

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 280 of 2018
Faisal Mehmood
Versus
District Judge, Islamabad and two others.

Petitioner by: Syed Iqbal Hussain Shah Gillani,
Advocate,
Respondents 1&2 by: M/s Jameel Hussain Qureshi and
Nawazish Ali, Advocates,
Respondent No.3 by: Mr. Shahid Hussain Jasra, Advocate,
Date of Hearing: 17.02.2021.

FIAZ AHMAD ANJUM JANDRAN, J:- Through instant writ petition, petitioner has impugned the order dated 15.05.2017 passed by the learned Rent Controller, Islamabad and judgment and decree dated 22.11.2017, passed by the learned Additional District Judge, Islamabad respectively. Vide said order dated 15.05.2017, objection petition (**the petition**) filed by the respondent No.2, Aamir Ali (**the objector**) was accepted, whereof appeal against the said order filed by the petitioner was dismissed. Hence instant writ petition.

2. Essential and relevant facts for adjudication of instant writ petition are that the petitioner filed ejectment petition against the respondent No.3 (Tanvir Ahmad) on the basis of lease agreement dated 20.02.2016 in respect of shop No. 8 & 9 (basement) on plot No.55, Sector G-10/4, Islamabad (**the premises**) wherein said Tanvir Ahmad entered appearance and filed written reply by stating that he is not in possession of the premises rather the objector holds possession of the premises. On 23.06.2016 respondent

Tanvir Ahmad also recorded his statement in the following words:-

بیان کیا کہ دوکان مستد عویہ میرے قبضہ میں نہ ہے۔ دوکان مستد عویہ محمد عامر نے خریدی جو کہ امجد صاحب نے بیچی تھی۔ امجد صاحب اور عامر نے مجھے کہا کہ dummy agreement کرنا ہے۔ تاکہ بیرون ملک سے پیسے منگوائے جاسکیں۔ اس لیے میں نے دو ماہ تک dummy agreement کر لیا۔ مزید یہ کہ حبائیداد مستد عویہ کی بید حلی منظور ہونے پر کوئی اعتراض نہ ہے۔

3. Learned Rent Controller, on the same date accepted the ejectment petition to that extent.
4. Thereafter, the objector filed petition under section 12(2) of the Civil Procedure Code for setting aside the order dated 23.06.2016 which after recording of evidence was dismissed.
5. Petitioner filed application for execution of order dated 23.06.2016 passed by the Rent Controller, the objector filed the objection petition which was allowed by the executing Court, appeal against said order was also dismissed, hence, instant writ petition.
6. Learned counsel for the petitioner contended that when petition under section 12(2) of the Code was dismissed by the Rent Controller, then he was not required to allow the objection petition filed by the objector. That when objector has filed suit for specific performance then to allow his objection petition is not warranted under the law.
7. Learned counsel for the objector argued that the judgments of two courts below are well reasoned and circumference of the section 12(2) of the Code when decided by the Rent Controller, and that of objection petition under Rule 99 of the Order XXI of the Code are two

distinct ambits. Respondent No.3 has corroborated the stance of the objector in an unambiguous manner.

8. Heard the learned counsels for the parties and examined the record with their able assistance.

9. Order passed by the two courts below concurrently is on the complain of the objector in pursuance of the Rule 99 of the Order XXI of the Code of Civil Procedure, 1908 (**the Code**), while acting as a executing court in the light of section 23 of the Islamabad Rent Restriction Ordinance, 2001 (**IRRO 2001**). For ease of reference section 23 of the IRRO 2001 is reproduced as under:-

*"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 Orders made under this Ordinance."* [Emphasis added]

10. Plain reading of the statutory provision reproduced above, explicitly provides that the phrase civil court in itself is sufficient to demonstrate the intention of the legislature, by showing that a Rent Controller while exercising powers of executing court regarding execution of an order of eviction shall exercise all powers vested in the civil court. All rent matters when pressed into execution proceedings passed under the sections 14, 17 & 18 would be construed as decree of the civil court, resultantly provision of the Order XXI of the Code would come into field. Domain and sphere of executing court headed by Rent Controller is undoubtedly as of the civil court.

