

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. S-184 / 2023

Date Order with signature of Judge

Petitioner: Qadir Bux,
Through Mr. Ayaz Ali Hingoro,
Advocate.

Respondents: Waseem Akhtar Soomro &
Another,
Through Mr. Naeem Suleman,
Advocate.

Ms. Naushaba Haque Solangi,
Assistant Advocate General.

Date of hearing: 17.10.2023

Date of Order: 17.10.2023

ORDER

Muhammad Junaid Ghaffar, J: The Petitioner has impugned order dated 01.02.2023 passed by the District Judge Malir, Karachi, in First Rent Appeal No. 52 of 2022 whereby, the Appeal of Respondent has been allowed by setting aside the Judgment dated 13.10.2022 passed by the Rent Controller Malir, Karachi, in Rent Case No. 25 of 2019 and the ejectment application of Respondent No. 1 has been allowed.

2. Heard learned Counsel for the parties and perused the record. It appears that Rent Case No. 25 of 2019 was instituted by Respondent No.1 on the ground of default and the learned Rent Controller has dismissed the Rent Application by coming to the conclusion that the relationship of landlord and tenant has not been established. Record reflects that the Petitioner had admitted that he was a tenant of the father of Respondent No.1; but not of Respondent No.1 himself; however, the defence as set up by him was that he had vacated the premises in April 2014 due to the damaged condition of the demised premises and thereafter, entered into a Sale Agreement with the father of Respondent No. 1 and was once again put into possession; but not as a tenant, rather as an

owner of the property. The learned Rent Controller though settled various points for determination but insofar as the main defence of the Petitioner is concerned, Point No. 2 was that, "*Whether the opponent had vacated the demised premises in the month of April, 2014*" and this was answered against the present Petitioner, by holding that the Petitioner had failed to prove vacation of the demised premises through any confidence inspiring and reliable evidence, whereas, the Petitioner never challenged such adverse findings against him. In that case, the entire superstructure on which the Petitioner's defence was premised, that he was not a tenant and had vacated the property in question and subsequently, was put into possession as a purchaser falls on ground. It seems that this line of defence was adopted by the Petitioner to overcome the settled proposition of law that even if a suit for specific performance is filed by a tenant on the ground that the property has been purchased from the landlord, the same does not entitle the tenant to first withhold payment of rent; and then come up with a plea in an ejectment application that he is the owner of the property¹. It is settled law that a mere agreement does not confer any title to a party. It is also settled that relationship of landlord and a tenant is not severed even if the execution of an agreement to sell is admitted². An ejectment application could not be stayed or stalled on a plea that tenant in possession was holding an agreement to sell, whereas, pendency of a suit for specific performance of agreement would also be no ground to avoid eviction of a tenant by the Rent Controller³. The proper course as mandated in law is to vacate the premises after handing over possession to the landlord and then file a suit for specific performance and possession. This cannot be treated as a defence against admitted default.

3. In view of hereinabove facts and circumstances of this case, since the Petitioner had failed to challenge the adverse findings in respect of Point No. 2 ("*Whether the opponent had vacated the demised premises in the month of April, 2014*") which was the entire defence against

¹ Abdul Rasheed v Maqbool Ahmed (2011 SCMR 320) and Dr. Babur Hussain Advocate v Ch. Islamuddin (2012 CLC 1453);

² Muhammad Iqbal Haider v VTH Rent Controller Karachi Central (2009 SCMR 1396)

³ Iqbal V Mst. Rabia Bibi (PLD 1991 SC 242)

the ejectment application and therefore, in view of the settled proposition the learned Rent Controller was not justified in dismissing the ejectment application, whereas, the learned Appellate Court has come to a fair and just conclusion by allowing the Appeal. Accordingly, Petition being meritless was therefore, dismissed by means of a short order passed on 17.10.2023 and these are the reasons thereof.

Arshad/

J U D G E