

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.1050 of 2016
Muhammad Rafique
Versus.
Farida Khan & 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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24.03.2016	Mr. Sajjad Haider Malik, Advocate for the petitioner
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Through the instant writ petition, the petitioner, Major (R) Muhammad Rafique, has impugned Orders dated 18.02.2016 and 17.03.2016, passed by the Court of the learned Rent Controller, Islamabad, and the Court of the learned Additional District Judge, Islamabad, respectively. Vide Order dated 18.02.2016, the learned Rent Controller had dismissed the petitioner's Objection Petition filed in execution proceedings, whereas vide order dated 17.03.2016, the Court of the learned Additional District Judge, had dismissed the petitioner's revision petition against the said order dated 18.02.2016.

2. The facts essential for the disposal of this petition are that Farida Khan (respondent No.1) had on 19.06.2015, filed an eviction petition against the petitioner under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") seeking the petitioner's eviction from Flat No.01 1st Floor, Plot No.5-D, F-10 Markaz, Islamabad ("the rented premises"). The grounds on which respondent No.1 sought the petitioner's eviction from the rented

premises were, (1) expiry of the lease agreement, (2) personal *bonafide* need of the owner, (3) default in the payment of rent and water charges etc; and (4) violation of the terms of the lease agreement. Vide order dated 02.12.2015, the eviction petition was disposed of by the learned Rent Controller. It is pertinent to reproduce the said order dated 02.12.2015 in its entirety:-

"On 15.10.2015 the counsel for respondent had got recorded his statement that the respondent would vacate the rented premises by the end of November & would hand over possession of the rented premises to the petitioner. The said statement of learned counsel for respondent was endorsed by counsel for the petitioner & counsel had stated that he has no objection on the statement of counsel for respondent if the respondent handover the keys of premises to the petitioner in the court. In the light of said statement of counsel the case was adjourned to 30th November 2015 with mutual consent of parties and respondent was directed to handover keys of rented premises to the petitioner in the court on the date fixed. On 30.11.2015 due to strike of bar the case was adjourned for today. The case file was kept pending till 02:45 PM but no one has put appearance on behalf of respondent therefore, keeping in view of order dated 15.10.2015 the statements of counsel for both the parties the ejectment petition is accordingly disposed off. File be consigned to record room after its due completion & compilation."

3. Respondent No.2 instituted execution proceedings on 10.12.2015. In these proceedings, the petitioner, filed an Objection Petition on the ground that respondent No.1 had sold the rented

premises to the petitioner and therefore, the relationship of landlord and tenant had ceased to exist between them. An objection was also taken to the effect that a suit for specific performance had been instituted by the petitioner against *inter-alia* respondent No.1 regarding the rented premises. This Objection Petition was opposed by respondent No.1, who asserted that she had not sold the rented premises to any one. Vide order dated 18.02.2016, the learned Rent Controller dismissed the petitioner's Objection Petition and ordered that warrant of possession be issued subject to the deposit of process fee. The matter was adjourned to 01.03.2016 for the bailiff's report.

4. The petitioner assailed the said order dated 18.02.2016 before the Court of the Additional District Judge, Islamabad. Vide order 17.03.2016, the learned Appellate Court dismissed the petitioner's revision petition. The concurrent findings of the courts below have been impugned by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner in his submissions reiterated the grounds taken by the petitioner in his Objection Petition before the learned Rent Controller and the grounds of appeal before the learned Appellate Court. He further submitted that the petitioner had purchased the rented premises by paying a huge amount to respondent No.1; that a suit for specific performance and permanent injunction had been instituted on 25.11.2015 by the

petitioner against *inter-alia* respondent No.1 before the Court of learned Civil Judge, Islamabad; that on 25.11.2015, the learned Civil Court had restrained the defendant in the said suit from transferring or alienating the suit flat/rented premises. The learned counsel also submitted that a registered sale deed had been executed between the petitioner and respondent No.1, whereby the rented premises were sold to the petitioner. Confronted with the question that the document annexed at Pages 48 to 75 had not been signed by respondent No.1 and did not fulfill any of the requirements of the registered sale deed i.e. signature of the seller, signature and stamp of the Sub-Registrar, registration number, the Registrar's seal, etc., learned counsel submitted that at the eleventh hour, respondent No.1 had backed out from the transaction. This document is signed by the petitioner and two persons, namely, Osman Rafiq and Mobeen Akhtar, purporting to be attesting witnesses. The question that crops up in the mind is that what are these two 'witnesses' witnessing – the signature of the alleged purchaser/petitioner only at Page 75? The 'witnesses' signed this document without the alleged seller signing it. The petitioner has some audacity to be filing such a document before the High Court. The less said about this document the better, but suffice it to say that it is shocking to the conscience of any reasonable person in a civilized society.

6. Learned counsel for the petitioner further contended that at no material stage did the learned Rent Controller pass any decree against the petitioner, therefore, in the absence of a decree the execution proceedings could not take place. The learned counsel for the petitioner placed reliance on the case of Arif Hayat Vs. Sher Muhammad reported as 2015 CLC 1383 and contended that the execution proceedings before the learned Rent Controller should be consolidated with the suit for specific performance and permanent injunction instituted by the petitioner before the Court of Civil Judge, Islamabad.

