

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-408 of 2023

Dated: Order with signature of Judge(s)

1.For orders on CMA No.3185/2023.

2.For hearing of Main Case.

Date of Hearing : 02.05.2023.

Petitioner : Afzal Ahmed through
Ms. Shaheen Fatima, Advocate

Respondents : Sikander Mirza and others.

ORDER

MOHAMMAD ABDUR RAHMAN, J., This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against an order dated 21 March 2023 passed by the IIIrd Senior Civil Judge & Rent Controller Karachi (Central) in Execution Application No.45 of 2022 that has been filed in Rent Case No.103 of 2019 by the Respondent No.1 and by which order the IIIrd Rent Controller Karachi (Central) was pleased to allow the Execution Application and has issued a writ of possession to take possession of Shop No.A-3, Ground Floor, House No.1610, Category-R, Block-18, Karachi Development Authority Scheme No.16, Federal "B" Area, Karachi (hereinafter referred to as the "**Said Tenement**").

2. The Respondent No.1 has maintained Rent Case No.103 of 2019 as against the Petitioner under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking the eviction of the Petitioner from the "Said Tenement". Rent Case No.103 of 2019 was opposed by the Petitioner, *inter alia* on the ground that the

Petitioner was not the tenant of the Respondent No.1. The Petitioner alleges that he was actually the tenant of one Mst. Arifa Shaheen who has since died and who according to the Petitioner, was succeeded by her four legal heirs namely:

- (i) Haroon Rasheed,
- (ii) Asif Haroon,
- (iii) Kashif Haroon and
- (iv) Mehreen Haroon.

The Petitioner contends that after the demise of Mst. Arifa Shaheen, the Petitioner started paying the rent for the "Said Tenement" to Kashif Haroon and which they are doing to-date. To rebut their contentions, the Respondent No.1 relied on a Registered Conveyance Deed dated 21 June 2017 whereby he contends that the "Said Tenement" was transferred into his name by Mst. Arifa Shaheen.

3. It seems that the issue of title is the subject of much litigation including but not limited to Civil Suit No.903 of 2017 which is apparently pending before the IX Senior Civil Judge, Karachi (Central).

4. That during the pendency of this litigations, the Respondent No.1 filed an application under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 in Rent Case No. 103 of 2019 seeking a direction that the arrears of rent be deposited in court and which application was granted on 16 November 2019 by the Illrd Senior Civil Judge & Rent Controller. Against the order dated 16 November 2019, the Petitioner preferred a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 bearing C. P. No. S-1434 of 2019 and which was disposed of on 11 December 2019 in the following terms:

" ... 11th December 2019.

Ms. Shaheen Fatima, Advocate for Petitioner.

Heard learned counsel for the petitioners.

Captioned petitions are disposed of alongwith listed applications in terms that petitioner shall deposit the rent as directed by the trial Court/Rent Controller in the impugned order prospectively in the court and trial Court shall proceed with the matter after framing of the issue regarding relation between landlord and tenant. In case, legal heirs of lady Arifa Shaheen are falling within the category of landlord/landlady, they would be competent to withdraw the rent amount deposited with the Court. Needless, to mention that with regard to arrears, trial Court would be competent to pass the directions in accordance with law after adjudication by full-fledge judgment.”

(Emphasis is added)

5. As the Petitioner did not comply with the order dated 16 November 2019, passed by the IIIrd Senior Civil Judge and Rent Controller Karachi (Central) in Rent Case No. 103 of 2019, the Respondent No.1 filed an application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 seeking to strike off the defence of the Petitioner and to seeking the summary eviction of the Petitioner from the “Said Tenement”. After hearing the Parties, the IIIrd Rent Controller, Karachi (Central) on 27 February 2020 granted the application of the Respondent No.2 noting that:

“ ... 5. From bare perusal of the order dated 16.11.2019 it reveals that the petitioner/opponent is directed by this Court to deposit the rent since March 2019., which is up to 12 months till date, which the opponent has deposited the rent in following manner:

1.	16.12.2019	Rs. 3,000
2.	09.01.2020	Rs. 3,000
3.	10.02.2020	Rs. 3,000

6. It appears that the opponent had committed not only willful default in depositing rent as directed in order dated 16.11. 2019 but also committed non compliance of the order dated 11.12. 2019 of Hon’ble high Court of Sindh.”

and proceeded to direct for the striking off the defence of the Petitioner and ordered for the eviction of the Petitioner from the Said Tenement.

