

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.234/2018  
Malik Sajjad  
Versus  
Shafqat Zaman and others

**Date of Hearing:** 29.10.2018  
**Petitioner by:** M/s Zulfiqar Ali Abbasi and Shahid Munir,  
Advocates.  
**Respondents by:** Mr. Haroon ur Rasheed, Advocate for  
respondents No.1 and 2,  
Mian Abdul Razzaq, Advocate for respondent  
No.3.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant civil revision petition, the petitioner, Malik Sajjad, impugns the judgment dated 06.07.2018, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 05.06.2018, passed by the learned Executing Court, was dismissed, as not maintainable. Vide the said order dated 05.06.2018, the learned Executing Court, dismissed the petitioner's objections against the execution petition filed by the respondents for the enforcement of the eviction order dated 20.01.2014, passed by the learned Rent Controller, Islamabad, under section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.").

2. This case has a long history. As far back as 01.07.2010, respondents No.1 and 2 (Shafqat Zaman and Sohail Ashaq) filed an eviction petition under Section 17 of the I.R.R.O., before the Court of the learned Rent Controller, Islamabad, seeking the petitioner's eviction from Shop No.16 and Upper Room constructed on Plot No.19, G-9 Markaz, Beval Market, Islamabad ("the rented premises"). After long drawn proceedings, vide order and decree dated 20.01.2014, the learned Rent Controller, allowed the said eviction petition and directed the petitioner to handover vacant possession of the rented premises to respondents No.1 and 2 on or before 20.02.2014. Vide judgment and decree dated 13.04.2015, the petitioner's appeal against the said order and decree dated

20.01.2014, was dismissed by the learned Appellate Court. Writ petition No.1457/2015 against the said decrees was dismissed by this Court, vide order dated 15.10.2015. Consequently, the eviction order against the petitioner attained finality for all intents and purposes.

3. On 02.12.2015, respondents No.1 and 2 filed an execution petition for the implementation of the order and decree dated 20.01.2014, passed by the learned Rent Controller; judgment and decree dated 13.04.2015, passed by the learned Appellate Court; and order dated 15.10.2015, passed by this Court.

4. On 02.03.2016, the learned Executing Court recorded the statement of the learned counsel for the decree holders (i.e., respondents No.1 and 2 herein) to the effect that since the contesting parties had arrived at a compromise, the decree holders do not want to pursue the execution petition. Vide order dated 02.03.2016, the learned Executing Court, dismissed the said execution petition as withdrawn.

5. On 26.03.2016, respondent No.3 (Raja Irshad Khan) filed an application for the recall of the order dated 02.03.2016 on the ground that the said order had been obtained through fraud and misrepresentation. The plea taken by respondent No.3 in the said application was that respondent No.3 had purchased the rented premises through registered sale deed No.2986, dated 28.06.2012; that the eviction petition had been filed by respondents No.1 and 2 before the registration of the said sale deed; that during the pendency of the said eviction petition, the petitioner had filed an application for the dismissal of the eviction petition on the ground that the rented premises had been sold to respondent No.3; and that the learned Rent Controller, vide order dated 20.01.2014, had spurned the petitioner's contention that the eviction petition should be dismissed on the ground that the rented premises had been sold.

6. Vide order dated 24.05.2017, the learned Executing Court, allowed respondent No.3's application for the restoration of the execution petition. The learned Executing Court held that the order for the withdrawal of the execution petition was obtained by concealing the material fact as to the sale of the rented premises in

favour of respondent No.3. The petitioner's appeal against the said order dated 24.05.2017 was dismissed by the learned Appellate Court, vide order dated 25.01.2018. The said concurrent orders were assailed by the petitioner in writ petition No.952/2018. Vide order dated 12.06.2018, this Court dismissed the said petition in *limine*.

7. The petitioner's plea that he had purchased the rented premises by executing an agreement to sell and had also instituted a suit for specific performance, was taken into consideration but spurned by this Court by placing reliance on the law laid down in the cases of Iqbal Vs. Rabia Bibi, (PLD 1991 SC 242), Jumma Khan Vs. Zarin Khan (PLD 1999 SC 1101), Barkat Masih Vs. Manzoor Ahmad (2006 SCMR 1068), Abdul Rasheed Vs. Maqbool Ahmed (2011 SCMR 320), Gohar Ali Shah Vs. Shahzada Alam (2000 MLD 82), Muhammad Akmal Vs. Faisal Saeed Mirza (2004 CLC 862), Muhammad Parvez Vs. Additional Rent Controller, Lahore (2013 YLR 1881), Refhat Hamidee Vs. Abdul Aziz (2013 YLR 1898) and Muhammad Rafique Vs. Farida Khan (2016 CLC 1451).

