

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-393 of 2023

Date	Order with signature of Judge
1.For orders on CMA No.3110/2023. 2.For orders on office objection No.19 and reply as at 'A'. 3.For orders on CMA No.3111/2023. 4.For hearing of Main Case.	

Date of Hearing : 08.05.2023.

Petitioner : Muhammad Akram through
Syed Shahid Mushtaq, Advocate.

Respondents : Mir Afzal & Others.

ORDER

Mohammad Abdur Rahman, J. That the Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as against the order dated 26 September 2022 passed by the VIth Rent Controller Karachi (West) on an application under Sections 3 & 4 of the Contempt of Court Ordinance, 1976 filed in Execution Application No. 04 of 2020 emanating from Rent Case No. 138 of 2019.

2. The Respondent No. 1 is the owner of a Commercial Plot No.1, Street No.1, Sector-IV, Haroon Cooperative Housing Society, Naval Colony, Karachi, in which he had purportedly rented out a shop to the Petitioner for running a confectionary business in the name and style of "New Shama Bakery Nimco & Sweets" (hereinafter referred to as the "Said Tenement").

3. Rent Case No. 138 of 2019 was instituted by the Respondent No. 1 as against the Petitioner in the Court of VIth Rent Controller Karachi (West) under clause (vii) of Sub-Section 2 of Section 15 of the Sindh Rented Premises Ordinance seeking the eviction of the Petitioner on the

ground that the Respondent No. 1 required the Said Tenement for his personal use in good faith. Rent Case No. 138 of 2019 was allowed by the Court of VIth Rent Controller Karachi (West) on 31 August 2020 whereby the Petitioner was given 90 days' time to vacate the Said Tenement.

4. The Petitioner thereafter preferred FRA No. 51 of 2020 before the District & Sessions Judge Karachi (West) against the order dated 31 August 2020 passed by the VIth Rent Controller Karachi (West) in Rent Case No. 138 of 2019 and which was dismissed by the District & Sessions Judge Karachi (West) on 22 February 2021.

5. The Petitioner thereafter filed C. P. No.S-178 of 2021 before this Court, assailing the Judgment 22 February 2021 passed in FRA No. 51 of 2020 by the District & Sessions Judge Karachi (West) which had upheld the order dated 31 August 2020 passed by the VIth Rent Controller Karachi (West) in Rent Case No. 138 of 2019 and which was also disposed of on 7 July 2022 maintaining the orders of the District and Session Judge Karachi (West) in FRA No. 51 of 2020 upholding the order dated 31 August 2020 passed by the VIth Rent Controller Karachi (West) in Rent Case No. 138 of 2019. No appeal against that order has apparently been filed by the Petitioner before the Supreme Court of Pakistan.

3. The Respondent No. 1 thereafter maintained Execution Application No. 04 of 2020 in Rent Case No. 138 of 2019 before the VIth Rent Controller Karachi (West) and who had on 21 July 2022 issued writ of possession as against the Petitioner that had been issued in the following terms:

“ ... WRIT OF POSSESSION WITH POLICE AID

The Head Bailiff, District & Sessions Court at Karachi West

Whereas, the rented premises bearing Shop No.1, Street No.1, Sector IV, Commercial, Haroon Cooperative Housing Society, Karachi, was ordered to hand over the vacant possession of the said property to the applicant / D.H. and it is in the possession of judgment debtor. The aforementioned execution application has been allowed by this Court and thereby the judgment debtors is directed to vacate and handover peaceful physical possession of suit property to the decree holders.

You are, therefore, directed to get vacated the said rented premises from occupation of the opponents/judgment debtors and hand over its possession to the decree holders. If the judgment debtors, refuses to vacate the same, in presence of two respectable witnesses of the vicinity; prepare the inventory of articles lying therein; and handover the peaceful physical possession of suit property to the decree holder under intimation to this Court. The bailiff is also directed if premises are locked, the lock shall be broken in presence of two witnesses and handover the possession of the premises to decree-holder and also make inventory of the articles if found in the premises. The case is now fixed on 29.07.2022."

4. As per the bailiff's endorsement, on 22 July 2022 he had proceeded to the Said Tenement with aid of the police, to execute the writ of possession. At the site of the Said Tenement he was met by the two sons of the Petitioner namely Ahmed Raza and Rizwan whom he personally asked to remove their personal items from the Said Tenement. Both the sons were passively obstructive and stated that as they had no labour they were therefore unable to remove their personal items from the Said Tenement and asked the bailiff to remove the items themselves. The bailiff thereafter with the help of the Respondent No. 1 and his relatives and after making an inventory removed the personal material of the Petitioner from the Said Tenement. The Bailiff also noted that monies amount to Rs. 3,300 were available in the Said Tenement and which he also asked the Petitioner's sons to remove. The Petitioner's son remained passively obstructive and declined to remove the amount of Rs. 3,300 which was thereafter retained by the Respondent No. 1.

5. The Writ of Possession having been executed, the matter should have ended there. Cussedly, the Petitioner thereafter moved an application under Section 3 & 4 of the Contempt of Court Act 1976 read with Article 204 of the Constitution of the Islamic Republic of Pakistan, 1976 stating that as per the writ of possession that had been issued in

Execution Application No. 04 of 2020 by the VIth Rent Controller Karachi (West) the bailiff had been directed to make an inventory of the goods at the time of the time of the execution of the Writ of Possession and which having not been made amounted to contempt of court and prayed that action should be taken as against the Respondents No. 1 to 7 (which included the Bailiff and other officials) for violating the terms of the Writ of Possession issued by the VIth Rent Controller Karachi (West) in Execution Application No. 04 of 2020.

