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JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.22949 of 2016

Mian Bilal v. Muhammad Razzaq, etc.

JUDGMENT

Date of Hearing:	08.05.2023
Petitioner by:	Raja Abdul Rehman, Advocate.
Respondent No.1 by:	Ch. Hamid Mahmood, Advocate.

Anwaar Hussain, J. Briefly stated facts of the case are that the petitioner filed an ejectment petition against respondent No.1 ('**the respondent**'), in respect of House No.140, Street No.50, bearing property No.SEXVI-50-S-140, measuring 5-Marlas ('**the rented premises**'), with the assertions that on 03.01.1995, the petitioner executed an agreement ('**the agreement**') in favour of the respondent, regarding the sale-cum-tenancy of the rented premises against total consideration of Rs.325,000/- and out of the said amount, Rs.100,000/- was received by the petitioner as earnest money, and it was further agreed that the remaining amount was to be paid by the respondent on 30.03.1995 upon which the rented premises was to be transferred in the name of the respondent; and in case of failure on part of the respondent to clear the balance payment, the respondent agreed and undertook to pay a sum of Rs.100,000/- as penalty. The pivotal and not-so-traditional clause resulting in the present lis was also agreed inter se the parties that till the performance of reciprocal contractual obligations spelled out above i.e., on or before 30.03.1995, the respondent was to be treated as tenant @ monthly rent of Rs.600/-. It is the case of the petitioner that the respondent failed to pay the balance amount of Rs.225,000/-, within stipulated period of time and instituted a suit for specific performance against the petitioner, which stood dismissed on account of non-affixation of the Court fee and by use of force, the

respondent, in respect of the rented premises, obtained signatures of the petitioner on blank papers and maneuvered registration of a general power of attorney ('**the GPA**') with respect to the rented premises, in favour of one Muhammad Ilyas son of Muhammad Yaqoob who is totally an alien person to the petitioner. Complaint about the incident was statedly registered by the petitioner. It was further asserted that having come to know about the registration of the GPA, the petitioner procured cancellation thereof on 13.07.1998 and since the respondent was illegally retaining the rented premises without payment of rent; the petitioner, on 23.09.1999, filed ejectment petition. The respondent contested the application by filing the reply and denied the relationship of landlord and tenant and claimed ownership of the rented premises on the strength of the agreement *qua* the sale-part thereof. The ejectment petition was dismissed, *vide* order dated 01.06.2009 against which an appeal was preferred by the petitioner that also met the same fate, *vide* order dated 03.05.2016, hence, the present constitutional petition.

2. Learned counsel for the petitioner contends that the learned Courts below have failed to appreciate that when the ownership of the petitioner was admitted by the respondent who had not been able to prove the payment of entire sale price in accordance with the agreement, in such situation the respondent was required to prove his title, which the respondent miserably failed to do as his right of evidence was closed and he ought to have been regarded as a tenant, under the agreement and therefore, decision of the learned Rent Controller upheld by the learned Appellate Court below is based on mere assumptions and conjectures.

3. Conversely, learned counsel for the respondent has supported the impugned findings with the averments that the original documents of the rented premises were produced by the respondent, which were handed over to him by the petitioner, after receipt of the balance sale price *albeit* after the due date agreed under the agreement, and this fact alone establishes that

the petitioner sold the rented premises and there is no relationship of landlord and tenant between the parties.

4. Arguments heard. Record perused.

5. The factual matrix of the case leads to the formulation of following questions that are required to be adjudicated upon by this Court:

- i. Whether the rent clause contained in the agreement is an independent and stand-alone contract, severable from the rest of the agreement, and the same could be considered to have survived after failure on part of the respondent to fulfil the condition of payment of balance sale price, before the cut-off date i.e., 30.03.1995?
- ii. Whether the jurisdiction exercised by the learned Courts below, under the West Pakistan Urban Rent Restriction Ordinance, 1959 ("the Ordinance"), could have been extended in aid of a person/tenant in occupation of the rented premises by permitting him to establish and prove the payment of outstanding sale price pursuant to the agreement (of sale) even though the suit for specific performance, instituted by such person/tenant, on the basis of the agreement had been dismissed by the competent Court?