8. Paragraph 16 of the said order dated 12.06.2018, passed by this Court in writ petition No.952/2018, is reproduced herein below:-

*"16. The irony of the situation is that the eviction petition seeking the petitioner's eviction from the rented premises was instituted as far back as 01.07.2010 and despite the concurrent eviction orders, the petitioner is still in occupation of the rented premises. Therefore, the learned executing Court may proceed with the execution proceedings expeditiously."*

9. Thereafter, the petitioner filed yet another objection to the execution petition on the ground that the petitioner had entered into an agreement for the purchase of the rented premises and that suit for specific performance of the said agreement was pending before the learned Civil Court. Vide order dated 05.06.2018, the said objections were dismissed by the learned Executing Court. Furthermore, warrants of possession were issued by the learned Executing Court. The said order also shows that the petitioner had sought several adjournments and had thereby protracted the execution proceedings. The said order dated 05.06.2018 was assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. As mentioned above, the said

appeal was dismissed as not maintainable. The said concurrent orders/judgments passed by the learned Courts below have been impugned by the petitioner in the instant civil revision petition.

10. Learned counsel for the petitioner, after narrating the facts leading to the filing to the instant civil revision petition, submitted that the learned Appellate Court had committed a jurisdictional error by observing in the impugned judgment that since the Code of Civil Procedure, 1908 ("C.P.C.") was not applicable to the execution proceedings, the appeal was not maintainable; that the execution petition had been filed by respondents No.1 and 2 under section 47 read with Order XXI, Rule 11(2) C.P.C.; that section 36 C.P.C. provides that the provisions of C.P.C. regarding to the execution of decrees shall be deemed to be applied to the execution of orders; that therefore, the provisions of the C.P.C. applied to the proceedings for the execution of the ejectment order; that any order passed in proceedings under section 47 C.P.C. is appealable under section 104(1)(ff) C.P.C.; and that the learned Appellate Court erred by not appreciating that the appeal filed by the petitioner against the order dated 05.06.2018, passed by the learned Executing Court, was appealable. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the impugned judgment dated 06.07.2018 to be set-aside and for the matter to be remanded to the learned Appellate Court for a decision afresh. In making his submissions, the learned counsel for the petitioner placed reliance on the judgments reported as 2014 MLD 820, 2013 YLR 1890, 2013 YLR 2159, 2009 YLR 2423 and 2003 YLR 2912.

11. Learned counsel for respondents No.1 and 2 adopted the arguments of the learned counsel for the petitioner.

12. On the other hand, learned counsel for respondent No.3 submitted that the impugned judgment dated 06.07.2018 does not suffer for any jurisdictional infirmity; that under section 23 of the I.R.R.O. every eviction order passed by the Rent Controller under section 14, 17 and 18 of the I.R.R.O. and by the Appellate Court under section 21 of the I.R.R.O. is to be executed as if it were a decree of a Civil Court; that although the provisions of Order XXI C.P.C. have

been made applicable to such execution proceedings, the substantive right of appeal provided in section 104 C.P.C cannot be read into the provisions of the I.R.R.O.; that a Rent Controller while executing eviction orders remains a *persona designata* and would not become a Civil Court merely because he had to execute eviction orders like a decree of a Civil Court; that an order passed by the Rent Controller during the course of execution proceedings would not be opened to an appeal under section 21 of the I.R.R.O. or section 104 C.P.C.; and that order dated 05.06.2018, passed by the learned Executing Court was not an appealable order. Learned counsel for respondent No.3 prayed for the revision petition to be dismissed. In making his submissions, learned counsel for respondent No.3 placed reliance on the judgment reported as PLD 1997 Lahore 451.

13. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

14. The facts leading to the filing of the instant petition have been set out in sufficient details in paragraphs 2 to 9 and need not be recapitulated.

15. Since vide the impugned judgment dated 06.07.2018, the Court of the learned Additional District Judge, Islamabad, dismissed the petitioner's said appeal as not maintainable, the vital question which, in my view, warrants determination by this Court is whether an appeal is maintainable against an order passed by the learned Executing Court dismissing the petitioner's objections to the execution petition filed for the enforcement of an eviction order passed by the Court of the learned Rent Controller under the provisions of the I.R.R.O..

