

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No. S-387 of 2020**

Petitioner : Muhammad Zubair,  
through Mr. Nadir Khan Burdi Advocate.

Respondent No.1 : Mst. Lubna Imran,  
through Mr. Ali Ahmed Zaidi Advocate.

Respondent : Waqar Khalid & others,  
Nos.2(c) to 2(g) through Mr. Naeem Suleman Advocate.

Date of hearing : 16.08.2022, 15.09.2022, 11.10.2022 &  
30.03.2023.

**ORDER**

**NADEEM AKHTAR, J.** – Rent Case No.253/2014 filed by respondent No.1 against the petitioner and respondent No.2 seeking eviction of the petitioner on the grounds of personal need and default in payment of monthly rent was allowed by the Rent Controller vide judgment dated 22.07.2019 by directing the petitioner to vacate the subject premises within thirty (30) days and also to pay the arrears of rent to respondent No.1 since 01.07.2012 till handing over its possession to her. First Rent Appeal No.202/2019 filed by the petitioner against the order of his eviction was dismissed by the learned Appellate Court vide order dated 06.01.2020. Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned the concurrent findings of the learned Courts below.

2. It was the case of respondent No.1 before the Rent Controller that she was the owner / landlady of half portion of Shop No.G-9, MPL No.9/31 (DS No.IC 379), Napier Quarters Karachi, (**‘demised premises’**) and respondent No.1 was her tenant in respect thereof ; the demised premises were acquired by her by way of gift whereafter she demanded rent from the petitioner at the rate of Rs.25,000.00 (Rupees twenty five thousand only) ; as the petitioner did not pay the rent, a legal notice was issued by her but he still failed to pay the same ; the intimation regarding change of ownership of the demised premises was sent by her to the petitioner ; and, the other half portion of the subject shop in possession of her husband was insufficient for his business, therefore, the demised premises were required by her for her husband so that he could expand his business in the entire shop.

3. Originally the rent case was filed by respondent No.1 only against the petitioner, however, respondent No.2 was subsequently impleaded therein as the petitioner had claimed in his written statement that the demised premises were acquired by him on *pugri* from respondent No.2 who was the actual owner / landlord thereof and was collecting rent from him in such capacity. In view of his said claim, the petitioner had denied the relationship of landlady and tenant between the parties. In his written statement, respondent No.2 had also challenged the *locus standi* of respondent No.1 to file the rent case by claiming that he was the actual owner of the demised premises that were purchased by him in the name of his son / husband of the respondent No.1, who was a minor at the time of the said purchase. On the basis of divergent pleadings of the parties, points for determination were settled by the Rent Controller on the questions of maintainability of the rent case, relationship of landlord and tenant between the parties, default allegedly committed by the petitioner and personal need claimed by respondent No.1.

4. Vide order dated 21.08.2017, the rent case was dismissed by the Rent Controller on an application filed by the petitioner under Section 19 of Sindh Rented Premises Ordinance, 1979, on the ground that a Civil Suit in respect of the demised premises was pending before this Court wherein the dispute regarding the ownership of the demised premises was under adjudication and a status quo was operating in the said Suit. The aforesaid order was challenged by respondent No.1 in First Rent Appeal No.500/2017 which was allowed by the learned Appellate Court vide judgment dated 16.02.2019 and the matter was remanded to the Rent Controller for decision afresh in accordance with law after recording evidence of the parties. As the examination-in-chief of respondent No.1 had already been recorded in the first round, the matter came up after the remand before the Rent Controller for her cross-examination. It appears that the petitioner did not appear to cross-examine respondent No.1 and consequently his right to cross-examine her was struck off by the Rent Controller vide order dated 02.04.2019, whereafter the matter was fixed for the petitioner's evidence. It further appears that even at this stage the petitioner remained absent due to which his side was closed by the Rent Controller vide order dated 20.04.2019. The petitioner filed an application for recalling the order dated 02.04.2019, however, the said application was dismissed for non-prosecution vide order dated 18.07.2019. Thereafter, the Rent Controller proceeded with the matter and decided all the points for determination in favour of respondent No.1 and

against the petitioner. In the appeal filed by the petitioner the findings of the Rent Controller were upheld by the Appellate Court.

5. Learned counsel for the parties have made their submissions at length and have also relied upon number of report cases in support of their respective contentions. It is contended by learned counsel for the petitioner that after the remand of the case, the Rent Controller ought to have issued court motion notice to the parties as while remanding the matter the Appellate Court did not fix any date for recording of evidence of the parties before the Rent Controller and/or for further proceedings ; and, due to this reason, the petitioner was completely unaware of any of the dates when the matter was taken up by the Rent Controller after the remand. Without prejudice and any addition to his above contention, it is contended by the learned counsel that the proceedings conducted by the Rent Controller after remand of the case and all the orders passed therein after the remand, were void. In support of this contention, it is contended by him that the petitioner could not be debarred on 02.04.2019 from cross-examining respondent No.1 ; firstly, as the witness of respondent No.1 was not present on the previous date, and secondly, as the date viz. 02.04.2019 was not given by the Rent Controller and was given on the previous date viz. 21.03.2019 by his Reader because the Rent Controller was on leave on the said previous date. It is further contended by him that due to this reason, the matter could not be taken up on 02.04.2019 for the petitioner's evidence, and accordingly his side could also not be closed on 20.04.2019 due to his absence. Learned counsel submits that the order purportedly passed by the Rent Controller on 18.07.2019 dismissing the petitioner's application for recalling the order dated 02.04.2019 is not available in the R&P received from the Court of the Rent Controller, therefore, it cannot be deemed or assumed that any such order was passed by the Rent Controller on 22.07.2019 as noted in paragraph 4 of the impugned judgment delivered by him. Regarding the concurrent findings of the learned courts below, it is urged by him that the same are not based on evidence as the case was not decided on merits.