6. Before answering the above referred questions, it will be advantageous to examine the contents of the agreement that read as hereunder:

"اقرارنامہ"

من کہ میاں بلاں ولد علم دین ساکن مکان نمبر 140 گلی نمبر 50 مجاہد آباد لاہور فریق اول

محمد رزان ولد محمد امین مکان نمبر 14 گلی نمبر 14 میاں میر لاہور فریق دوم

اندریں وقت بقاگئی ہوش و حواس خمسہ خود اقرار کر کے لکھ دیتے ہیں جو کہ ایک قطعہ مکان پر اپرٹمنٹ نمبری SEX VI-50S 140/RC یک منزلہ خستہ حال قابل مرمت ناقابل رہائش بر مشتمل 3 کمرہ جات صحن چار دیواری بھلی پانی سمیت رقبہ تعدادی تقریباً 5 مرلہ X 45 پلات نمبر 140 بحدود اربعہ حصہ ذیل شرقی مکان نمبر 141 غربی مکان نمبر 139 شمالی مکان دیگر فتح محمد جنوبی گلی نمبر 50 عریض 30 فٹ تقریباً واقع عقب حد بست موقع ساہواڑی مجاہد آباد (رائگڑھ) مغل پورہ تحصیل کینٹ ضلع لاہور مملوکہ و مقبوضہ خود بروئے دستاویز ہبہ نامہ دستاویز نمبر 679 درج شدہ مورخہ 28.4.93 مجانب مسماں صغار اس بی بی بیوہ احمد خان و بحکم عدالت دیوانی نیصلہ مورخہ 19.10.94 بطور مرحوب الیہ مالک قابض منتقل ہوا۔ نیز یہ کہ پر اپرٹمنٹ مذکورہ میرہ از بار و کفالت ہر قسم ہے اور بوجہ تمام و کمال فریق اول میاں بلال مذکور کو مکان مذکورہ ہر طرح سے منتقل کرنے کا حق و اختیار حاصل و میسر ہے۔ چنانچہ اب مکان مذکورہ بالام جمع حقوق اندر و نی و بیرونی داخلي و خارجي رہائشی و آسامائی وغیرہ متعلقہ اش و مع حق را ہگزو مع حق مزید تعمیر عمارت وزمین زیر آمدہ تعدادی 5 مرلہ پلات نمبر 140 و مع تمام و کمال حقوق جو فریق اول مذکور کو حاصل و میسر ہیں۔ بعوض مبلغ تین لاکھ پچھیں ہزار روپے (-/Rs.325000) نصف جنکے ایک لاکھ باسٹھ ہزار پانچ صدر روپے (-/162500) ہوتے ہیں بحق بدست محمد رzac و لد محمد امین مکان نمبر 4 گلی نمبر 14 میاں میر لاہور فریق دوم مذکور بیچ کرنے کا معابدہ کر کے مبلغ ایک لاکھ روپے (-/100000) نقد بطور بیانہ رو برو گواہان حاشیہ وصول پالیا ہے اور اقرار یہ کیا ہے کہ باقی زر ثمن مبلغ دولاکھ پچھیں ہزار روپے مورخہ 30.3.95 تک وصول پا کر منتقل کروانے کا پابند و ذمہ دار ہونگا۔ اگر حسب وعدہ منتقل نہ کروانگا تو زر بیانہ کے برابر تواں ادا کرو گا اور فریق دوم کو حق حاصل ہو گا کہ بذریعہ عدالتی و قانونی طریقہ سے بقایار قم خزانہ میں بحق فریق اول جمع کرا کے بیہ نامہ بحق خود منتقل کرانے اور اگر مقرر الیہ باقی زر ثمن اندر میعاد ادا کر کے منتقل نہ کروائے گا تو زر بیانہ بحق فریق اول ضبط اور سودا فتح تصور ہو گا جملہ کاغذات برائے تکمیل بحق نامہ بطور ثبوت ملکیت پیش کرنا فریق اول کی ذمہ داری ہو گی قبضہ بروز منتقلی دیا جائیگا۔ خرچہ منتقلی زر خید اسلام تا تکمیل منتقلی بذمہ خریدار ہو گا۔ نیز یہ کہ فریق دوم مکان مذکورہ میں 30.3.95 تک بطور کرایہ دار رہائش پنیر ہیگا اور بل سابقہ سمیت کے علاوہ مبلغ 600 روپے ماہوار زر کرا یہ ادا کرنے کا پابند و ذمہ دار رہیگا۔ لہذا اقرار نامہ معابدہ بحق پڑھ سن سوچ سمجھ اور درست تسلیم کر کے تحریر کر دیا ہے کہ سند رہے۔ اور عبد الحاجت کام آؤئے۔ تا تکمیل منتقلی مقرر بدد ستور قابض۔"