6. That on 19 March 2020, the Petitioner moved an application bearing CMA No. 2109 of 2020 in CP No. S-1434 of 2019 seeking to set aside the orders

dated 27 February 2020 that had been passed by the IIIrd Rent Controller, Karachi (Central) on the application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979. The application was dismissed by an order dated 3 June 2022 in the following terms:

“ ... The Petitioner maintained the instant Petition against the order dated 16.11. 2019, whereby the Learned Rent Controller-III Karachi- Central passed a tentative rent order under Section 16 (1) of SRPO, 1979 in Rent Case No. 103/2019 directing him to pay rent at the rate of Rs.3000/- since March 2019 till final decision of the rent case within one month.

The instant petition was disposed of by the Court vide order dated 11.12. 2019 which is reproduced as under:

“Captioned petition are disposed of along with listed applications in terms that petitioner shall deposit the rent as directed by the trial Court/ rent Controller in the impugned order prospectively in the Court and trial Court shall proceed with the matter after framing of the issue regarding relation between landlord and tenant. In case the legal heirs of lady Arifa Shaheen are falling within the category of landlord/landlady, they would be competent to withdraw the rent amount deposited with the Court. Needless to mention that with regard to arrears, trial court would be competent to pass the directions in accordance with law after adjudication by full-fledged judgment. “

Subsequently, the learned Rent Controller vide order dated 27.02. 2020 struck off the defence of the Petitioner under Section 16(2) of the Act. Against that final order, an appeal is provided under Section 21 of the SRPO, 1979; hence the listed application being not maintainable is dismissed, accordingly, along with pending application.

The order dated 2 June 2022 passed in CP No. S-1434 of 2019 was not disclosed by the Petitioner in this Petition and was discovered by me when I called for and inspected the file of CP No. S-1434 of 2019.

7. While inspecting the file, I also noted that the Petitioner had filed an application bearing CMA No. 4439 of 2022 for review of the Order dated 3 June 2022, seeking the following relief:

“ ... a. To pass a review order and interoperate/review the first three lines of the order dated 11.12.2019, to clear the ambiguities regarding to deposit the rent as directed by this Honourable Court month rent along with arrears or without arrears of rent, in the rent application No. 103/2019, before IIIRD Rent Controller Central, Karachi.

b. To pass a restraining order for further proceedings of the rent application No. 103/2019 before IIIrd Rent Controller Central, Karachi and further directed to suspend the operation of the order dated 27.02.2020 till final disposal of this application”

This application along with an application bearing CMA No.4438 of 2022 seeking suspension of the order dated 27 February 2020 passed by the IIIrd Rent Controller, Karachi (Central) was also filed are which still pending adjudication in C. P. No. S-1434 of 2019. **The filing of these two applications were also not disclosed by the Petitioner in the Petition.**

8. This Petition was first heard by me on 28 April 2023 and as there was no documents attached to the Petition to indicate as to whether an Appeal had been preferred by the Petitioner as against the order dated 27 February 2020 passed under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, I asked the Counsel for the Petitioner as to whether an Appeal had been preferred by the Petitioner under Section 21 of the Sindh Rented Premises Ordinance, 1979 as against an order passed under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979? The Petitioner initially contended that an Appeal had been preferred but had not proceeded as the Court was vacant. She then immediately corrected her statement and said that the Court was not vacant and the Presiding Judge was in fact present and requested for time so as to confirm such facts and the matter was adjourned to 2 May 2023.

9. On 2 May 2023, the Petitioner appeared and conceded that the Presiding Judge was in fact present, but in the interim the Petitioner had been dispossessed from the Said Tenement. She further contended that she still wished to press the said Petition and argued that as this was a dispute regarding the ownership of the “Said Tenement” in terms of the Order dated 11 December 2019, the Rent Controller could not have passed the order dated 27 February

2020 without first framing an issue and recording evidence as to the issue of ownership as had been directed by this Court in C. P. No. S-1434 of 2019 in the order 11 December 2019. She concluded by stating that as the order dated 21 March 2023 passed in Execution Application No. 45 of 2022 was premised on the basis of the Order dated 27 February 2020 granting the Application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 this Court has jurisdiction to set aside the order dated 21 March 2023 and also restore the Petitioner into possession in this Court jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Counsel for the Petitioner did not rely on any case law in support of her contentions.

10. I have heard the Counsel for the Petitioner and perused the record. Section 22 of the Sindh Rented Premises Ordinance, 1979 reads as under:

“ ***Final order*** passed under this Ordinance shall be executed by the Controller and all questions arising between parties and relating to the execution, discharge or satisfaction the order shall be determined by the Controller and not by a separate suit.

Explanation:- In the execution proceedings relating to the order of ejection, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order.”

Section 21 of the Sindh Rented Premises Ordinance, 1979 which confers the right to file an appeal states that:

“ 21. (1) Any party aggrieved by an ***order, not being an interim order, made by the Controller*** may, within thirty days of such order, prefer an appeal to the District Judge having Jurisdiction in the area where the premises in relation to which the order is passed

1-A. On such appeal being preferred, the District Judge may hear it himself, or refer it for disposal to an Additional District Judge.