16. Section 23 of the I.R.R.O. provides that every order made under sections 14, 17 and 18 of I.R.R.O. and every order passed in appeal under section 21 of the I.R.R.O. shall be executed by the Controller as if it were a decree of a Civil Court. Furthermore, it is provided that the provisions of Order XXI C.P.C. shall, so far as may be, apply to the execution of an order made under the I.R.R.O.. Admittedly, the order passed by the learned Rent Controller which was sought to be

executed in the execution proceedings was an eviction order passed under section 17 of the I.R.R.O..

17. Although a Rent Controller can hear objections to an execution petition and can invoke the provisions of Order XXI C.P.C. in such proceedings, but he does so as a *persona designata*. The mere fact that the Rent Controller has been given the power to execute certain orders passed under the provisions of the I.R.R.O., as if they were decrees of a Civil Court, does not make the Court of the Rent Controller into a Civil Court. An order passed by the learned Rent Controller in execution proceedings cannot be termed as an order passed by a Civil Court entitling an aggrieved party to file an appeal against the same under *inter-alia* sections 96 and 104 or Order XLIII Rule 1 C.P.C. In the case at hand, the petitioner had filed the appeal before the learned Appellate Court under section 104 read with Order XLIII, Rule 1 C.P.C. against the order dated 05.06.2018, passed by the learned Rent Controller in execution proceedings. Since the substantive right of appeal provided under the said provisions of C.P.C. have not been incorporated or made applicable to orders passed by a Rent Controller, I am of the view that the learned Appellate Court was committed no jurisdictional irregularity in dismissing the petitioner's appeal as not maintainable.

18. Since the order dated 05.06.2018, whereby the learned Rent Controller, dismissed the petitioner's objections to the execution petition, cannot be termed as a final order, and appeal against the same was also not competent under section 21 of the I.R.R.O..

19. This Court, in judgment dated 04.05.2015, passed in writ petition No.4576/2014 titled "*M/s Shakeel Express (Pvt.) Ltd. Vs. Sultan Mehmood etc.*" held as follows:-

*"06. The appeals were filed under section 96 CPC against order passed by respondent No.4. In Islamabad Rent Restriction Ordinance, 2001 the order passed by the Rent Controller is to be executed as a decree of Civil Court, meaning thereby that the procedure for execution of a decree provided in Code of Civil Procedure has to be followed. However, the fact that procedure in CPC has been made applicable for execution of order of eviction does not mean that the substantive right of appeal has also been conferred."*

20. In view of the above, I do not find any jurisdictional infirmity in the judgment dated 06.07.2018 passed by the learned Appellate Court. Consequently, the instant revision petition is dismissed.

21. Before parting with this judgment, it may be observed that the objection regarding the purchase of the rented premises by the petitioner through an agreement to sell and the institution of a suit for specific performance for such an agreement to sell had already been spurned by this Court in its judgment dated 12.06.2018, passed in writ petition No.952/2018. Reference to this has been made to paragraph No.7 herein above. By re-agitating this very objection in another objection petition to the execution proceedings, the petitioner committed an abuse of the process of the Court and unnecessarily protracted the said proceedings. The learned Executing Court is expected to proceed with the execution proceedings on a day-to-day basis and not entertain any request for adjournment on the petitioner's part.

22. Section 35 C.P.C. was amended by the Costs of Litigation Act, 2017. Section 35(1)(i) C.P.C. as amended by the said Act, provide that a party to the any proceedings, shall before the announcement of the final order, judgment and decree, file in the prescribed form, details of actual costs of litigation, including but not limited to Court fee, stamp fee, fee paid to counsel and all other ancillary and other incidental expenses thereto. Furthermore, section 35(1)(iii) C.P.C., as amended by the said Act, provide that costs other than those mentioned in section 35(1)(i) C.P.C. shall be in the discretion of the Court.

23. Vide order dated 25.09.2018, this Court had required the contesting parties to file their respective affidavits of costs. As per the affidavit of costs filed by respondent No.3, he paid Rs.80,000/- to the learned counsel for respondent No.3 for the instant revision petition and Rs.15,000/- as clerk's fees. This affidavit was attested by an Oath Commissioner on 26.09.2018. No objections to this affidavit were taken by the petitioner. Consequently, in terms of section 35(1)(i) C.P.C., as amended by section 2 of the Costs of Litigation Act, 2017, the petitioner shall pay Rs.95,000/- as costs to respondent

No.3. Additionally, for protracting the execution proceedings by taking objections which had been decided in the earlier round of litigation, this Court in its discretion imposes an amount of Rs.1,00,000/- as costs in terms of section 35(1)(iii) C.P.C. on the petitioner. These costs shall be paid to respondent No.3 on the next date before the learned Executing Court.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2018.

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**