7. I have heard the arguments of the learned counsel for the petitioner and perused the record with his able assistance.

8. I propose to deal at first with the contention of the learned counsel for the petitioner that in the absence of a decree against the petitioner, no execution proceedings could take place. Section 23 of the IRRO is reproduced herein below:-

23. "Execution of orders . -- Every order made under Section 14, Section 17, Section 18 and every order passed in appeal under Section 21, shall be executed by the Controller as if it were a decree of a Civil Court. The provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) shall, so far as may be, apply to the execution of order made under this Ordinance."
(Emphasis added)

9. The term "*as if it were a decree of a Civil Court*" employed in Section 23 of the IRRO is in the nature of a deeming clause. By fiction of law, the Rent Controller, in execution proceedings, is to treat every

order made under Sections 14, 17, 18 and 21 of the IRRO like a decree of a Civil Court. The provisions of the IRRO do not obligate the Rent Controller to pass a decree when deciding an eviction petition. For instance, Section 17 Sub Section 9 of the IRRO obligates the Rent Controller to strike off the tenant's defence and put the landlord in possession of the rented premises in the event the tenant fails to deposit the amount of rent in compliance with an order passed under Section 17(8) of the IRRO. The IRRO in such circumstances does not require a decree to be passed against the tenant. Therefore, it is my view that the absence of a decree does not make the execution proceedings before a Rent Controller *coram non judice* or of no legal effect. This objection of the petitioner is spurned as hyper-technical and otherwise devoid of substance. The learned Revisional Court was correct in holding that the orders passed by the learned Rent Controller were "*executable in the same manner as the execution of the decree*".

10. I am not impressed by the contention of the learned counsel for the petitioner that execution proceedings could not take place against the petitioner because respondent No.1 had sold the rented premises to the petitioner; and that the petitioner had already instituted a suit for specific performance and permanent injunction against respondent No.1; and that the learned Civil Court had already issued an ad-interim injunctive order. It has become

commonplace for unscrupulous tenants/litigants to avoid eviction proceedings by contending that the rented premises had been sold to them. Unless and until the petitioner was able to establish his claim for specific performance on the basis of the alleged sale agreement through a judgment (not an interim order) in his favour passed by a Court of competent jurisdiction, respondent No.1 would continue to enjoy the status of being the owner and landlord of the rented premises. Pendency of a civil suit does not give a license to the tenant to remain in occupation of the rented premises. There is a catena of case law in support of the proposition that ejectment proceedings could not be stayed or stalled on the plea that tenants in possession were holding an agreement to sell. Mere pendency of a suit for declaration or specific performance of an agreement is no ground to avoid eviction of tenants, who claim to have purchased the rented premises. Reference in this regard may be made to the following case law:-

11. In the case of Iqbal Vs. Rabia Bibi, reported as PLD 1991 SC 242, it has been held at page 245 of the report as follows:-

“Be that as it may, in some recent judgments this court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to

remain in occupation despite having set up a, hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and right the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation, wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and. free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano V, Haji Abdul Ghani (PLD 1984 Supreme Court 17), Allah Yar and others v. Additional District Judge and others (1984 SCMR v. Mufti Abdul Ghani (PLD 1985 SC 1)."

12. In the case of Jumma Khan Vs. Zarin Khan, reported as PLD 1999 SC 1101, the relationship of landlord and tenant was denied by the tenant on the ground that the landlord had executed an agreement to sell the rented premises to the tenant, and that a substantial amount had been paid to the landlord, and that a civil suit for specific performance was pending adjudication against the landlord. The landlord had unequivocally refuted the execution of any agreement for sale. The Hon'ble Supreme Court of Pakistan dismissed the tenant's petition in the following terms:-

"7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effort will be independently determined by

the Civil Court. However, in the instant case we are satisfied that issue regarding relationship of tenancy and personal bona fide requirement of respondent-landlord has been correctly decided by the Courts below. There does not appear any material defect or legal infirmity with regard to conclusions drawn in the impugned judgments. Accordingly the petition having no merit is dismissed and leave to appeal is refused."

13. In case of Barkat Masih Vs. Manzoor Ahmad, reported as 2006 SCMR 1068, it was held that if a tenant denies the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights.

14. In the case of Abdul Rasheed Vs. Maqbool Ahmed, reported as 2011 SCMR 320, the petitioner/tenant had denied the relationship of landlord and tenant between parties. The petitioner had claimed that he had purchased demised premises subsequently through a sale agreement. The Hon'ble Supreme Court of Pakistan dismissed the petition by holding as follows:-

"5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent

and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller.”