1-B. The District Judge may recall an appeal referred to an Additional District Judge and either hear it himself to refer it for disposal to another Additional District Judge.

1-C. The appellate authority, may, at any stage of appeal attempt to effect a compromise between the parties.

1-D. The appellate authority may, where it deems fit, before passing a final order allow the tenant to continue his tenancy subject to payment of enhanced rent fixed by the authority.

1-E. On the application of a party and after notice to the other party and after hearing such of them as desire to be heard, or on its own motion without such notice-

(a) the appellate authority may at any stage withdraw any application pending with a Controller and transfer the same for disposal to any other Controller;

(b) the High Court may at any stage withdraw any appeal pending with any appellate authority and transfer the same for disposal to any other appellate authority competent to dispose of the same.”.

(2) The appellate authority may pending the final disposal of the appeal, grant injunction staying further proceedings or action on the order of the Controller:

Provided that no injunction shall be granted if the appeal has been preferred from the order under section 14.

(3) The appellate authority shall, after perusing the record of the case and giving the parties an opportunity or being heard and, if necessary, after making such further enquiry either by himself or by the Controller, make an appropriate order, which shall be final.”

(Emphasis is added)

11. As is apparent, Section 21 of the Sindh Rented Premises Ordinance, 1979 permits any person who is a “party” to proceedings before a rent controller to prefer an appeal under that section as against any “order not being an interim order”. No exception having been made in Section 21 of the Sindh Rented Premises Ordinance, 1979 that an appeal could not be preferred from an order on an application under Section 22 of the Sindh Rented Premises Ordinance, 1979 i.e. in execution proceedings it would logically follow that a “party” to those execution proceedings would therefore have a right prefer an appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 against such an “order not being an interim order”. This right was also recognised by the

Supreme Court of Pakistan in **Messrs Bambino Li,Mtied vs. Messrs Slemor International Limited and Another**¹ wherein it was held that:²

“ As regards the second contention that no appeal lay from the order passed by the Rent Controller in execution of the order of ejection it may be stated that a plain reading of section 21 of the Sind Rented Premises Ordinance, 1979 shows, that such an order not being an interim order, was appealable before the High Court. There is, therefore, no substance in this contention as well.”

12. Sub-Article (1) of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 begins by stating that:

“ ... Subject to the Constitution, a High Court may, if it is satisfied that **no other adequate remedy** is provided by law:

In **Muhammad Saeed vs. Mst. Saratul Fatimta**³ Shafi ur Rehman, J while hearing an Intra Court Appeal, against the order a single judge who had dismissed a petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on the basis that appeal lay against an order of a Rent Controller to deposit arrears of rent and future rent, held that:

“ ... 3. The Legislature manifested its intent unequivocally by prescribing two broad categories of all orders passed under the W. P. Urban Rent Restriction Ordinance (VI of 1959) by making the more determinative orders constituting the smaller category appealable and all others forming the larger category non-appealable. The scheme of such a categorization, the limits and the rationale thereof has been fully considered in Mian Manzar Bashir v. M. A. Asghar (P L D 1978 S C 185). It, therefore, follows that what the Legislature held to be an interlocutory order not by itself fit to be appealable, should not by such a device be held fit enough to attract the more important, and at a higher level, the constitutional jurisdiction. Any contention, or practice to the contrary, would defeat and deflect the legislative intent, which has been disapproved in Mumtaz Hussain Bhutta v. Chief Administrator Auquf etc. (1976 S C M R 454)

4. There is yet another aspect of the case. The constitutional jurisdiction is invoked and made available in cases of imminent, grave and tangible threats to valuable personal and property rights and that too subject, inter alia, to the condition that the legal remedy, if at all any available in the circumstances, is not efficacious or adequate. In this case, an order which by itself caused no tangible damage to the appellant, and is incapable of causing any, was challenged. In order to pose a real threat to

¹ PLD 1983 SC 155

² *Ibid* at pg. 157

³ PLD 1978 Lhr 376

him it has to be substituted by another order and the moment it so happens, a right of appeal would accrue to the appellant which right is certainly more extensive and beneficial being available in the same hierarchy and on both questions of law as well as of facts. Thus the case of the petitioner was not a fit one to be entertained in constitutional jurisdiction."

