interference by this Court. Accordingly, the petition and listed application are dismissed with no order as to costs.

JUDGE