

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-476 of 2023

Present

Justice Mrs. Kausar Sultana Hussain

Syed Akhtar Ali Zaidi.....Petitioner

V e r s u s

Mst. Zainab Faisal and another.....Respondents

Date of Hearing **22.11.2023.**

Date of Order 06th February, 2024.

Mr. Muhammad Ramzan Tabbasum, advocate for petitioner.
Syed Shabbir Hussain Shah, Advocate for respondent No.1.

ORDER

Kausar Sultana Hussain, J. :- By invoking the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan 1973, the petitioner/tenant has filed this petition against the interlocutory / interim order dated 13.03.2023 passed by the learned XII Rent Controller, Karachi-East in Rent Case No.163 of 2022 on Respondent No.1's/landlady application filed under section 151 CPC for filing amended Special Power of Attorney, which was allowed and matter was fixed for re-examination of respondent's attorney to the extent of producing amended/rectified Special power of attorney.

2. Learned counsel for the petitioner/tenant has contended that the respondent No.1 is a landlady of a tenement known as Shop No.S-2, Ground Floor, Toshi Square, Block-13 B, Gulshan-e-Iqbal, Karachi and an application under section 15(2) of the of the Sindh Rented Premises, Ordinance, 1979 was filed by her through her Attorney and attached such Power of Attorney with the rent application. The subject Power of Attorney did not permit the

Attorney to adduce evidence on behalf of the respondent No.1/landlady, despite of having no requisite authority proceeded to file an affidavit-in-evidence subject to cross-examination. During the cross-examination, the Attorney was confronted with the fact that he did not have the requisite authority to adduce evidence on behalf of the respondent No.1/landlady on the basis of the said Power of Attorney. It is submitted that in order to fill up the lacuna, an application under Section 151 of the Code of Civil Procedure, 1908 was filed by the Respondent No. 1/landlady, whereby the second Power of Attorney was filed which attempted to ratify the actions of the Attorney under the first Power of Attorney. The XIIth Rent Controller by order dated 13.03.2023 granted the application in terms of the judgment reported as Muhammad Azeem vs Mst. Rani through Special Attorney & 2 others (2020 YLR 1932). Counsel for the petitioner/tenant relies on another judgment of the Supreme Court of Pakistan, reported as 'Unair Ali Khan & Others vs. Faiz Rasool' (PLD 2013 SC 190), which goes contrary to the earlier judgment.

3. On the other hand learned counsel for the respondent No.1/landlady submits that the order passed by the learned XIIth Rent Controller on her interlocutory application filed under section 151 CPC was bound to be complied with by the petitioner/tenant. He further submits that the petition is not maintainable and is liable to be dismissed. He has also relied upon the case laws reported as 2020 SCMR 260 (President, All Pakistan Women Association, Peshawar Cantt v. Muhammad Akbar Awan and others), 2014 SCMR 1694 (Sheikh Saleem v. Mrs. Shamim Attaullah Khan and others), 2007 SCMR 818 (Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami and others) and 2020

YLR 1932 (Muhammad Azeem v. Mst. Rani through Special Attorney and 2 others).

4. I have considered the above submissions and perused the relevant record and also gone through the case laws relied upon by the parties.

5. Record reveals that the respondent No.1/landlady had filed a Rent Case No. 163 of 2022 against the petitioner/tenant through her Special Attorney i.e. Fawad Farooq and brought on record such special Power of Attorney through producing the same as Exhibit A/2 (original seen and returned) while leading his evidence on behalf of the principal of said Power of Attorney, which means the respondent No.1/landlady had owned the act of appearance of her attorney, on her behalf and led evidence. Later while cross-examination of the attorney the respondent No.1/landlady had realised that due to oversight she could not specifically authorize her attorney to file affidavit-in-evidence and led evidence on her behalf and on realizing such defect she approached the Court in order to get the required correction be made in her Power of Attorney and for that purpose she filed an application under Section 151 CPC for filing amended Special Power of Attorney, which was considered by the learned trial Court and then the learned appellate Court but the petitioner/tenant being dissatisfied with both the orders approached this Court through filing present petition, wherein the petitioner/tenant mainly emphasized on the point that the learned trial Court had passed an order on interlocutory application of the respondent No.1/landlady filed under Section 151 CPC and appellate Court had maintained the same. Now the question arises that as to whether passing order by the Rent Controller on application of the respondent/landlady for

bringing the amended Power of Attorney on record, while previous Power of Attorney is already on record, could be treated as '*interim order*', passed by the Rent Controller in order to decide a controversy between the parties on the point of leading evidence on behalf of the respondent No.1/landlady without that assigning such authority while the respondent No.1/landlady ratified such an act already done, therefore, the act of leading evidence on her behalf shall be deemed as duly performed under her authority. Besides! an order of a Rent Controller which decides a controversy between the parties being not an '*interim order*' is always appealable.

6. I, therefore, find no illegality, infirmity, irregularity, perversity or impropriety in the impugned order dated 13.03.2023. The petition in hand is therefore, **dismissed**. The learned Rent Controller may consider the amended Special Power of Attorney, while proceeding the matter.

J U D G E