

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. S – 73 of 2022

Date	Order with signature of Judge
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For orders on CMA No.535/2022 (Urgency) :
For order on office objections 18, & 31 as at 'A' :
For orders on CMA No.536/2022 (Exemption) :
For hearing of main case :

08.02.2022 :

Mr. Ahmed Nawaz, advocate for the petitioner.

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NADEEM AKHTAR, J. – Rent Case No.390/2020 was filed by respondent No.3 / landlord against the petitioner / tenant for her eviction on the ground of default in payment of the monthly rent and utility bills. In the aforesaid case, a tentative rent order was passed by the learned Rent Controller on 20.03.2021 by directing the appellant to deposit the arrears of rent with effect from August 2020 within thirty (30) days at the rate of Rs.15,000.00 per month ; future monthly rent on or before the tenth day of each calendar month at the same rate ; and, to pay utility bills in respect of the demised premises on regular basis and to submit the copies thereof before the Court. It was observed by the learned Rent Controller in his aforesaid order that respondent No.3 will not be entitled to withdraw the monthly rent till the final decision of the rent case. As compliance of the aforesaid order was not made by the petitioner, her defense was struck off by the learned Rent Controller through the impugned order dated 23.08.2021 with further direction to her to vacate the demised premises within thirty (30) days. First Rent Appeal No.118/2021 filed by the petitioner against her aforesaid order of eviction was dismissed by the learned appellate Court vide impugned judgment dated 13.01.2022. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the concurrent findings of the learned Courts below.

2. It is contended, *inter alia*, on behalf of the petitioner that she had purchased the demised premises and due to this reason she was not liable to pay rent to respondent No.3 ; she was never inducted as tenant either by the previous owner (respondent No.4) or by respondent No.3 ; there was no relationship of landlord and tenant between the parties ; and, respondent No.3 had no *locus standi* to file the eviction application against

her as he did not have title of the demised premises in his name. Learned counsel concedes that the petitioner did not file any Suit against respondents 3 and/or 4 for specific performance or for declaration. 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 the 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.

3. Regarding the *locus standi* of respondent No.3 to file the eviction application, it was held in the impugned order by the learned Rent Controller that a copy of the conveyance deed executed in his favour by respondent No.4 / previous owner was available on record. It was also held in the impugned order that the present petitioner had failed to produce any document of title in her name in respect of the demised premises. Learned counsel has failed to point out any illegality or infirmity in the concurrent findings of the learned Courts below.

4. 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 her 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 appeal and listed application are dismissed in limine with no order as to costs.

J U D G E