

# IN THE HIGH COURT OF SINDH AT HYDERABAD

CP No.S-102 of 2023 : Zahid Ahmed & another.  
For the Petitioner/s : Mr. Muhammad Nooruddin, Advocate.  
Date/s of hearing : 23.10.2023.  
Date of announcement : 23.10.2023.

## ORDER

**Agha Faisal, J.** Rent Application 04 of 2015 was filed against the present petitioners before the Senior Civil Judge / Rent Controller, Mirpurkhas and the same was allowed by order dated 26.11.2021. The operative constituent of the aforementioned order is reproduced herein below:-

*"In view of above discussion, it is dear that shops in question were rented out to opponent No.1 [Zahid] by Jean [father/husband of applicants] through rent agreement dated 15-02-2000. It appears that when applicants asked opponents for vacating shops/premises for personal bonafide need and use, opponents refused and stopped payment of rent on the basis of fictitious sale agreement through the today's judgment dated 26-11-2021 passed in F.C.Suit No.252/2015, Admittedly, opponents are in possession of shops/premises in question, when their claim of being in possession of shops/premises in question as owner was dismissed through judgment in civil suit No.252/2015 definitely their status becomes as that of tenant and relationship of landlord and tenant is established. Hence, applicants have successfully proved that opponent No.1 was sat on premises as tenant by late father/husband of applicants namely Jean through rent agreement dated 15-02-2000 and applicants require shops/premises in question for bonafide personal use. Therefore, both these points are answered in affirmative.*

*In view of the findings on points No.1 and 2, application in hand is allowed as prayed with no order as to the costs with direction to opponents to hand over vacant possession of shops/premises in question to applicants within 60 days hereof.*

2. First Rent Appeal No.07 of 2021 was then preferred by the present petitioners before the Court of Additional District Judge-II, Mirpurkhas and the same was dismissed by judgment dated 22.02.2023. The operative part of the judgment is reproduced herein below:

*8. From the evidence of the appellants it appears that they have claimed possession of the demised shops by virtue of sale agreement allegedly executed by respondents in 2013, whereas electricity bill produced by official witness shows that it was installed in the name of appellant No.1 Zahid in 2002. Whereas, per evidence of respondents the demised premises was rented out vide rent agreement dated 15-02-2000 and Zahid the appellant No.1 started paying rent to the father/ husband of applicants and after his death to them. The rent agreement dated 15-02-2000 shows to have been executed by Jean the father/husband of applicants whereby shops were rented out to Zahid the appellant No.1 and presently Jean and witnesses of the agreement have died. It also appears that the Civil Appeal filed by the appellant No.2 against dismissal of his suit for specific performance against the respondents has already been dismissed by this court, hence keeping in view of the above evidence of the parties, the appellant failed to prove their version.*

*9. In my humble opinion, learned counsel for the appellants could not point out any material illegality or irregularity, misreading and non-appreciation of evidence in the impugned order, hence point in hand is answered in nec.tue.*

*10. In view of my findings on point No.1, the impugned order being sustainable under law requires no interference by this court and same is maintained. The first rent appeal stands dismissed. The appellants are directed to vacate the demised premises within 60 days, otherwise the executing court may adopt any procedure in accordance with law to get the demised premises vacated. Let the R & Ps of Rent Application be returned to the learned trial court with copy of the judgment for information and compliance."*

3. Against the concurrent findings, the petitioners have preferred the present petition. It is contended by the petitioners' learned counsel that the petitioners were never tenants and on the contrary were bona fide purchasers of the property. Upon being confronted as to whether there was any judicial determination in their favour in such regard, it was submitted that the petitioners filed a suit to establish their rights in respect to the relevant property, however, the same was dismissed and the appeal there against was also dismissed. Therefore, it is apparent that the petitioners' contention, which was not sustained by the forums below, has also not survived in the proceedings filed by themselves.

4. It is apparent that the concurrent findings have been rendered in appreciation of the evidence and no infirmity could be identified in the orders impugned, nor could it be demonstrated that the conclusion drawn could not have been rested upon the rationale relied upon. A recent judgment of the High Court in the case of *Ali Tasleem*<sup>1</sup> has also deprecated the tendency to utilize the writ jurisdiction of this Court as a subsequent unsanctioned appellate forum in rent matters *inter alia* in the following terms:

"It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned... Insofar as the plea for de novo appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard . In cases wherein the legislature has provided only one Appeal as a remedy, like family and rent cases, it has been the consistent view of the Apex Court, that invoking of Constitutional jurisdiction in such matters as a matter of right or further appeal is not a correct approach."

5. In view of the foregoing, this petition is found to be devoid of merit, hence, hereby dismissed along with pending application.

JUDGE

Ahmed/Pa,

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<sup>1</sup> Per Muhammad Junaid Ghaffar J in *Ali Tasleem vs. Court of IXth ADJ Karachi East (CP S 985 of 2023)*.