15. In the case of Gohar Ali Shah Vs. Shahzada Alam, reported as 2000 MLD 82, the appellant was seeking to avoid eviction from the rented premises by claiming that he had purchased the rented premises. The Hon'ble High Court of Sindh struck off the tenant's defence and directed him to vacate the premises subject to refund by the landlord of the amount of consideration paid towards the price of the premises in question to the tenant after adjustment of rent till the delivery of possession. Furthermore, it was held as follows:-

"Mere agreement to sale would not absolve the appellant to pay rent only because he was proposed purchaser of the premises when there has been no term that appellant would not pay rent on this executing such agreement of sale when such agreement of sale would not create any right title or interest in or over the property in favour of appellant the proposed purchaser until and unless the said relationship of landlord or tenant is determined by an agreement.

16. In the case of Muhammad Akmal Vs. Faisal Saeed Mirza, reported as 2004 CLC 862, the tenant had denied the existence of relationship of landlord and tenant between the parties alleging that predecessor-in-interest of the landlord had entered into agreement to sell the premises in question in favour of the tenant. The tenant had also stated that he had filed a suit for specific performance of the agreement to

sell. The said assertions of the tenant did not find favour with the Hon'ble Lahore High Court, and in paragraph 8 of the said report, it was held as follows:-

“8. ... It may be pointed out here that learned Rent Controller has not to decide the fact of sale and purchase allegedly made between the appellant and predecessor-in-interest of the respondents. The Civil Court, seized of the matter, is competent to decide such dispute and if appellant turns successful in that suit he would have the chance for the recovery of possession, in case of his ejectment. Till the decision of the civil suit proceedings of this case (ejectment petition) cannot be stayed or stalled as held in Iqbal and 6 others v. Mst. Rabia Bibi and another PLD 1991 SC 242. The intention of suit for specific performance of contract cannot furnish a ground to the appellant to get the proceedings before the Rent Controller stayed as held in Muhammad Amjad v. Mst. Rehana Kausar 2001 YLR 939.”

17. In the case of Muhammad Parvez Vs. Additional Rent Controller, Lahore, reported as 2013 YLR 1881, an applicant, claiming to be the purchaser of the rented premises, had filed an application under Order I, Rule 10 C.P.C. for impleadment in the eviction petition before the Rent Controller. The landlord's writ petition against the order of the Rent Controller allowing the application for impleadment was allowed by the Hon'ble Lahore High Court, holding as follows: -

“6. ... By applying above said principles in the instant case the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. The rent proceedings are between the land

owner and tenant and entry or interference by the third party is to be jealously guarded. In this view of the matter, the impugned order is set aside and the writ petition is allowed. Resultantly application under Order 1 Rule 10, C.P.C. filed by respondents Nos.2 and 3 is dismissed.”

18. In the case of Refhat Hamidee Vs. Abdul Aziz, reported as 2013 YLR 1898, it has been held by the Hon'ble High Court of Sindh that unless and until a registered sale deed existed between the parties, the relationship of landlord and tenant existed between the parties, the tenant could not get the benefit of a 'sale agreement' to avoid payment of rent. The eviction of the tenant from the rented premises was held to be justified.

19. In view of the aforementioned case law, I cannot bring myself to agree, with utmost respect, with the view taken by the learned Single Judge in Chambers in the case of Arif Hayat Vs. Sher Muhammad (supra), wherein the proceedings before the Rent Controller were consolidated with the suit instituted by the tenant. Such consolidation would set at naught Section 25 (3) of the IRRO which reads as follows:-

“Except for sufficient reasons to be recorded in writing, the Controller shall finally dispose of an application under this Ordinance as expeditiously as possible but not later than four months of the date of the first hearing after the service of summons on the respondent.” (Emphasis added)

20. I am of the view that the eviction or execution proceedings before the learned Rent Controller should not in any manner be hampered by the mere pendency of a civil

suit instituted by a tenant claiming to have purchased the rented premises.

21. The petitioner did not file an appeal under Section 21 of the IRRO against the order dated 02.12.2015 whereby respondent No.1's eviction petition was disposed of/decided. As the said order dated 02.12.2015 has attained finality, the petitioner cannot get out of it by either asserting that he had become the owner of the rented premises or by asserting that no 'decree' had been passed against him.

22. Further, the petitioner is estopped by his conduct to take a contradictory stance just so as to prolong his occupation of the rented premises and the woes of the landlord/respondent No.1. I find myself in agreement with the view taken by the learned Revisional Court that the petitioner is attempting to wriggle-out of his liability created by the consenting/conceding statement recorded before the learned Rent Controller on 15.10.2015.

23. When the petitioner filed that revision petition before the learned Additional District Judge, the execution proceedings were pending before the learned Rent Controller. Given the facts of this case the learned Rent Controller may bear in mind the provisions of Section 26 of the IRRO when finally disposing of the execution proceedings. The said Section 26 *ibid* is reproduced herein below:

"26. Compensation for frivolous applications and defence.--If in the opinion of the Controller or, as the case may be, the appellate authority any party to the proceedings under this Ordinance is found

guilty of abuse of the process of law by filing frivolous or vexatious application or by taking pleas in defence which are false or intended to prolong the proceedings unnecessarily he or, as the case may be, it shall, while passing the final order, award compensation to the other party which shall not be less than five thousand rupees or more than ten thousand rupees.”

24. In view of the foregoing, I do not find any merit in this petition, and the same is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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