(Emphasis supplied)

7. Both the learned Courts below have interpreted the agreement to have created a tenancy only for a period of three months ending on 30.03.1995, and treated the acknowledgement of payment of the balance payment at the reverse/back side of the first page of the agreement to be valid discharge of obligation by the respondent to pay the balance price, under the agreement, *albeit* after the stipulated period of time while holding

that the parties agreed to the extension in cut-off due date. A meticulous examination of the agreement reveals that the agreement is unique in nature. It has three significant parts. First part of the agreement indicates that the parties had agreed to sell the rented premises for total consideration of Rs.325,000/- out of which an amount of Rs. 100,000/- was paid as earnest money by the respondent to the petitioner and the balance amount was to be paid by or before stipulated date i.e., 30.03.1995. Admittedly, the needful was not done by the respondent and the payment was not made on or before 30.03.1995. Whereas second part of the agreement is the effect of such breach, which contemplates that in case of failure on part of the respondent to pay the balance amount of the consideration, the earnest amount will be confiscated and that the transaction (of sale) shall be deemed to have been rescinded. Third part is the stipulation that till 30.03.1995, the respondent will pay rent to the petitioner. Meaning thereby that till the cut-off date that had been fixed for payment of the balance consideration, the nature of relationship between the parties was that of the landlord and the tenant and the moment the said due date expired and the respondent admittedly failed to pay the balance consideration, the agreement envisaging sale, between the parties, automatically stood rescinded and the respondent continued to hold the possession as tenant *albeit*, under an oral tenancy, on the basis of doctrine of holding over. It is pertinent to observe that no overt or covert was required on part of the petitioner to get sale-part of the agreement rescinded or cancelled. At this juncture, it is imperative to mention that the ejectment petition was filed under the Ordinance (since repealed), which did not envisage expiry of term of tenancy as a ground of eviction and the petitioner was obligated to prove default or any other ground of ejectment envisaged under the Ordinance. Therefore, the ejectment petition was rightly filed on ground of default in payment of rent. The respondent had taken the stance that in-fact he paid the balance consideration after the expiry of the stipulated date i.e., 30.03.1995 as the said date was extended with mutual consent of the parties

and the petitioner received the amount and acknowledgment thereof was recorded on the reverse/back side of the agreement, therefore, there was no need to pay the rent and the learned Rent Controller as well as the learned Appellate Court below accepted the said stance. The learned Appellate Court below held as under:

“12. It was emphatically argued that the respondent had failed to perform his part of the agreement therefore, he was not entitled to retain the possession of the demised premises being defaulter in payment of rent as he admitted the relationship of landlord and tenant in written reply and even before Hon'ble Lahore High Court, Lahore and that an agreement to sell does not create an estoppel against the right of the landlord. This argument would have of much weight and substance if there had been any independent rent agreement between the parties but the appellant has derived his alleged claim of landlord on the basis of sale agreement Ex-R-1 which otherwise was an alternate arrangement made by the parties in execution of the agreement just to claim the tenancy rent amount for that specific period of two months by which respondent was put into possession in the demised property under the agreement to sell. I have also gone through the alleged admissions pointed out by learned counsel for the appellant but could not sway myself to accede to this argument because respondent though admitted the execution of agreement yet he explained there that alleged tenancy had terminated after the payment of sale consideration and with this explanation, alleged admissions have become insignificant for proving the case of appellant. Therefore, argument of the learned counsel for the appellant has not been substantiated by the record.

