

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

C.M. Independent No. 1 of 2025

Awais Ahmad Satti

Versus

Shafqat Naeem and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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31-7-2025.

Mr. Jan Muhammad Khan, Advocate for the Applicant.

1. The Applicant [Awais Ahmad Satti] by way of the instant Application filed under Section 12(2), CPC has assailed the consolidated Judgment dated 24-10-2024 (“**Impugned Judgment**”) passed by this Court in Writ Petitions Nos.3354 and 3685 of 2023 whereby Writ Petition No. 3354 of 2023 filed by the Respondent No.1 [Shafqat Naeem] was allowed while Writ Petition No. 3685 of 2023 filed by the Respondent No.4 [Major (R) Abdul Khaliq Awan] was dismissed with cost.

2. At the very outset, the learned counsel for the Applicant submits that the instant petition which is an application under Section 12(2), C.P.C. has only been filed against the Impugned Judgment to the extent that it has dismissed the Writ Petition No.3685 of 2023 filed by the Respondent No. 4.

3. Writ Petition No. 3685 of 2023 was filed by the Respondent No.4 to challenge the Eviction Order dated 9-10-2023 passed by the learned Additional District Judge-I, East-Islamabad (“**Appellate Court**”) allowing the appeal filed by the Respondent No. 1 (as attorney of Respondents

No. 2 and 3) against the Rent Controller's Order dated 19-7-2023 whereby the Respondent No.1's eviction petition was dismissed on account of failure to prove relationship of tenancy with the Respondent No.4.

4. The learned counsel for the Applicant submits that the eviction proceedings were filed by the Respondents No. 2 and 3 through Respondent No.1 by fraudulently claiming to be the owners of the Shops No. 10 and 11 of Gulberg Emporium Mall and Residency located at business Square, Park Avenue Road, Gulberg Greens, Tehsil and District Islamabad ("**Subject Shops**") whereas pursuant to the Settlement Agreement dated 18-2-2021 ("**Settlement Agreement**") between the Applicant and the Respondent No.1, the Respondent No.1 had agreed to return the transfer of the Subject Shops from the names of his nominees i.e. the Respondents No.2 and 3 at the time of repossession of the House No. 15, Street No. 12, Sector-A, Phase-I DHA, Islamabad ("**DHA House**"). The learned counsel for the Applicant submits as such it is the Applicant who is the owner of the Subject Shops and not Respondent No.1, 2, or 3. He also alleged collusion between the Respondent No. 1 and 4.

5. I have heard the learned counsel for the Applicant and perused the available record.

6. It is admitted in the Application that by way of Agreement to Sell dated 4-4-2018 the Petitioner purchased the DHA House in consideration of the Subject Shops and that provisional allotment letters dated 17-8-2022 in respect of the Subject Shops

were issued in the names of Respondents No.2 and 3. It is also admitted that by way of Management Control Rent Agreements dated 21-8-2021 the Subject Shops were rented to Respondent No.4 however it is alleged that the Respondent No.1, 2, and 3 had no legal authority to rent the Subject Shops in view of the Settlement Agreement which the Respondent No.1 failed to perform. It is also admitted that though the Petitioner filed a civil suit seeking cancellation of the provisional allotment letters in favour of the Respondents No. 2 and 3 the same was withdrawn in view of the Settlement Agreement.

7. Bare perusal of the Appellate Court's Eviction Order dated 9-10-2023 reveals that not only was the Settlement Agreement produced by the Respondent No. 1 before the Appellate Court as Ex.A13 but it was duly considered. The Appellate Court's Eviction Order dated 9-10-2023 specifically observes that the terms of the Settlement Agreement have not matured as the Applicant has not restored back the vacant physical possession of the DHA House to the Respondent No. 1. Thus the Applicant cannot plead any fraud or misrepresentation on account of withholding of the Settlement Agreement.

8. I too have considered the Settlement Agreement vide the Impugned Judgment and found that it is the Applicant who did not perform his end of the deal by restoring the physical possession of the DHA House in favour of the Respondent No.1 against which the Respondent No.1 had agreed to transfer the Subject Shops from the names of the

Respondents Nos. 2 and 3 to the name of the Applicant and further that this Court in Order dated 23-8-2021 passed in F.A.O. No. 117 of 2019 records that the Applicant has already sold the DHA House to a third party. The Applicant in the instant Application has not contended that such findings are erroneous in any manner nor has he shown in any manner that he was in compliance of his end of the deal there under i.e. transfer of the DHA House as per the Settlement Agreement.