6. On the other hand, it is contended by the learned counsel for respondent No.1 that the ground urged by the petitioner in the instant petition that the date on which he was debarred from cross-examining respondent No.1 was given by the Reader and not by the Rent Controller, was not urged by him before the Appellate Court ; and similarly, the plea raised by the

petitioner that the order of dismissal of his application for recalling the order dated 02.04.2019 is not available on record, was also not raised by him in the appeal. It is further contended by the learned counsel that respondent No.1 cannot be blamed or prejudiced if the said order passed by the Rent Controller is not available on record. It is also contended by him that as the rent case was not transferred on administrative grounds and was admittedly remanded by the Appellate Court, the petitioner was bound to inquire about the date of the case before the Rent Controller after the remand, and due to this reason Section 24-A CPC was not applicable to the instant case. It is asserted by him that the petitioner was fully aware of the date(s) of hearing after the remand, but he deliberately avoided appearing before the Rent Controller. Learned counsel submits that the impugned judgment and order are fully justified in the facts and circumstances of the case and as such do not require any interference by this Court.

7. Learned counsel for respondent Nos.2(c) to 2(g) has supported the arguments advanced on behalf of the petitioner by relying on number of reported cases. Additionally, it was contended by him that the orders passed by the Rent Controller whereby the plaintiff was debarred from cross-examining respondent No.1 and subsequently his side was closed, were not only illegal and void, but had also denied the right of fair trial to the petitioner guaranteed by Article 10-A of the Constitution. It was urged by the learned counsel that the impugned judgment and order, being not sustainable in law, are liable to be set aside.

8. I have heard learned counsel for the parties at length and with their able assistance have also examined the material available on record and the law cited at the bar. Copies of the diary sheet of the subject rent case before the Rent Controller have been filed by the petitioner. Perusal of the said diary sheet and the R&P received from the Court of the Rent Controller confirms that the Presiding Officer / Rent Controller was on leave on 21.03.2019 when the case was adjourned to 02.04.2019 for cross-examination of respondent No.1. It further reveals that only the counsel for respondent No.1 was present on that date, and respondent No.1 and her witness were absent. Their absence on that date becomes relevant as they were present along with the counsel on the immediately preceding two dates viz. 09.03.2019 and 14.03.2019. The above shows that the contention of the petitioner that respondent No.1 and her witness were absent on 21.03.2019 and the

Presiding Officer / Rent Controller was on leave on that date, is correct. It is, therefore, clear that the next date i.e. 02.04.2019 for the cross-examination of respondent No.1 / her witness was not given on 21.03.2019 by the Rent Controller himself, but was given by his Reader. This aspect has not been disputed by learned counsel for respondent No.1. Accordingly, irrespective of issuing or not issuing court motion notice by the Rent Controller, the date viz. 02.04.2019 given by his Reader on 21.03.2019 could not be deemed or treated to be a date fixed by the Rent Controller for cross-examination of respondent No.1 and/or her witness. It is well-settled that the Reader of the Court is not competent to fix the case for hearing or evidence, and the Reader can only give the next date for further proceedings. The above view is fortified by Muhammad Swaleh and another V/S Messrs United Grain & Fodder Agencies (PLD 1964 S.C. 97), Nowsheri Khan V/S Said Ahmad Shah (1983 SCMR 1092) and Muhammad Qasim and others V/S Moujuddin and others (1995 SCMR 218).

9. In view of the settled legal position discussed above, it can be safely concluded that the Rent Controller could not debar the petitioner on 02.04.2019 from cross-examining respondent No.1 and/or her witness as the said date was admittedly not fixed for this particular purpose by the Rent Controller himself ; and, since the side of respondent No.1 could not be closed without her cross-examination by the petitioner, the Rent Controller could not fix the matter for the evidence of the petitioner on the following date nor could his side be closed on the said following date. On 21.03.2019 when the case was fixed for the cross-examination of respondent No.1 and the Presiding Officer / Rent Controller was on leave, the Reader ought to have simply given the next date for further proceedings ; and, on the next date i.e. 02.04.2019, the Rent Controller ought to have himself given the next date for cross-examination of respondent No.1 and her witness, rather than taking up the case on 02.04.2019 for this purpose and debarring the petitioner from cross-examining respondent No.1. This being the position, the said order dated 02.04.2019 was void and all orders passed subsequent thereto were also void.

10. The argument advanced on behalf of respondent No.1 that the petitioner did not urge the ground in the appeal filed by him that the date on which he was debarred from cross-examining respondent No.1 was given by the Reader and not by the Rent Controller, is not sustainable. Accordingly,

the cases cited and relied upon by learned counsel for respondent No.1 are not applicable to the instant case. Needless to say, ground involving a question of law can be raised at any stage.

11. In view of the above discussion, the impugned judgment of the Rent Controller and order of the Appellate Court are hereby set aside. The matter is remanded to the Rent Controller to decide the same afresh strictly in accordance with law within three (03) months from receipt of this order after providing opportunity to the petitioner to cross-examine respondent No.1 and her witness, and also to produce his evidence. The parties shall appear before the Rent Controller on **10.05.2023** for further proceedings in terms of this order. Let this order be communicated to the Rent Controller through the learned District Judge concerned for compliance.

12. The petition is allowed in the above terms with no order as to costs and the listed application stands disposed of accordingly. Office is directed to return the R&Ps forthwith to the learned courts below.

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