(Emphasis supplied)

The learned Rent Controller as well as the learned Appellate Court below erred in interpretation of the agreement between the parties that comprises of two different transactions. This Court is of the opinion that the rent clause contained in the agreement is an independent and stand-alone contract severable from the rest of the agreement and the same survived after failure on part of the respondent to fulfil the condition of payment of

balance sale price, before the cut-off date i.e., 30.03.1995. The contracts have their own canons and principles for their construction. Principle of severance/severability of a contract is well-entrenched under the law of contract. The doctrine implies that there are contracts within a contract in the form of particular clause, which survive the frustration and/or the determination/rescission of the main contract. This principle is also known as principle of separability and is well established. In this regard, case reported as "Hitachi Limited and another vs Rupali Polyester and others." (**1998 SCMR 1618**) is referred.

8. Perusal of the agreement reproduced above reveals that the agreement was couched by the parties in a manner that the same could be severed into two independent and separate agreements one of which pertained to sale of the rented premises that specifically contains that the possession shall be handed over at the time of mutation of the rented premises by stipulating that "بے روز ملکیتی، جاگہ". This is followed by the clause whereby it had been agreed that the possession of the rented premises is being handed over to the respondent on rent, which shall be paid till the completion of the remainder of the contract that is in the nature of agreement to sell. The remainder of the contract could not be performed for rhymes and reasons that would be unnecessary to dilate upon in the present proceedings. However, the ineluctable position is that the suit of the respondent for specific performance failed. The possession under the agreement, as per contractual stipulations, was to be handed over on the date and day of mutation which never took place. Time was certainly essence of the contract and admittedly payment of balance sale price was not made by the respondent on or before the cut-off date. Since the respondent failed to meet the cut-off date, as a natural corollary, he continued to hold the possession of the rented premises, under the terms of the agreement, which though forms second part of the agreement but, in essence, is an autonomous and separable agreement creating oral tenancy, under the Ordinance. Therefore, it was not appropriate for the learned Rent

Controller to cherry-pick parts of the contract and overlook the others. The respondent took over the possession of the rented premises as a tenant, under the agreement, and cannot take *volte-face* from the stipulations of the agreement in this regard including automatic rescission of the agreement, to the extent of sale, upon failure on part of the respondent to meet the cut-off date.

9. It is also imperative to note that the respondent instituted a suit for specific performance of the agreement, which was dismissed but the dismissal was not assailed before the appellate forum, hence, the said order attained finality. Perusal of the order of dismissal of the suit (Ex.A-2) reveals that the suit of the respondent was dismissed on 03.05.1995 and the contents of the reverse/back side of agreement has been taken as an extension in time for performance of the agreement, by the learned Courts below to draw the conclusion that the petitioner himself extended the date of performance of the agreement after receipt of Rs. 100,000/- on 05.04.1995 and then received the balance sale consideration of Rs.125,000/- on 02.05.1995 and these dates of payment manifestly establish the amicable resolution of dispute, so there was no reason for the respondent to challenge the order of dismissal of his suit for specific performance of contract. The conclusion is erroneous inasmuch as while exercising jurisdiction under rent law, the learned *fora* below extended an opportunity to the respondent to establish and prove the outstanding payment of sale consideration pursuant to the agreement that is not covered under the object of the Ordinance, more so when the suit for specific performance on the basis of the agreement had been dismissed by the competent Court. The learned Rent Controller as well as the learned Appellate Court below appear to have been impressed by the endorsements on the reverse/back side of the agreement, which by itself cannot be a circumstance that establishes the receipt of any money, more particularly, when the said endorsements have not been recorded in accordance with the dictates of Qanun-e-Shahadat Order, 1984 ('QSO'). No doubt that the learned Rent Controller was

