

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. S – 1075 of 2019

Date	Order with signature of Judge
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For order on office objection :
For orders on CMA No.761/2021 :
For hearing of CMA No.5024/2019 :
For hearing of main case :

23.02.2022 :

Ms. Uzma Zahid, advocate for the petitioner.
Mr. Muhammad Aqil Zaidi, advocate for respondent No.1.

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NADEEM AKHTAR, J. – Rent Case No.07/2018 was filed by respondent No.1 / landlady against the petitioner / tenant for her eviction on the ground of default in payment of the monthly rent was allowed by the Rent Controller vide impugned order dated 17.11.2018 by directing her to vacate the demised premises within seventy five (75) days. First Rent Appeal No.41/2018 filed by the petitioner against her aforesaid order of eviction was dismissed by the appellate Court vide impugned judgment dated 31.08.2019. 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 on behalf of the petitioner that respondent No.1 had entered into an agreement for sale of the subject premises with the late husband of the petitioner ; due to this reason, the petitioner's husband and or petitioner were not liable to pay the rent to respondent No.1 ; as respondent No.1 had failed to complete the sale of the subject premises in favour of the petitioner's husband, and after his death in her favour, the petitioner was constrained to file a Suit for specific performance against respondent No.1 which is subjudice before the trial Court ; there was no relationship of landlord and tenant between the parties ; this important aspect has not been appreciated by the learned Courts below ; and, the impugned orders are not sustainable in law. Learned counsel concedes that no decree for specific performance or in relation to the title of the demised premises has been passed up till now in favour of the petitioner.

3. The record shows that despite the fact that the petitioner was being represented by a counsel before the Rent Controller, written statement was not filed by her, and due to this reason the rent case proceeded ex-parte against her. While allowing the eviction application filed by respondent No.1, it was observed by the Rent Controller that the allegation of default made by her against the petitioner had remained un-rebutted.

4. 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.

5. In view of the above, the impugned orders are in accord with the law laid down by the Hon'ble Supreme Court and as such do not require any interference by this Court. Accordingly, the petition and listed applications are dismissed with no order as to costs with direction to the petitioner to vacate the subject premises latest by **31.08.2022**.

J U D G E