

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-757 of 2021

Date: Order with signature(s) of the Judge(s)

Hg/Priority.

1. For Hearing of MA No.4897/2021
2. For Hearing of Main Case

15th November, 2022

Mr. Muhammad Ramzan Tabassum advocate for the Petitioner
Respondent No.2 is present in person

It is the case of the Petitioner that he has instituted the Suit No.2082/2020 for Specific Performance of Contract, which is pending adjudication, wherein by means of order dated 18.12.2020 ad-interim injunctive relief was granted directing the Defendants not to create any third party interest wherein the Respondent is impleaded as the Defendant No.4. According to counsel for the Petitioner in civil suit directions were issued by way of interim order that no third party interest be created; Respondent filed application under Order I Rule 10 CPC in Rent Case No.782/2020 filed by the Petitioner claiming therein that he is co-owner of the entire building and receiving rental income; hence, he is necessary and proper party to the rent proceedings. Further it is contended that the Respondent has manipulated forged power of attorney and intends to linger on the rent proceedings particularly which he cannot, as an ad-interim order is operating against him. At this juncture it would be conducive to refer para-5 of impugned order, which is reproduced as under:

“05. The submissions of both the sides have cautiously been heard and the material available on file along with the relevant provisions of law have carefully been perused. The applicant has filed rent case against the opponents No.1 & 2. It is claim of applicant that opponent No. 1 has sublet the demised premises to the opponent No. 2. On the other hand, the Opponent No. 2 filed his written statement and averred in the same that on 01-01-2019, applicant and his brother namely Abdul Wahab rented out the demised premises to him and his wife Mrs. Fahima Khan under tenancy agreement. The opponent No. 2 has also annexed such

tenancy agreement with the written statement. It has further been averred in the written statement of opponent No. 2 that applicant's brother namely Abdul Wahab executed general power of attorney in favor of him and one Bashir Ahmed in respect of his 50% undivided share. Subsequently, the opponent No. 2 and said Bashir Ahmed sold out the aforesaid property to Mrs. Fahima Khan (Intervener). The intervener, in her application U/O I rule 10 CPC, has also taken the aforesaid contentions raised by the opponent No. 2. Moreover, the intervener has annexed with instant application the copy of registered sale deed by virtue of which she become owner in respect of 50% undivided share in the building of demised premises. Under such circumstances, I am of the view that intervener claiming to be co-owner in property is necessary party in instant rent case, as such, the application in hand is allowed and intervener is impleaded as opponent No. 03 in present case. The applicant is directed to file amended title of rent application. Order accordingly".

2. Perusal of above and in view of plea taken by learned counsel for the Petitioner; candidly Respondent is receiving the rent, though Petitioner is claiming that he is in league with his tenant and dishonestly receiving rent. It is pertinent to mention that it is matter of fact that Respondent is receiving rent from the tenant being co-owner of the demised premises and suit for specific performance has been instituted by the Petitioner, which is also pending adjudication. In such circumstances, the presence of the Respondent is necessary in order to enable the Court/Rent Controller effectually and completely to adjudicate upon and settle all the questions involved in the rent case.

3. The learned counsel for the Petitioner has relied upon the case of M/s. Mahboob Bakhsh Pvt. Ltd. Vs. Moinuddin Paracha and another reported in (1989 CLC 1354 [Karachi]), wherein it is observed by this Court that if someone is claiming co-owner, he may be joined as applicant and not as an opponent. Needless to mention that Petitioner is claiming that Respondent No.2 has managed the documents, his suit is pending, therefore, for reaching at just and proper decision, trial court has rightly allowed the application under Order 1 Rule 10, CPC, which may be helpful for the Petitioner to bring on record that there is manipulation in the documents and tenant is in league with the Respondents.

4. So far as the contention of the learned counsel for the Petitioner to the extent that the Respondent should have been co-applicant and not as one of the Opponents is concerned, in Case of Syed Sarfaraz Ali v. Shah

Jehan Begum and another (1996 CLC 1034), while examining the previous case laws on this point, it has been held by single bench of this Court that:

“I would like to add that the ratio therein appears to be that where the intervener claims title or ownership of property he should be allowed impleadment as a co-party to the landlord but where the intervenor claims joinder as a tenant he should be joined as a co-party to the tenant”.

5. This question is left to be determined by the Rent Controller, who can exercise his powers to transpose the Respondent as Co-Applicant, if the facts of the case so require. Order I, rule 10, C.P.C. is very wide in its scope. The Court/Rent Controller always enjoys ample powers to transpose any of the Opponent as co-applicant and vice versa, inasmuch as, depending upon the nature of cause, if it finds that *lis* can effectively be adjudicated upon without transposition, the Court/Rent Controller would be competent to decide the cause accordingly. The power to transpose is derived, amongst others, from the aforesaid provisions, which has always been interpreted liberally in the interest of complete adjudication and of all the questions involved in *lis* and in order to avoid multiplicity of the proceedings. This power is invariably exercised generously and technical hurdles are always bypassed for considerations of effectual adjudication and inexpensive access to justice.

6. The impugned order against which this petition is directed is in the nature of interim order and therefore, not appealable under Section 21 of the Sindh Rented Premises Ordinance, 1979, which section is restrictive in character and specifically bars appeal from interim orders. The obvious purpose of not providing appeal from interim orders is, to avoid piecemeal decision and to ensure expeditious disposal of cases under the Ordinance, 1979. This object cannot be allowed to be defeated by the device of challenging such interim orders in Constitutional jurisdiction. This question came up for consideration before the superior Courts on several occasions including in the case of *Mst. Seema Begum v. Muhammad Ishaq and others (PLD 2009 Supreme Court 45)*.

In view of above instant petition being devoid of merits is hereby dismissed alongwith listed application[s].

JUDGE