

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. S – 929 of 2021

Date	Order with signature of Judge
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Petitioner : Mst. Samina Begum
through Mr. Muhammad Nadeem Khan Advocate.
Respondent No.1 : Muhammad Haq Nawaz Khan
through Mr. Muhammad Irfan Advocate.
Date of hearing : 26.09.2022.

ORDER

NADEEM AKHTAR, J. – Rent Case No.397/2019 filed by respondent No.1 / landlord against the petitioner / tenant for her eviction from the demised premises was allowed by the Rent Controller vide order dated 08.12.2020 ; and, First Rent Appeal No.32/2021 filed by the petitioner against the said order of her eviction was dismissed by the appellate Court vide judgment dated 07.10.2021. This constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed by the petitioner against the concurrent findings of the learned Courts below.

2. Perusal of the order passed by the Rent Controller shows that the eviction application was filed by respondent No.1 on the grounds of his personal need and the default committed by the petitioner in payment of the monthly rent for twelve (12) years. The record shows that after exhausting all modes of service including publication in newspaper, an ex-parte order was passed by the Rent Controller on 20.12.2019 against the petitioner as she did not appear nor did she file her written statement. The record further shows that a counsel filed his power on 04.01.2020 on behalf of the petitioner along with an application for recalling the ex-parte order ; her said application was allowed by the Rent Controller vide order dated 08.02.2020 with the consent of respondent No.1 ; despite the above, she did not file her written statement although several opportunities were granted to her ; and, in view of her said failure, she was finally debarred vide order dated 11.08.2020 from filing the written statement. Thereafter, respondent No.1 filed his affidavit in ex-parte proof and his evidence was recorded when he produced relevant documents in support of his case, including the title documents in respect of the demised premises. It is pertinent to mention here that the petitioner did not cross-examine respondent No.1.

3. After examining the eviction application and evidence of respondent No.1, his application was allowed by the Rent Controller by holding that he had succeeded in proving his case on both the grounds, and also that the evidence produced by him was not rebutted by the petitioner. The tenor of the order passed by the Rent Controller clearly indicates that the eviction application was allowed by him on the strength of the evidence produced by respondent No.1, and not merely because of the absence of the petitioner. The said order also shows that the Rent Controller was conscious of the legal position that the arrears of rent could not be granted for more than three years. The findings of the Rent Controller were upheld by the appellate Court by further observing that the petitioner was claiming ownership of the demised premises only on the basis of a sale agreement, but she did not have any decree from the civil Court in her favour in the Suit for specific performance filed by her against the previous owner of the demised premises and respondent No.1. It was held by the appellate Court that in such circumstances, the petitioner was to be presumed and treated as a tenant.

4. It is contended by learned counsel for the petitioner that there was/is no relationship of landlord and tenant between the parties nor was the petitioner inducted as a tenant by respondent No.1, and due to this reason she never paid any rent to respondent No.1 nor was she liable to do so. It is further contended by him that the subject property was purchased by the petitioner from its previous owner through a sale agreement and since he did not transfer the same in her favour, she was constrained to file a Suit against him for specific performance wherein respondent No.1 was also impleaded subsequently. He submits that this aspect ought to have been considered by the learned Courts below and a point for determination regarding the relationship of landlord and tenant between the parties ought to have been framed and decided by the Rent Controller. He further submits that the petitioner was condemned unheard by the Rent Controller. He concedes that up till now no decree has been passed in the Suit for specific performance filed by the petitioner.

5. Regarding the contention of the learned counsel that the petitioner was condemned unheard by the Rent Controller, it may be observed that the principle '*audi alteram partem*' is attracted only in a case where the opportunity of hearing is not afforded by the Court to a party to the proceedings in spite of the fact that the party was present before the Court or was absent but was not properly served in accordance with law. The principle shall not apply in a case

where the party, despite proper service of notice and opportunity granted by the Court, chooses to remain absent, or appears either personally or through counsel and then deliberately abstains itself from participating in the proceedings. In the instant case, it is an admitted position that before the Rent Controller the petitioner was not only being represented by a counsel, but had also filed an application for recalling the ex-parte order which application was allowed ; but, she never appeared thereafter nor did she bother to file her written statement or to cross-examine respondent No.1. In such circumstances, it does not lie in her mouth to plead at this belated stage that she was condemned unheard. In fact, the course adopted by the Rent Controller by debarring her from filing the written statement and proceeding against her ex-parte was the only course available and permissible under the law.

6. As to the claim of the petitioner that there was/is no relationship of landlord and tenant between the parties because the demised premises were purchased by her from the previous owner and a Suit for specific performance was filed by her against the previous owner and respondent No.1, suffice it to say she ought to have set up such defense in her written statement. However, she admittedly did not do so despite the fact that the ex-parte order passed against her was recalled as an indulgence by the Rent Controller whereafter several opportunities were granted to her for this purpose. The contention of the learned counsel that a point for determination regarding the relationship of landlord and tenant between the parties ought to have been framed and decided by the Rent Controller is misconceived as no such point could be framed in the absence of the petitioner's written statement. Needless to say it is the duty of every litigant to prosecute and or defend, as the case may be, his case in a prudent, diligent and vigilant manner, and in case of his failure, he has to face the consequences that may follow because of his failure. In the instant case, the petitioner had miserably failed in discharging her duty as a prudent, diligent and vigilant litigant ; therefore, she was bound to face the consequences of her failure. In the absence of her defense, the Rent Controller had no other option but to proceed against her ex-parte. Admittedly, the petitioner did not cross-examine respondent No.1 and allowed his evidence to remain un-rebutted. Despite this situation, the claim and evidence of respondent No.1 was examined by the Rent Controller on merits and, as noted above, his eviction application was allowed on the strength of the same and not merely because of the absence of the petitioner.

7. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the rented 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 instant case, it is an admitted position that no decree has been passed up till now in the Suit for specific performance filed by the petitioner.

8. In view of the above discussion, the impugned concurrent findings do not suffer from any defect and as such do not require any interference by this Court in its constitutional jurisdiction.

9. Foregoing are the reasons of the short order announced by me on 26.09.2022 whereby this petition and the stay application pending therein were dismissed with no order as to costs.

J U D G E