

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R. No.85 of 2020
Mst. Nasreen Zaib and others
Versus
Mohammad Shafiq and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.03.2020	Raja Shiraz Ahmed Janjua, Advocate for the petitioners.

At the very outset, learned counsel for the petitioners submitted that the instant civil revision petition may be converted and treated as a writ petition. Allowed. Office is directed to assign the number accordingly.

2. Through the instant writ petition, the petitioners impugn the following orders:-

- i. Order dated 12.03.2019 passed by the Court of the learned Rent Controller, whereby the eviction petition filed by respondent No.1 (Muhammad Shafiq) was allowed *ex-parte*.
- ii. Order dated 28.01.2020 passed by the learned Rent Controller, whereby the petitioners' application under Section 12(2) C.P.C. seeking the setting aside of the said order dated 12.03.2019, was dismissed as not maintainable.
- iii. Order dated 19.02.2020, whereby the learned Executing Court dismissed the objection petitions filed by the petitioners against the execution of the *ex-parte* order and decree dated 12.03.2019.

3. The facts essential for the disposal of the instant petition are that vide lease agreement dated 09.01.2014, executed between respondent No.1 (Muhammad Shafiq) and respondent No.2

(Malik Shakeel Ahmed Awan), Shop No.657, Block No.4, Hajvary Poultry Traders, near Modern Bakery, Aabpara Market, Sector G-6/1-4, Islamabad ("the rented premises") was taken on lease by respondent No.2. The said agreement was valid up to 31.12.2014.

4. On 10.10.2018, one Ghulam Jillani (the predecessor of the petitioners and respondent No.1) and the petitioners filed a petition before the learned Rent Controller seeking respondent No.2's eviction from the rented premises. On 06.10.2018, respondent No.1 also filed an eviction petition against respondent No.2.

5. The eviction petition filed by Ghulam Jillani, etc. was dismissed as withdrawn on 12.04.2019 after the learned Rent Controller recorded Ghulam Jillani's statement to the effect that a fresh lease agreement had been executed with respondent No.2 who was to comply with his obligations under the said agreement.

6. As regards the eviction petition filed by respondent No.1, the same was allowed vide *ex-parte* order and decree dated 12.03.2019. Respondent No.2's appeal against the said order dated 12.03.2019 was dismissed by the Court of the learned Additional District Judge, Islamabad, vide judgment dated 19.07.2019. Writ petition No.2743/2019, wherein respondent No.2 had assailed the said concurrent orders, was dismissed in *limine* by this Court, vide order dated 26.07.2019. With the passing of the said order dated 26.07.2019, the eviction order against respondent No.2 had attained finality.

7. The petitioners had filed an application under Section 12(2) C.P.C. read with Order IX Rule 13 C.P.C. seeking to set aside the *ex-parte* eviction order dated 12.03.2019. Vide order dated

28.01.2020, the said application was dismissed as not maintainable on the basis of the law laid down in the judgment reported as PLD 2016 S.C. 358.

8. Respondent No.1 had filed an execution petition seeking the execution of the *ex-parte* order and decree dated 12.03.2019. The petitioners had filed an objection petition to the said execution proceedings primarily on the ground that they being the co-owners of the rented premises had entered into an agreement with respondent No.2 under which the latter could retain possession of the rented premises. Vide order dated 19.02.2020, the said objection petition was dismissed by the learned Executing Court.

9. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that since the petitioners were the co-owners of the rented premises, and were not inclined to have respondent No.2 evicted from the rented premises, the learned Executing Court could not have dismissed their objection petition or proceeded with the execution proceedings; that respondent No.1 was one of the co-owners of the rented premises, and therefore respondent No.2 could not be evicted only at the behest of respondent No.1; and that the learned Executing Court ought to have taken into account the fact that the petitioners had entered into a fresh lease agreement with respondent No.2. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

10. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance.

11. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 8 above, and need not be recapitulated.

12. As mentioned above, the *ex-parte* order and decree dated 12.03.2019 passed by the learned Rent Controller in favour of respondent No.1 was upheld by the learned Appellate Court as well as this Court. Therefore, the said order and decree had attained finality. Since the appellate judgment dated 19.07.2019 was a detailed judgment on the merits of the case, the learned Rent Controller was correct in holding that on the basis of the law laid down in the case of Sahibzadi Maharunnisa Vs. Mst. Ghulam Sughra (PLD 2016 S.C. 358), the petitioners' application under Section 12(2) was not maintainable before the learned Rent Controller.

13. Respondent No.2's entry into the rented premises was on the basis of the lease agreement entered into between respondent No.1 and respondent No.2. Respondent No.1 had been receiving rent under the said agreement. It is not disputed that the said lease agreement has expired. Presently, there is no valid and subsisting lease agreement between respondent No.1 and respondent No.2.

14. Respondent No.1 is not a party to the lease agreement said to have been executed between the petitioners and respondent No.2. It is also not the petitioners' case that respondent No.1 had been receiving rent from respondent No.2 on the basis of the lease agreement executed between the petitioners and respondent No.2. In this view of the matter, the learned Executing Court did not commit any jurisdictional irregularity by

dismissing the petitioners' objections to the execution petition filed by respondent No.1.

15. In view of the above, I do not find any merit in this petition, which is accordingly dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*