

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A. No.438/2014

Nazir Ahmad Khan

Versus

Muhammad Bashir, etc.

Appellant by : Syed Javed Akbar Shah, Advocate.

Respondents by : Mr Ahmed Nawaz, Advocate.

Date of Hearing : 01-02-2023.

Arbab Muhammad Tahir, J.- The appellant, through the instant appeal under section 19 of the Contempt of Court Ordinance, 2003 has assailed judgment, dated 16-06-2014, passed in Crl. Org. No.02-S of 2011.

2. The facts, in brief, are that the appellant had filed a suit for recovery of possession, which was decreed in his favour vide judgment and decree, dated 08-09-2008. The appellant filed execution petition before this Court. The execution proceedings were transferred to the learned Senior Civil Judge, Islamabad for further proceedings, wherein possession of the suit property was handed over to the appellant.

It is the claim of the respondent Bashir Ahmed that the appellant had purchased land from one *Karamat Hussain* (judgment debtor) mentioning its wrong particulars. The said *Bashir Ahmed*, while terming the agreement as result of connivance, filed an application under section 12(2) of the Code of Civil Procedure, 1908 ("*CPC*") on the ground that the decree was obtained on the basis of

fraud and misrepresentation (*i.e. C.M. No.926/2009*). Alongwith the application under section 12(2) CPC, an application seeking interim injunction was also filed. The learned Executing Court while issuing notices, ordered suspension of the judgment and decree, dated 08-09-2008.

The appellant, being aggrieved of the injunctive order, filed an application i.e. C.M. No.1058/2009 for recalling of order, dated 18-05-2009 on the ground that he is in possession of the property pursuant to the judgment and decree. This Court vide order, dated 29-05-2009 modified the interim injunction in terms that "*status quo shall be maintained*". The parties thereafter invoked criminal jurisdiction against each other. The complaint filed by the appellant under the Illegal Dispossession Act, 2005, which was dismissed and such dismissal remained upheld up-till the august Supreme Court. The application under section 12(2) of CPC filed by respondent/*Bashir Ahmed* was subsequently dismissed as withdrawn vide order, dated 09-04-2014.

On 09-02-2011, the appellant filed contempt petition before this Court alleging violation of order, dated 29-05-2009. As per contents of the contempt petition the alleged incident of violation of injunctive order happened 5/6-08-2009. Due to legal reasons, the contempt petition was transferred twice to the courts below. However, since the appellant had alleged violation of an order passed by this Court, therefore, the said proceedings were transferred to this Court. The learned Single Judge issued notice to the respondents, who filed their reply. However, the contempt petition filed by the appellant was dismissed vide the impugned order dated 16-06-2014.

3. The learned counsel for the appellant has argued that; the impugned order is against the law and facts; the learned Single Judge failed to appreciate that the application under section 12(2) of CPC was dismissed as withdrawn; the respondents have admitted that they are in possession despite the fact that the possession was handed over to the appellant pursuant to execution of the decree; the impugned judgment is not sustainable.

4. The learned counsel for the respondents has argued that; the injunctive order was an interim order passed in the proceedings under section 12(2) of CPC; the said application was subsequently dismissed as withdrawn; the said interim order has merged into the final order and is no more in the field; the doctrine of merger is applicable; the proceedings under the Contempt of Court Ordinance, 2003 could not have been invoked as the injunctive order was passed under Order XXXIX Rules 1 and 2 CPC; the issue whether the property in possession of the respondents was the same property regarding which relief was sought in the main civil suit is still undetermined; the role of the appellant was not more than an informer in relation to the contempt proceedings; the informer cannot insist upon the Court to prosecute the alleged contemnor; the appellant has no *locus standi* to file the instant appeal; reliance has been placed on the case titled "*Shahid Orakzaid v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan and another*" [2016 PCr.LJ 1017 (Peshawar)].

5. The learned counsels have been heard and the record perused with their able assistance.

6. Perusal of the record shows that the appellant had filed the contempt petition against the respondents alleging violation of order, dated 29-05-2009. The said order was passed in the proceedings/application filed by *Bashir Ahmed* under section 12(2) CPC against the judgment and decree passed in favour of the appellant. The respondent Bashir Ahmed alongwith his application under section 12(2) had filed an application seeking interim injunction whereupon this Court suspended the basic judgment and decree. However, vide order, dated 29-05-2009, this Court had modified the earlier injunctive order to the extent that "*status quo shall be maintained*" on the application of the appellant claiming that he was in possession of the property pursuant to the judgment and decree and their suspension would cause him irreparable loss. The proceedings were being conducted pursuant to the application filed by *Bashir*

