

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No. S – 67 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA-245/2021(urgency)
For orders on office objection
For orders on MA-246/2021(exemption)
For orders on MA-247/2021 (stay)
For hearing of main case

01.03.2021

Mr. Adeel Baig Panhwar advocate for the petitioner.

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ORDER

NADEEM AKHTAR, J. : Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned order passed on 03.02.2021 by the learned IInd Senior Civil Judge / Rent Controller Hyderabad in the respondent's Rent Application No.48/2020 whereby the application filed therein by the respondent / landlord under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, (**'the Ordinance'**) was allowed by directing the petitioner / tenant to deposit arrears of rent within thirty (30) days.

2. Relevant facts of the case are that the above rent application was filed by the respondent / landlord against the petitioner / tenant seeking his eviction from Shop No.1, Ground Floor, Arif Plaza, Station Road, Hyderabad, (**'demised premises'**) on the grounds of personal need and default in payment of monthly rent. Instead of filing written statement, the petitioner filed objections to the said application wherein he admitted that he was inducted as a tenant of the demise premises. However, it was claimed by him that subsequently the parties entered into an agreement for sale whereafter he ceased to be the tenant in respect of the demise premises. It was also stated by him in his objections that he has filed a Suit for specific performance and injunction against the respondent and other co-owners of the demise premises which is subjudice before the Civil Court.

3. Along with his above eviction application, the respondent filed an application before the learned Rent Controller under Section 16(1) of the Ordinance praying that the petitioner be directed to deposit in Court arrears of rent at the rate of Rs.15,000.00 per month for fifty eight (58) months from May 2015 to February 2020.

In response to this application, a counter affidavit was filed which was sworn by the petitioner's counsel, and not by the petitioner himself although material facts relating to the case were stated therein. Thus, the petitioner did not file any counter affidavit to the above application. In this context, it may be observed that an affidavit in relation to facts can be sworn and filed only by the party concerned who is familiar with such facts, and the counsel of such party cannot swear an affidavit of facts on behalf of his client. Therefore, the above counter affidavit sworn and filed by the petitioner's counsel was of no significance and was liable to be discarded.

4. It is contended by learned counsel for the petitioner that the petitioner ceased to be tenant of the demise premises with effect from the date of the agreement for sale executed in his favour and as such he was not liable to tender rent ; the learned Rent Controller failed to appreciate that the Suit filed by the petitioner for specific performance and injunction was subjudice before the Civil Court ; and, the application filed by the respondent under Section 16(1) of the Ordinance was liable to be dismissed in view of the above. On my query, it was conceded by the learned counsel that title of the demise premises is still in the name of the landlords / co-owners, including the respondent, and the same has not yet been transferred or mutated in the name of the petitioner. Therefore, in view of this admitted position it cannot be said or claimed that the respondent and other co-owners have sold the demised premises to the petitioner or the latter has purchased the same from the former. Moreover, because of pendency of his Suit even the petitioner cannot claim with conviction that he will succeed in his said Suit as it is well-settled that specific performance cannot be claimed as a matter of right and it is the discretion of the Court to grant it or not which discretion is exercised by the Court keeping in view the facts and circumstances of each case. Accordingly, the petitioner is not entitled in law to claim ownership of the demised premises till a decree to this effect is passed in his favour and such decree attains finality. This being the legal position, mere pendency of the Suit filed by the petitioner for specific performance will not change the position.

5. The above views expressed by me are fortified by the following authorities of the Hon'ble Supreme Court :

- A. In *Haji Jumma Khan V/S Haji Zarin Khan*, **PLD 1999 S.C. 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.

- B. 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.
- C. In Muhammad Iqbal Haider and another V/S Vth 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 Suit 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 the Ordinance pending final determination.
- D. In Syed Imran Ahmed V/S Bilal and another, **PLD 2009 S.C. 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.
- E. 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.

6. In view of the law laid down by the Hon'ble Supreme Court, it is clear that till date the petitioner has not acquired any proprietary rights, title or interest in the demised premises, and as such the relationship of landlord and tenant between the parties still exists. Therefore, the learned Rent Controller was duty-bound to pass an order on the application filed by the respondent / landlord under Section 16(1) of the Ordinance. Perusal of the impugned order shows that the petitioner has been directed by the learned Rent Controller to deposit arrears of monthly rent only for thirty six (36) months, and not for fifty eight (58) months as prayed for by the respondent. Learned counsel for the petitioner has not been able to point out any illegality or infirmity in the impugned order which, in my humble opinion, is in accord with the law laid down by the Hon'ble Supreme Court and as such does not suffer from any illegality or infirmity. Accordingly, the petition and all listed applications are dismissed in limine with no order as to costs.

JUDGE