9. It is also noteworthy that the provisional allotment letters dated 17-8-2022 were issued in the names of Respondents No. 2 and 3 in respect of the Subject Shops one and a half year *after* the Settlement Agreement was executed on 18-2-2021 which too shows that the Settlement Agreement was never enforced. This is further confirmed by the fact that the Petitioner has not shown that he has filed any suit for the specific performance of the Settlement Agreement.

10. The Applicant also claims that on 29-8-2022 the mediator cancelled the provisional allotment letters dated 17-8-2022 of Respondents No. 2 and 3 and thereafter IBECHS issued regular allotment letters in the name of the Applicant dated 1-12-2023 in respect of the Subject Shops. The name of the mediator has not been disclosed however examination of the cancellation letter dated 29-8-2022 shows that it has been issued by the Respondent No.4. No document has been filed to show that Respondent No.4 was appointed mediator by all parties concerned especially considering that the Respondent No.1 had instituted eviction

proceedings against the Respondent No.4 and Respondent No.4 himself was claiming to be the owner thereof. The question arises as to why in such circumstances the Respondent No.1 would agree to appoint Respondent No.4 as the mediator and why Respondent No.4 would agree to act as mediator between the Applicant and the Respondent No.1 to mediate ownership of the Subject Shops. Nor has it been shown as to what legal authority such mediator had for cancellation of the provisional allotment letters in favour of Respondents No. 2 and 3 particularly after withdrawal of the civil suit filed by the Applicant seeking cancellation of the provisional allotment letters and dismissal of the FAO against the same. I have already held vide the Impugned Judgment that the misrepresentation of the Respondent No. 4 and contradictory stances taken by him before this Court in various proceedings highlighted therein indicate malafide intent which view is further strengthened by the foregoing. The aforementioned indicates collusion between the Applicant and Respondent No.4.

11. Furthermore although the Applicant in the Memo of Petition claims that IBECHS has issued regular allotment letters dated 1-12-2023 of the Subject Shops in the name of the Applicant however examination of the allotment letter dated 1-12-2023 shows that it is a transfer of provisional allotment of Office No. 2 on the ground floor of the of Gulberg Emporium Mall and Residency located at business Square, Park Avenue Road, Gulberg Greens, Tehsil and District Islamabad from the name of the Respondent No.1 to the name of the Applicant whereas the Subject Shops comprise of Shops

No.10 and 11 of Gulberg Emporium Mall and Residency located at business Square, Park Avenue Road, Gulberg Greens, Tehsil and District Islamabad in respect of which provisional allotment letters were issued to the Respondents No. 2 and 3 and not Respondent No.1.

12. At best, the grievance of the Applicant is that he claims to be the owner of the Subject Shops of which the Respondent No.1 also claimed to be the owner in eviction petition instituted against Respondent No. 4 who, it may be noted, too claimed to be the owner in the eviction proceedings. By dismissing Writ Petition No. 3685 of 2023, the Impugned Judgment in effect simply upholds the Appellate Order passed in respect of the eviction proceedings instituted by the Respondent No.1 against the Respondent No.4. But even if the Applicant had become a party to the eviction proceedings the Rent Controller had no jurisdiction to determine the ownership claimed by the Applicant against the Respondent No.1.

13. Upon a query of this Court, the learned counsel for the Petitioner, however, confirmed that the physical possession of the Subject Shops is still not with the Respondent No.1, 2, and 3 despite the dismissal of the Writ Petition No. 3685 of 2023 entitling them to the possession of the Subject Shops and that in fact that the Subject Shops are in possession of JS Bank Limited. It may be recalled that JS Bank Limited was handed over possession of the Subject Shops by Respondent No.4 claiming to be the owner of the Subject Shops. Yet the Applicant has not explained why he has not

instituted any legal proceedings against the Respondent No. 4 or JS Bank Limited if he is indeed the owner of the Subject Shops.

14. No reason has been shown why the Applicant is precluded from instituting a civil suit for specific performance of the Settlement Agreement and for a declaration of ownership in respect of the Subject Shops or how the Impugned Judgment stands in his way which at best has held Respondent No. 4 not entitled to possession as a tenant of the Subject Shops.

15. Thus the Applicant has failed to show that the Impugned Judgment to the extent of W.P. No.3685 of 2023 is the result of fraud or misrepresentation. In any event, as observed hereinabove the claim of the Applicant is of ownership in respect of the Subject Shops which involve disputed questions of fact for which he may institute appropriate civil proceedings before a Court of competent jurisdiction and such question cannot be determined by filing an application under Section 12(2), C.P.C. in respect of judgment passed in writ petition arising from rent proceedings between Respondent No. 1 and Respondent No. 4.

16. In view of the foregoing, the instant C.M. Independent is dismissed *in limine* along with all C.Ms. The office is directed to give notice of this Order to the Respondents.

(SAMAN RAFAT IMTIAZ)
JUDGE