

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
C.P No.S-243 of 2021

Date: Order with signature(s) of the Judge(s)

Hg/Priority Case

1. For Orders on MA No.1434/2023
2. For Hearing of MA No.1613/2021
3. For Hearing of Main Case

04th September, 2023

Mr. Sami Ahsan advocate for the Petitioner
Mr. Najamul Hassan advocate for Respondent No.3
Mr. Pervaiz Ahmed Mastoi, AAG

SALAHUDDIN PANHWAR, J.-Heard learned counsel for respective parties.

2. The case of Laiq Ahmed [petitioner] is that he purchased subject matter property by way of Sale Agreements from respondent No.3 [Muhammad Shareef Ansari] and respondent No.4 [Mst. Shakeela Qadir]. Both respondents were under civil and criminal litigation. During pendency of rent application, compromise arrived between the parties and such application was filed by both the parties and litigation came to an end. Through order dated 30.10.2019, trial court accepted the compromise arrived at between the parties whereby respondent No.4 was required to handover keys of the subject property to the Nazir of Rent Controller and similarly respondent No.3 received Rs.26,00,000/- out of Rs.30,00,000/- and Rs.4,00,000/- were to be paid to the respondent No.3 [Muhammad Shareef] in terms of Rent Agreement, however, respondent No.4 failed to hand over keys to Nazir of the trial court. Accordingly, clause-III of Compromise Agreement was not acted upon and respondent No.4 violated the terms and conditions of the said compromise, whereas, respondent No.3 agreed on clause I & II, whereby respondent No.4 received the amount.

3. Alleged Sale Agreement with the parties was executed in the year 2017, whereas compromise application was filed on 29.10.2019. Accordingly, respondent No.3 filed execution application before the Rent Controller with the prayer that respondent No.4 Mst. Shakeela Qadir may be directed to

deposit the keys of the demised premises, but the respondent No.4 Mst. Shakeela Qadir failed to appear. For the first time, Laiq Ahmed [petitioner herein] appeared and filed an application under Section 12(2) CPC, which was declined by the trial court as such, it was challenged by preferring First Rent Appeal No.135/2020 but that too met the same fate. Being relevant Point No.1 is produced as under:

“At the very outset, the appellant claimed to be purchaser of the demised premises from respondent No.2 Mst. Shakeela Qadir through different sale agreements, however, the applicant Muhammad Shareef and Mst. Shakeela Qadir in collusion with each other had obtained compromise order from the learned Rent Controller by way of fraud and misrepresentation. From perusal of record it manifests that the property in question was/is in the name of Muhammad Sharif Ansari by virtue of sale deed dated 24.02.2012; such document has not been disputed either by appellant or tenant, therefore, I am not convinced to the arguments advanced by learned counsel for the appellant that appellant purchased the property from Mst. Shakeela for the obvious reason that, tenant has no right to sell out the property to anybody else, and according to learned counsel, Mst. Shakeela was tenant of Muhammad Sharif. Learned counsel also took plea that, compromise order could not be executed through execution application. In this context, I have gone through the record. Perusal thereof, it manifests that, the respondent Muhammad Sharif Ansari had filed a rent case bearing No.235/2018 against Mst. Shakeela, such case was disposed of in terms of compromise vide order dated 30.10.2019. I have gone through the contents of such compromise/agreement, wherein at para-3 it is clearly mentioned that, Mst. Shakeela shall handover the vacant peaceful possession of house to Muhammad Sharif on 20.11.2019 and shall deliver the key of said house in the court in R.C. No.235/2018 and in case of failure, Muhammad Sharif will receive possession through court. Therefore, I am not convinced to the arguments advanced by learned counsel for the appellant that, compromise order could not be executed through the court, hence the landlord has rightly filed execution application in terms of such compromise. In this context, I am also fortified by case of Muhammad Hussain Vs. Akbar Ali, reported as 2019 CLC 726, wherein the Honourable Lahore High Court has been pleased to held that:

S 47 & O. XXI, R. 15---Specific Relief Act (I of 1877), S. 12---Suit for 4 specific. performance of contract---execution petition – compromise was recorded on behalf of one of the decree-holders---Effect---Objection Petition--execution of joint decree---Procedure---Statement for compromise was recorded on behalf of one of the decree-holders that he did want execution of decree to his extent-- Contention of applicants was that decree in question was not executable---Objection petition was dismissed by the Courts below--Validity---Executing Court was bound to execute the decree, as it was, and it could not exceed beyond the same---One or more persons could submit application for execution of joint decree---Omission on the part of decree-holder to state in his application the names of all the persons who were interested in the decree did not render the execution proceedings invalid---If anyone or more decree-holders had relinquished their rights in the decree then their such conduct would not make the whole decree redundant and un-executable--Petitioner-decree-holder, in the present case, had _ included rest of the decree-holders in the array of pro forma respondents--Executing Court had rightly protected rights of other decree-holders while observing that sale deed should be executed and registered in favour of all except one who was disinterested to get the decree executed---No illegality, irregularity or jurisdictional defect had

been pointed out in the impugned orders passed by the Courts below-- Constitutional petition was devoid of merits which was dismissed, in circumstances.

I have also gone through the case law cited by the learned counsel for the appellant, but with due respect of the Honourable Apex Courts, the facts and circumstances of the case in hand are quite distinguishable, as in case of Dr. Munawar Islam Mirza Vs. Abdul Hameed and others, reported as 1997 MLD 2981, it is held that where the landlord withdraw the ejectment application on the basis of compromise, there was no question of r execution, however, in the instant case, the rent case was not simply withdrawn but it was disposed under certain terms and conditions as stated supra.

For what has been discussed above, I do not find illegality of irregularity whatsoever in the impugned order dated 03.02.2021 passed by the learned Rent Controller; the point No.1 is therefore answered in negative”.

