

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

Writ Petition No.1090 of 2015

Khushnood Ahmad

**Versus.**

Learned Additional District Judge, Islamabad & others

<b>Date of Hearing:</b>	10.05.2016, 13.05.2016, 27.05.2016, 02.06.2016, 08.06.2016, 09.06.2016, 14.06.2016, 28.06.2016, & 04.07.2016
<b>Petitioner by:</b>	M/s M. Aleem Khan Abbasi, Hamood-ur-Rehman Khan and Rana Ghulam Asghar Khan, Advocates,
<b>Respondents No.2 to 7 by:</b>	Mr. Tariq Mahmood Jehangiri, Advocate.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Khushnood Ahmad, impugns the judgment dated 25.02.2015, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioner's appeal against the order dated 13.12.2014, passed by the Court of learned Rent Controller, Islamabad, was dismissed. Vide the said order dated 13.12.2014, the learned Rent Controller had allowed respondents No.3 to 7's petition for the eviction of the petitioner from House No.13, Street No.62, Sector G-6/4, Islamabad ("the disputed premises"), under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO").

2. This case has a long chequered history. On 28.11.2013, respondents No.3 to 6 and 7 (i) to 7 (iv), ("respondents") who are the successors/legal heirs of late Colonel Ihsan Ullah, filed a petition under Section 17 of the IRRO, for the eviction of the petitioner from the disputed premises. The petitioner contested the said eviction petition by filing a written reply. After the framing of an issue and recording of evidence, the said eviction petition was allowed, vide order dated 13.12.2014, and the petitioner was directed to hand over vacant possession of the disputed premises within 30 days. The petitioner assailed the said order in an appeal before the Court of the Additional District Judge, Islamabad. Vide judgment dated 25.02.2015, the said appeal was dismissed. The petitioner assailed the said concurrent orders of the learned Courts below in Writ Petition No.1090/2015 before this Court. Vide interim order dated 16.04.2015, the execution proceedings instituted by the

respondents were stayed by this Court. Till date, the petitioner continues to remain in possession of the disputed premises.

3. Earlier vide judgment dated 15.07.2015, the learned Single Judge-in-Chambers had allowed Writ Petition No.1090/2015, and the orders of the learned lower Courts were set aside, and the matter was remanded to the Court of learned Rent Controller to ensure compliance with Section 28 of the IRRO and to decide the case afresh on merits. The said judgment dated 15.07.2015, was assailed by respondents No.3 to 7 before the Hon'ble Supreme Court of Pakistan in Civil Petition No.2526/2015. Vide order dated 24.03.2016, the Hon'ble Supreme Court set aside the judgment dated 15.07.2015, passed by this Court. Paragraph 6 of the Hon'ble Supreme Court's Order is reproduced herein below:-

*"In this view of the matter, we convert this petition into appeal and set aside the impugned order only to the extent of remanding main case. The writ petition shall be deemed to be pending before the High Court for decision on merits in accordance with law. As it is an old case it be given priority according to its date of institution. The learned Judge deciding the case has already expressed his view, therefore, this case be listed before some other learned Judge."*

4. In the post remand proceedings, this case came-up for adjudication before this Court.

#### CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:

5. Raja Muhammad Aleem Khan Abbasi, learned counsel for the petitioner submitted that on 15.11.2011, an oral agreement was entered into between the petitioner and the respondents, whereunder the respondents agreed to sell the disputed premises to the petitioner for a total sale consideration of Rs.3,45,00,000/-, out of which an amount of Rs.5,00,000/- was paid, as advance payment, and the balance Rs.3,40,00,000/- was to be paid subsequently; that the petitioner entered the disputed premises on 15.11.2011 as an owner/purchaser, and not as a tenant; that at no material stage had any tenancy agreement, oral or written, been executed between the petitioner and the respondents; that a suit for specific performance of an oral agreement to sell the disputed premises was instituted by the petitioner against the respondents on 07.05.2013, whereas the eviction petition was filed by the respondents against the petitioner on 28.11.2013 (i.e. six and half