entitled to hold an inquiry into question of title in case of eviction, however, when the matter involved a complexity such as the one in hand, requiring interpretation of the agreement having dual characteristics involving issue related to specific performance thereof, unless the same is proved in accordance with Article 17 read with 79 of the QSO, before the Court of plenary jurisdiction, the respondent could not deny the relationship of landlord and tenant. Learned Rent Controller has erroneously allowed the respondent to take benefit of the purported endorsements/acknowledgements recorded on the reverse/back side of the agreement. At this juncture, before analysing whether the reasons recorded by the learned Courts below in general and that of the learned Appellate Court below in particular are cogent and sustainable in the eye of law, it will be advantageous to reproduce the two endorsements/acknowledgments, of payment, recorded on the reverse/back side of the agreement that reads as under:

"آج مبلغ ایک لاکھ روپیہ مزید وصول کر کے آخری بقایا ادا نگی کے لئے 95-4-11 تک توسعہ کر دی
5-4-95۔"

میان بلاں ولد علم دین نہ کوئ گواہ شد

باقیار قم مبلغ ایک لاکھ پچیس ہزار روپیہ ازاں محمد رضا مشتری وصول کر کے اس طرح تمام رقم وصول کر لی
2-5-95۔ کچھ بقایا نہ ہے۔"

میان بلاں

"ID 337-41-245574

Both the learned Courts below have erred in drawing the conclusion that the tenancy between the parties expired since the balance sale consideration had been paid after the due date, with mutual consent inasmuch as the above quoted endorsements/acknowledgments do not refer the name of any witnesses in whose presence the purported balance sale consideration was paid and the same have been taken as a gospel truth. Whereas there is no

denial that at the outset of his induction in the rented premises, the respondent was a tenant and it is settled principle of law that once a tenant is always a tenant. The status of the respondent as a tenant was to continue as such till the transformation of the same into an owner, had the sale-part of the agreement been completed and executed in letter and spirit, which was admittedly not taken to its logical conclusion or proved in accordance with law before a Court of competent jurisdiction, therefore, the learned Rent Controller had no power to draw such conclusion. Moreover, even if it is assumed that learned Rent Controller had power to conduct the inquiry allowing the respondent to prove the payment of balance price, which the learned Rent Controller had not, question arises who were the witnesses of such endorsements/ acknowledgments reflecting payment beyond cut-off date as no such witnesses were produced. Hence, it can easily be inferred that the respondent, having admitted ownership of the petitioner as well as initial tenancy failed to prove the payment of balance sale price as agreed and the status of the respondent never underwent any transformation and remained as a tenant. Much emphasis has been laid by learned counsel for the respondent that mere presence of the original title documents of the rented premises in custody of the respondent in itself substantiates the stance of the respondent that he cleared full payment under the agreement and received the said documents. The said argument too is misconceived as presence of the title documents does not get traction from anything in writing, either in the agreement or even through the endorsements/ acknowledgments at the reverse/back side thereof or through any other independent instrument that the original documents were lawfully obtained by the respondent, pursuant to completion of the sale under the agreement, whereas it has not been denied by the respondent that the GPA stood cancelled and criminal complaint was also filed against the respondent for committing forgery and use of force against the petitioner. Suffice to observe that the purpose and object of the Ordinance, which is erstwhile legislation governing relationship of landlord and tenant, was to

provide machinery for ejectment of tenants and other ancillary matters and the learned Rent Controller functioning thereunder had no authority to hold that a tenancy agreement coupled with stipulation of sale was specifically performed and the respondent is to be treated as a buyer simply because of the presence of original title document of the rented premises with the respondent and by doing so the learned Rent Controller erroneously assumed jurisdiction of a Civil Court, passing a decree of specific performance by concluding that the agreement stood specifically performed between the parties, more so when there is no supporting evidence on record.

10. In view of the above, this constitutional petition is **allowed** and the impugned findings of the learned Courts below are set aside. As a natural corollary, the eviction petition filed by the petitioner is accepted and the respondent is liable to forthwith eviction from the rented premises.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood