ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-509 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For hearing of M.A. No.1349/2021
3. For hearing of main case

13.11.2023

Mr. Muhammad Arshad S. Pathan, advocate for Petitioner.
Mr. Shafqat Ali Memon, advocate for Respondents No.3 to 9.

Agha Faisal J. This writ petition challenges concurrent findings rendered in the rent jurisdiction; on the premise that the evidence was not appreciated properly by the respective forums.

2. Briefly stated,Rent Application No.182/2017 was allowed by the learned Rent Controller Hyderabad vide order dated 08.02.2021 *inter alia* on the ground of personal need. Fist Rent Appeal No.8/2021, filed in respect thereof, was dismissed vide Judgment dated 17.08.2021 by the 6th Additional District Judge Hyderabad. It is considered illustrative to reproduce pertinent observations therefrom:

"*12. So far argument that eviction application is filed by an incompetent person whose status was already decided and it is not maintainable in its present form is concerned. Needless to observe that same attorney previously filed R.A.No.71 of 2015 on the basis of sub-power of attorney which was proceeded and dismissed vide order dated 23.9.2017 Ex.71/F on the ground that said attorney failed to produce such power by which he was authorized meaning thereby that it was not decided on merit. Be that as it may, relationship of landlords and tenant is admitted which provides continuing cause to the parties and if it is so; to say that said attorney became incompetent to file eviction application, it is wrong. If cause persists to the landlords, they can move eviction application subsequently. Still the eviction application, no doubt, was filed through attorney Muhammad Adnan Khan but one of the co-sharers, the respondent No.2 examined himself at Ex.17 who in addition to other documents also produced sub-power of attorney at Ex.17/B. This document is shown to have been signed by the executants and the witnesses and same is shown to had been attested by the Notery Public also. So far veracity of this document is concerned, it is settled principle of law that it can only be challenged by its principle and not any third person.*

13. As regards the merits of the case, it is the case of respondents that appellant is tenant of shop No.7 while appellant stated that he is tenant of shop No.15. The documents so far produced by the respondents side do show total number of shops as 01 to 09 in respect whereof all the legal heirs authorized Mst. Khursheed Begum virtue of document Ex.17/A and this lady given sub-power of attorney to Muhammad Adnan at Ex.17/B in November 2015. Still the legal notice issued by the respondents to appellant also mention the shop No.7 by which the appellant was called upon to vacate the premises and if it is so; the rent agreement produced at Ex.71/A, execution whereof has been denied by the respondents also, alone would not brush aside the above documents. To say that at the time of construction of building the actual owner Syed Mashkoor Ahmed Jafri was paid huge amount by the appellant and that the appellant is under the occupation of rented premises as tenant on "Pagri" basis, the like argument has least support in it. Once a person admitted of his being as tenant, he shall always remain as tenant and nothing else. Further the "Pagri" system has no legal sanctity under the law. Even otherwise, nothing like that was claimed in the written reply. Furthermore, if the appellant is presumed to had made payment of huge amount to the landlords at the time of construction of the building where the rented shop is situated, he may adopt legal recourse for recovery of such amount, if he is permitted by law to do. So far default in payment of rent, it is the case of respondents that appellant made payment of rent of December 2014 in January 2015 while such fact was denied by the appellant. Respondent Mansoor Ahmed Jaffri filed his affidavit in evidence at Ex.17 in which he deposed the same facts which were stated in the eviction application. He was cross examined at length but was not shaken otherwise as to disclosure made in the affidavit in evidence. It is an admitted position that since after receiving legal notice by appellant, he started depositing rent in Court, as per him he remitted the rent by money orders but it was refused, however, he failed to produce such proof of refusal and further failed to examine the postmaster concerned. Thus the appellant failed to establish refusal of receiving the rent by the respondents and if it is so; direct resort to other mode of payment was not justified and having so, the ground of default in payment of rent stood proved. This was also appreciated by learned trial court. Concerning the personal bonafide need of landlords, the tenant is always tenant, no hard and fast rule could be laid down for quantum and quality of evidence to prove the bonafide need of landlord, if he satisfies that such requirement do exists. Not only in the eviction application it is claimed that the rented premises is required for the personal use of landlords for starting business of baby garments but such fact also is stated on oath in the affidavit-in-evidence of respondent No.2 and his like claim was not shaken otherwise in his cross. Even if it is assumed to be correct that the landlords have

other shops in the same building and they can get any of them vacated except the shop of appellant, the landlords cannot be advised by the tenant to chose the premises of his choice for their business. To my humble opinion, the learned Rent Controller after proper appraisal of material made available on record delivered the impugned which being lawful does not call for interference of this court. The point under discussions is answered in negative."

3. It is the petitioner's case that the rent application was barred by *res judicata*; as earlier Rent Application No.71/2015 had already been dismissed. It was also averred that since the property had been transferred into the names of the applicants individually, therefore, the collective rent application was misconceived. It was submitted that the concurrent judgments be set aside. Learned Counsel for the Respondents supported the impugned judgments and submitted that no interference was warranted therein in writ jurisdiction.

4. Heard and perused. The primary issue to consider is that of *res judicata*.It is observed from the order dated 23.09.2017 in Rent Application No.71/2015 that the same was dismissed solely on account of the attorney of the applicants not having been able to demonstrate the authority to file or maintain the rent proceedings. It is *admitted* that there was no adjudication whatsoever, therefore, such dismissal could not be demonstrated to bar the rights of an applicant to cure any such procedural defect and file the proceedings afresh, as appears to have been.

5. Insofar as the issue of individual title is concerned, Learned Counsel for Respondents points out that while the initial rent application was filed in 2017 the subsequent mutation under reference took place much thereafter somewhere in 2021, hence, it had no effect on the competence of the application filed before the learned Rent Controller in the back in 2017. Petitioner's counsel articulated no cavil in such regard, hence, no case is made our for interference on this count either.

6. It is observed that appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed[1].Once the statutory remedial process has been exhausted, recourse to writ jurisdiction cannot be taken as a matter of right; *inter alia* as the same *prima facie* impinges upon the finality granted by statute to the judgment of the last appellate forum. Since, the appellate hierarchy has already been exhausted the only issue that could be looked in by this Court in the exercise of its writ jurisdiction is whether there is any patent illegality apparent from the orders impugned. It is observed that no such illegality could be identified by the petitioner's counsel.

7. It is apparent that the concurrent findings have been rendered in appreciation of the evidence.It is trite law[2] that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgment is well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

8. A recent judgment of the High Court in the case of*Ali Tasleem*[3] has also deprecated the tendency to utilize the writ jurisdiction of this Court as

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[1]Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.
[2]Per *Faqir Muhammad Khokhar J.* in *NaheedNusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.
[3]Per *Muhammad Junaid Ghaffar J* in *Ali Tasleem vs. Court of IXth ADJ Karachi East (CP S 985 of 2023)*.

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."

9. In view hereof this petition is found to be devoid of merit hence dismissed along with pending application.

Judge

Ali Haider