4. In similar way relevant para of trial court’s order passed on application under Section 12(2) CPC is reproduced as under:

“Admittedly, the title of applicant Muhammad Sharif is not disputed either by the opponent or by the objector, however, it is alleged by the objector that he purchased the demised premises from the opponent through aforesaid sale agreements against payment of sale consideration and finally the applicant executed sale agreement in his favor. The perusal of record shows that the opponent during proceeding of rent case took plea that her father purchased the demised premises from the applicant vide sale agreement dated P9-01-2013. The opponent although filed suit for Specific Performance against the applicant which too was withdrawn unconditionally therefore, the opponent was not owner of demised premises at the time of alleged sale by her in favor of objector’ and the compromise application filed by applicant and opponent jointly in court showed that the opponent was tenant of applicant which was in fact the claim of applicant in rent case. So far, the contention of the objector that the opponent and the applicant executed sale agreement in his favor is concerned, the same is denied by the applicant therefore the objector may seek specific performance of such sale agreement against the applicant if he desires by filing a suit or claim damages from opponent. In these circumstances, I am of the opinion that the order dated 30-10-2019 was not result of alleged fraud or misrepresentation. So far, the argument of learned counsel for the objector that since order dated 30-10-2019 was passed on compromise between them parties therefore execution application does not lay and his reliance upon case law 2020 CLC 721 Sindh is concerned, the perusal of said case law does not reflect specific bar on filing of execution application in pursuant to compromise however in such case law the issue of “Transfer Surcharge” was dealt with, hence the facts and circumstances of said case law are distinguishable from that of present case. Resultantly, the application U/s. 12(2) CPC is hereby dismissed with no order as to costs”.

5. Learned counsel for the Petitioner while relying upon the case law reported in 1991 CLC 489 [Karachi] Jumromal Vs. Muhammad Paryal & another], 2020 CLC 721 [Sind] [Port Qasim Authority Vs. Industrial Management and Investment C. Ltd. and 2 others] and 1983 CLC 178 [Karachi] [Mrs. Ameena Lodhi and two others Vs. Maqbool Hussain] has emphases that

this is a settled proposition of law that order of the trial court, whereby parties compromised can be executed/enforced through independent lis and not by the execution application.

6. Learned AAG contends that he has examined fact of the case and in fact respondent No.4 was in league with Petitioner, hence, trial court has rightly dismissed application under Section 12(2) CPC. Learned counsel for the respondent has contended that concurrent findings can't be disturbed in writ jurisdiction.

7. It is pertinent to mention that petitioner Laiq Ahmed filed suit for specific performance in the year 2020 when admittedly Mst. Shakeela Qadir failed to abide by the terms and conditions of the compromise agreement, meaning thereby, by violating the compromise, the tenant handed over possession to a stranger, who filed application under section 12(2) CPC claiming therein that he is purchaser of the subject property. Admittedly sale agreements are unregistered documents. As per provisions of Section 54, of the Transfer of Property Act, 1882, "*Sale/Transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument*". "*A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties*". "*It does not, of itself, create any interest in or charge on such property*". The underlining is supplied.

8. In Case of *Abdul Jabbar and others v. Mst. Maqbool Jan and others* (2012 SCMR 947), it was held by the Apex Court as under:-

"Section 54 of the Transfer of Property Act, 1882 defines the sale and the contract for the of sale of immovable property, that a "sale" is a transfer of ownership in exchange for a price paid or promised or part paid and part promised and in case of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument, whereas the contract for the sale of immovable property is defined as that sale of such property shall take place in terms settled between the parties, but does not by itself create any interest in or charge on such property".

The underlining is supplied.

9. As per compromise, Respondent No.4 was required to deposit the keys only, hence, the point that lis shall be filed through independent suit with this prayer that Mst. Shakeela Qadir may be directed to hand over the keys to the Nazir of the trial court, in view of compromise order, is not appealable to a prudent mind, hence, proposition raised by learned counsel for the Petitioner

in different cases cannot be applied in this case. In Case of *Trading Corporation Of Pakistan v. Devan Sugar Mills Limited and others* (PLD 2018 Supreme Court 828), it was held by the Apex Court that: “The Appellant after almost five years from date of ejectment order, ventured to invoke Section 47 C.P.C. on substantially same facts and grounds. Even if it is assumed that grounds as available under section 47 C.P.C. to question executability, discharge or satisfaction of ejectment order passed as a consequence for non-compliance of tentative order, set down different parameter to resist and defend execution of eviction order, then too, all such grounds were very much available when first application under section 12(2), C.P.C. was initially made”. Moreover, the language of Section 47(1) and (2), C.P.C. shows that all questions relating to execution, discharge or satisfaction of the decree, arising between the parties or their respective legal representatives to a suit wherein decree was passed, are to be determined by the executing Court and filing of separate suit for this purpose is barred, but subject to the eventuality that proceedings in the suit can be treated as proceedings under this section and vice versa. However, situation would be different if the compromise amounts to an agreement and breach of such agreement is alleged against one of the parties to the said agreement, which may give rise fresh and distinct cause of action. Reference may be made to the Case of *Mst. Niaz Bibi through L.Rs. v. Ghulam Mustafa and others* (PLD 2011 Supreme Court 520).

10. Accordingly, present petition is dismissed. At this juncture learned counsel for the Petitioner undertakes that Petitioner will hand over the possession of demised premises to the respondent No.3 within thirty [30] days. In case of failure, Executing court shall ensure that Petitioner shall hand over possession of demised premises to respondent No.3 Muhammad Shareef. Needless to mention that petitioner would be at liberty to pursue his suit for Specific Performance of Contract and findings of this Court will not effect upon the merits of that case.

JUDGE

Sajid