11. When came to the conclusion that all provisions of Order XXI of the Code are applicable, it is manifest that complain of the objector before the executing court was in nature of Rule 99 of Order XXI of the Code. For ease, Rule 99 of the Code is reproduced as under:-

*"99. Where the **Court is satisfied** that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) **claiming in good faith** to be in possession of the property on his own account or on account of some person other than the judgment debtor the Court shall make an order dismissing the application."* [bold is by the court]

12. In fact Rule 99 would be seen in the sequence of its two preceding provisions i.e. Rule 97 & 98, wherein frivolous complains/objections are turned down and if a person malafidely and illegally obstructs, creates hindrance in the process of execution of a decree, he may be sent to the civil prison for thirty days. In that sequence/continuation, Rule 99 comes in sequence which lays much emphasis upon the wording "*court is satisfied*" and "*claiming in good faith*".

13. The phrase 'good faith' has a very wider connotation but to have a comprehensive glance of the same by taking advantage of its dictionary meanings/explanation through Black's Law Dictionary 11th Edition, is manifest " A state of mind consisting in (1) honesty in belief or purpose (2) faithfulness to one's duty or obligation (3) observance of reasonable commercial standards of fair dealing in a given trade or business or (4) absence of intent to defraud or to seek un-conscionable advantage. The word good faith to some extent also extends meanings of bona-fides. This phrase is normally used in variety of contexts and meanings

vary with the context. While considering the gist as provided in the dictionary this Court is of the humble view that the objector never defrauded the petitioner as well as the proceedings regarding case in hand.

14. The record made available of the case-at-hand shows, that the objector purchased the premises through an agreement to sell on 28.05.2013 and as per record his suit for specific performance regarding the premises is pending since 20.05.2016. Petitioner is also party to the said proceedings.

15. The statement of the respondent No.3 dated 23.06.2016 which is part of judicial record that possession of the premises is with the objector, written reply filed by the said respondent No.3 dated 08.06.2016 also suggests that possession is with the objector, in a suit for specific performance petitioner has also been impleaded as the party by the objector. In existence of these facts, convincing evidence is available, therefore, this Court undoubtedly considers that objector had acted in good faith.

16. The second important aspect of the Rule 99 is when **court is satisfied**. Learned executing court when investigated the matter as per law and found that the objector has substance in his plea. The objector acted vigilantly in respect of subject decree. His case was not subject matter of Rule 97 or 98 of the Code. After evaluating all material available, two learned courts below acted correctly by reaching upon the conclusion that they were satisfied, regarding complain/objection of the objector, it is humble view of this Court.

17. The Hon'ble Supreme Court of Pakistan in a judgment reported as "**Mst.Khurshid Begum etc. v. Mr.Ghulam Kubra, etc.**" (1982 SCMR 90) in paragraph No.12 has held in the following temrs:-

"It follows consistently from these decisions of this Court that an executing Court has the power to entertain and adjudicate an objection petition filed by persons not claiming through the judgment debtor, even before their physical dispossession from the property. This has to be distinguished from the right conferred by law on such a party to prefer an objection without resisting the execution or without being dispossessed from the property."

18. This aspect of the case in hand has been considered particularly in the light of referred dictum of the Apex Court and it is found that here is not a case when judgment debtor is claiming himself to have any right in good faith or he had some agreement to sell in respect of the premises to be enforced and till then his possession be not disturbed, but the fact of the matter is that the objector is neither a judgment debtor nor is claiming any right on account of the judgment debtor. Sufficient material is there, which suggests that possession of the objector even much before passing of the eviction order by the Rent Controller was there, hence, provisions of the Rule 99 of Order XXI of the Code read with section 23 of the IRRO, 2001 are fully applicable in the case at hand.

19. There is another important aspect of the matter and that is the order, execution whereof was sought by the petitioner explicitly provides that ejectment is allowed to the extent of the respondent No.3 only, said phrase is also self-explanatory that no decree exists qua the objector.

20. Cumulative effect of above narrations/findings is that the objector acted in good faith, was possessor of the premises much before passing of the order by the learned Rent Controller, execution whereof was sought, alleged tenant in his written reply as well as his oral statement recorded in the court unambiguously described that he is not in possession of the premises and his agreement was only a dummy (fictitious) agreement just for the period of two months while physical possession is with the objector, petitioner is also party in the suit for specific performance while acting under the provisions of section 23 of the IRRO 2001, read with Order XXI Rule 99 of the Code, objection petition filed by the objector has rightly been allowed.

21. The sequel of above discussion is that the instant writ petition fails and is accordingly **dismissed**.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on **02.03.2021**.

JUDGE

Approved for reporting.