(Emphasis is added)

This judgement was approved by the Supreme Court of Pakistan in **Abdur Rehman vs. Mir Ahmad Khan**⁴ wherein Muhammad Afazal Zullah J, (as his Lordship then was) elaborated that:⁵

" ... Instead of raising the second jurisdictional question based on the state of the property, before the lower forum (where no other similar question was in fact raised, regarding the status of the parties), and then pursuing the matter in first appeal which was as a matter of right and of wider scope, petitioner sought to divert the normal remedial process provided by law, and invoked constitutional jurisdiction of the High Court. It could exercised only on proof of non-availability of adequate remedy. This proof is not forthcoming in this case. The petitioner had a right of appeal if any final decision would have gone against him. Much can be said on the question that this mode was adopted by the petitioner because he wanted to avoid enquiry on facts (if it was needed) and also wanted to delay the proceedings by raising piecemeal pleas of similar jurisdictional nature -one before the proper Her forum and the other in the High Court, in its writ jurisdiction. The matter in fact got delayed because if left to be processed as provided by the special law of summary procedures governing it, the same might have ended within months before the Rent Controller and some more months in appeal. Now it has taken nearly three years and one limb thereof is still being delated in the superior Courts. Apart from delay the petitioner, whether intentionally or otherwise, has successfully avoided enquiry on the question of fraud and forgery-both on the rent side as also on the criminal side. Such could not be the results visualised either by Article 199 which conferred writ jurisdiction on the High Court, nor by the Rent laws which created special forums for speedy and summary disposal of these cases.

This Court has time and again cautioned against piecemeal decisions of these and similar matters. An exposition of principle that it is negation of justice, can be found in Ibrahim v Muhammad Hussain (P L D 1975 S C 457). The fact that it was an appeal case will not make any difference in so far as the basic principle is concerned. The argument in this behalf of different treatment in writ and appeal jurisdiction, was rightly considered in a later Division Bench, High Court in the case of Muhammad Saeed v. Mst. Saratul Fatima (P L D 1978 Lah. 1459), as follows

" The learned counsel for the appellant contends that as the very assumption of jurisdiction by the Rent Controller and the competence of the proceedings before him was under serious challenge, such an onerous order could not be passed without deciding these questions. Beside, the appellant has no statutory alternative remedy. He should not be forced to a situation where

⁴ PLD 1983 SC 21

⁵ *Ibid* at pg. 23

he commits a technical default, is visited with an order of eviction and gets a right of appeal in the hierarchy. It is, according to the learned counsel, an eminently fit case for being entertained and dealt with in the constitutional jurisdiction of this Court.

The Legislature manifested its intent unequivocally by prescribing two broad categories of all orders passed under the W. P. Urban Rent Restriction Ordinance (VI of 1959) by making the more determinative orders constituting the smaller category appealable and all others forming the larger category non-appealable. The scheme of such a categorization, the limits and the rationale thereof has been fully considered in *Mian Manzar Bashi: v. M. A. Asghar*. It, therefore, follows that what the Legislature held to be an interlocutory order not by itself fit to be appealable, should not by such a device be held fit enough to attract the more important, and at a higher level, the constitutional jurisdiction. Any contention, or practice to the contrary, would defeat and deflect the legislative intent, which has been disapproved in *Mumtaz Hussain Bhutta v. Chief Administrator, Auqaf* etc.

There is yet another aspect of the case. The constitutional jurisdiction is invoked, and made available in cases of imminent, grave and tangible threats to valuable personal and property rights and that too subject, inter alia, to the condition that the legal remedy, if at all any available in the circumstances, is not efficacious or adequate. In this case, an order which by itself caused no tangible damage to the appellant, and is incapable of causing any, was challenged. In order to pose a real threat to him it has to be substituted by another order and the moment it so happens, a right of appeal would accrue to the appellant which right is certainly more extensive and beneficial being available in the same hierarchy and on boat questions of law as well as of facts. Thus the case of the petitioner was not a fit one to be entertained in constitutional jurisdiction."...

Keeping the afore-discussed aspects of the question raised before the High Court and the trend of authority regarding exercise of writ jurisdiction in rent matters, it is held that the petition in the High Court, was liable to be dismissed on the short ground of availability of adequate remedy to the petitioner if ever any adverse final order was passed against him. That being so, this petition-must fail."

13. The Petitioner had an alternate efficacious remedy available before the District Judge under Section 21 of the Sindh Rented Premises Ordinance against the order dated 21 March 2023 passed by the Illrd Senior Civil Judge & Rent Controller Karachi (Central) in Execution Application No.45 of 2022 that had been filed in Rent Case No.103 of 2019. The Petitioner had, instead of preferring an appeal, chosen to maintain this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 without exhausting a

remedy that was available to him under in Section 21 of the Sindh Rented Premises Ordinance, 1979 and which would, as per the decisions of the Supreme Court of Pakistan, prevent him from maintaining this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and which resultantly must fail.

14. Having come to the conclusion that this Petition was misconceived and not maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, I had dismissed this Petition on 2 May 2023 and the foregoing are the reasons for that order.

Dated: 7 July 2023

JUDGE

Nasir P.S.