5. The application under Section 3 & 4 of the Contempt of Court Act 1976 read with Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 was heard by the VIth Senior Civil Judge & Rent Controller Karachi (West) who on 26 September 2022 was pleased to dismiss the same stating that there had been no violation of the courts order and held that:

- (i) any contempt of the order that has been alleged by the Petitioner was not on account of the actions of the alleged contemnors as the Petitioner had themselves been passively obstructive in the implementation of the Writ of Possession passed by the the VIth Senior Civil Judge & Rent Controller Karachi in Execution Application No. 04 of 2020;
- (ii) compliance had in fact been made by the Bailiff and an inventory of the goods was made of the personal items of the Petitioner, which the Petitioner and his sons refused to acknowledge.

6. Counsel for the Petitioner appeared and argued that the order dated 26 September 2022 passed by the VIth Senior Civil Judge & Rent Controller Karachi (West) was incorrect as the violation of the order of the

term of the writ of possession has clearly been established and asked that action be taken against the Respondents No. 1 to 7 for contempt. The Counsel for the Petitioner did not rely on any case law in support of his contention.

7. I have heard the learned counsel for the Petitioner and perused the record. It is to be noted that the Petitioner has maintained the application under Section 3 & 4 of the Contempt of Court Act 1976 read with Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973. On technical note it is to be remembered that Contempt of Court Act 1976 has been repealed by the provisions of Contempt of Court Ordinance, 2003,¹ and therefore I am treating the application that had been filed by the Petitioner before the VIth Rent Controller Karachi (West) as an application under Section 3 & 4 of the Contempt of Court Ordinance, 2003.

8. On the facts it is apparent that the Petitioner has quite clearly himself attempted to obstruct the order dated 21 July 2022 passed by the VIth Rent Controller Karachi (West) in Execution Application No. 04 of 2020. The Petitioner being fully aware that the Writ of Possession had been issued, deliberately stayed away from the Said Tenement on the date when the Bailiff of the Court had attended the Said Tenement. His two sons, who were present, did not cooperate with the Bailiff at the time when the Writ of Possession was being executed. In the circumstances, to my mind, the Bailiff proceeded to implement the Writ of Possession in the most transparent manner possible. It is scandalous, that having passively obstructed the execution of the Writ of Possession, the Petitioner should thereafter present an application for alleged contempt of an order of the VIth Rent Controller Karachi West before the same Court!

¹ See ***Baz Muhammad Kakar vs. Federation of Pakistan*** PLD 2012 SC 923 at pg. 1009

It is even worse that after that application was correctly dismissed by the VIth Rent Controller Karachi (West) the Petitioner now maintains this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and to allege that the VIth Rent Controller Karachi (West) has acted illegally in dismissing that application. The Petitioners conduct of passively obstructing the orders of VIth Rent Controller Karachi (West) is enough to nonsuit the Petitioner from maintaining this Petition as having come to this Court with unclean hands. On merits as well, it is exceptional that contempt proceedings would lie against an official of the court acting in their official capacity for contempt of court. This issue was considered by Wajihuddin Ahmed, J. in **M/s Mother Car Nursing and Maternity Home vs. Mrs. Syeda Raisa Fatima**² wherein while considering the potential contempt committed by a Rent Controller of the orders of this Court held that:³

“ ... *It seems to me that the matter of refund due to the appellant-tenant, if any, was agitated before the learned Controller in execution proceedings in the ordinary course of law. The learned Controller, as a result has come to a finding arrived at in the exercise of quasi-judicial powers without any appearance of disregard of the authority of this Court. Likewise, the contest initiated before the learned Controller at the instance of the landlady may or may have been legally correct but that too seems to have been resorted to in the ordinary course of law and in bona fide exercise of personal rights through, for obvious reasons, one may be having an honest but erroneous notion as to such rights. If action was taken in gross abuse of the process of Court and without any reasonable or probable cause the situation could well have been different to the extent of the landlady. **Matters would rest there and, unless it be an extraordinary case, a judicial officer or a quasi-judicial officer could not be treated to have committed contempt.** In the instant case there were counter cases as to the dues between the parties pending before a Civil Court which gave right to the finding the learned Controller under reference. As said the finding may be right or wrong but that is not material. It was certainly not in disregard of the order of the Court passed in this F.R.A.*

(Emphasis is added)

10. The Petitioner having himself passively obstructed the order of the VIth Rent Controller Karachi (West) in Execution Application 04 of 2022

² 1994 CLC 1242

³ *Ibid* at pg. 1244

could not have maintained an application for contempt of court under Section 3 and 4 of the Contempt of Court Ordinance, 2003 as against either the Respondents No. 1 to 7 who were simply implementing the orders passed by the VIth Rent Controller Karachi (West) in Execution Application 04 of 2022. While the implementation of the order of the VIth Rent Controller Karachi (West) in Execution Application 04 of 2022 may not have been as per the letter of the Writ of Possession, it certainly was not obstructive to the implementation of the Writ of Possession and therefore cannot be considered to contempt of court.

11. There being no illegality or infirmity in the order passed by the VIth Rent Controller Karachi (West) dismissing the application for contempt of court filed by the Petitioner in Execution Application No. 04 of 2020 and the Petitioner himself having coming to the court with unclean hands on account of having passively disobeyed the orders of the VIth Rent Controller Karachi (West) in Execution Application 04 of 2022 renders this Petition as not being maintainable under the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. It is for the foregoing reasons that I had on 8 May 2023 dismissed this petition as being not maintainable and these are the reasons for that order.

J U D G E

Dated: 21 July 2023

Nasir P.S.