Ahmed. Subsequently the application of *Bashir Ahmed* under section 12(2) CPC was dismissed as withdrawn vide order, dated 09-04-2014. It may be noted that order alleged to have been violated by the respondents was an "interim order" passed in an application under section 12(2) of CPC, which was subsequently dismissed as withdrawn. The words 'ad-interim' and 'interim' have been defined in Black's Law Dictionary (9th Edition) as "*ad interim: In the meantime; temporarily*" and "*interim: Done, made, or occurring for an intervening time; temporary or provisional.*" It is settled law that the interim orders passed during proceedings merge into the final order and would not survive after the conclusion of the said proceedings. In the case in hand, the proceedings conducted during pendency of the application under section 12(2) CPC were the 'original proceedings' which instantly terminated after the said application was dismissed as withdrawn, therefore, the ground that the interim order dated 29-05-2009 still holds the filed even after termination of the proceedings is misconceived. The interim order is always of a limited duration which legally does not control the final adjudication of the main proceedings. In a nutshell, interim orders are merged into the final order and lose its efficacy and operation instantly. Reliance is placed on the case titled "*Federation of Pakistan through Secretary M/o Interior v. Gen. (R) Pervez Musharraf and others*" [PLD 2016 SC 570].

7. The appellant did not mention as under which law i.e. *Order XXXIX CPC or the Contempt of Court Ordinance, 2003 (the "Ordinance")*, the contempt application was filed. In case of contempt, the petitioner had the option to file an application under Rule 2(3) of Order XXXIX CPC, which was an exhaustive remedy in case of disobedience of the injunctive order passed in the proceedings under section 12(2) CPC and simultaneously, he had the option to file a petition under the provisions of the Ordinance as well. His contempt petition was dealt with under the Ordinance without any objection from the appellant. His intention to have filed the contempt petition under the Ordinance is further clarified from

his act of filing this appeal under section 19 of the Ordinance. The learned Single Judge has, therefore, rightly dealt with the matter under the Ordinance.

8. The appellant has been pursuing his remedies under the Ordinance, alleging violation of order, dated 29-05-2009. The law is by now well settled that the role of the person who lays information before a Court alleging commission of contempt is no more than an "informer" and that the matter of contempt is between the contemnor and the Court. The role of the informer is restricted to bringing the matter to the notice of the Court. His role, therefore, ends once the Court takes cognizance of the matter at his instance. The informer, therefore, is divested of a right to prosecute the contemnor on behalf of the Court. Reliance is placed on the case titled "*Shahid Orakzai v. Pakistan Muslim League (Nawaz Group) and 8 others*" [2000 SCMR 1969] and "*Shahid Orakzaid v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan and another*" [2016 PCr.LJ 1017 (Peshawar)]. In the case in hand, appellant had laid information before the learned Single Judge by way of filing application alleging commission of contempt. The said application was dismissed by the learned Single Judge vide the impugned order.

9. It is true that section 19 of the Ordinance only provides forums for filing of appeal without mentioning as to who can file the appeal. Under the Ordinance, the role of the appellant, being informer, is limited. The matter of contempt was between the Court and the alleged contemnor. The appellant was divested of a right to prosecute the alleged contemnor on behalf of the Court. The informer, therefore, cannot be aggrieved by an order of a Court to terminate the contempt proceedings. It is noted that the Court, whose order has been alleged to have been violated, can conclusively resolve to its satisfaction the question of contempt and the reasons for satisfaction of the Court to "terminate" contempt proceedings are not justiciable in appeal under section 19 of the Ordinance. The legislature was cognizant of the fact that no person other than the contemnor against

whom proceedings are pending or has been convicted as such under the Ordinance can be treated as an aggrieved person and thus competent to avail the remedy of appeal under section 19. It is for this reason that the legislature has provided only for the forums of appeal under section 19 of the Ordinance without referring to the aggrieved person. It is noted that the appellant has filed this appeal under section 19 of the Ordinance. The right of appeal is a substantive right and can only be availed if it is expressly provided under the enabling statute. The right of appeal under section 19 of the Ordinance can only be availed by a person aggrieved of initiation of proceedings against him or has been convicted under the Ordinance. The appellant, being informer, became irrelevant after bringing the matter to the notice of the learned Single Judge and, therefore, has no *locus standi* to file this appeal under section 19 of the Ordinance.

10. In view of the above, the instant appeal is without merit and is, therefore, accordingly dismissed. The proceedings filed by *Bahsir Ahmed* under section 12(2) CPC are no more pending; therefore, the appellant is at liberty to avail remedies provided to him under the law.

(MIANGUL HASSAN AURANGZEB) (ARBAB MUHAMMAD TAHIR)
JUDGE JUDGE

Announced in the open Court on _____

JUDGE

JUDGE