months after the filing of the eviction petition); that in the written statement to the said suit, the respondents admitted that an agreement to sell the disputed premises was executed with the petitioner; that although, on 18.02.2014, the plaint in the suit was rejected under Order VII, Rule 11 C.P.C., the petitioner had filed an appeal (Regular First Appeal No.32/2014), which was pending adjudication before a Division Bench of this Court; that since an appeal is treated as a continuation of proceedings, the dismissal of the civil suit is of no consequence to the petitioner; that the respondents, in their eviction petition, alleged default in the payment of rent since September, 2011, but the eviction petition was filed two long years after the alleged default; that between September 2011 and the filing of the eviction petition on 29.11.2013, neither was any demand raised by the respondents for the payment of rent nor was any notice of default served on the petitioner; and that the respondents in their eviction petition, did not mention any date, time or place regarding the oral agreement to lease the disputed premises to the petitioner, whereas in the civil suit, the petitioner gave all details regarding the date, time or place regarding the oral agreement to sell the disputed premises.

6. It was further submitted that the petitioner, in his reply to the eviction petition, took a preliminary objection that the eviction petition was not maintainable, because there was no relationship of landlord and tenant between the respondents and the petitioner; that the learned Rent Controller framed an issue on whether there was a relationship of landlord and tenant between the respondents and the petitioner; and that his issue was wrongly decided by the learned Rent Controller against the petitioner.

7. That the special power of attorney dated 26.11.2013 (Exh.P.3), executed by the respondents in favour of Imtiaz Khalid Khan (attorney) does not authorize the said attorney to sign or file an eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001, against the petitioner; that the eviction petition signed by the said attorney was defective, and liable to be dismissed; that similarly the affidavit-in-evidence submitted by the said attorney was without any legal authorization; that the said attorney was not given any power to depose before the learned

Rent Controller; and that these legal defects could not be cured, and the evidence of the said attorney should have been discarded.

8. It was further submitted that the respondents' stance was that the oral rent agreement was entered into between the petitioner and Shahid Ihsan (respondent No.3), but Shahid Ihsan did not appear as a witness before the learned Rent Controller; that Shahid Ihsan's testimony would have been of pivotal importance, but it was never recorded; that adverse inferences ought to have been drawn against the respondents, because they withheld their best evidence; that there was nothing preventing Shahid Ihsan to enter the witness box; that Shahid Ihsan abstained from entering the witness box in order to avoid cross-examination; that the provisions of Qanun-e-Shahadat Order, 1984, applied to the proceedings before the learned Rent Controller; and that under Article 129(g) of the Qanun-e-Shahadat Order, 1984, a presumption has to be drawn against a party, who does not enter the witness box.

9. It was further submitted that both the learned courts below relied on the statement of the Stamp Vendor, namely, Muhammad Waheed Anwar (A.W.4) in non-suiting the petitioner; that A.W.4 was in police custody and was brought to the Court to give evidence; that the mere fact that a stamp paper was purchased on which the lease agreement was to be written does not mean that the agreement was actually executed; that a blank stamp paper cannot establish the existence of a tenancy; that the extract from the register showing that the stamp paper was purchased by the petitioner, was correctly discarded by the learned Rent Controller; that the petitioner denied purchasing the stamp paper; that the respondents were not able to prove that the signature on the stamp paper was that of the petitioner; and that burden of proving that a tenancy existed between the petitioner and the respondents was on the respondents.

10. Learned counsel for the petitioner further submitted that there was written lease agreement between the petitioner and the respondents; that Section 5 of the IRRO, requires every tenancy to be in writing; that as the respondents' case is that there was an oral lease agreement between the petitioner and the respondents, the respondent should have filed a civil suit for the ejectment of the petitioner from the disputed premises; that the jurisdiction of a Rent

Controller cannot be invoked for the eviction of a trespasser or an unlawful occupant; that the respondents should have filed a suit under Section 9 of the Specific Relief Act, 1877; that a Rent Controller cannot grant relief to a petitioner claiming to be a landlord unless the relationship of landlord and tenant is established; that the respondents' allege that the oral lease agreement was for a period of one year; that the expiry of the lease agreement is not a ground under Section 17 of the IRRO for the eviction of a tenant; that the respondents should have been non-suited, because there was no tenancy; and that the learned Rent Controller should have ensured compliance with Section 28 of the IRRO, and imposed a penalty on the respondents because they did not enter into a registered/written lease agreement.

11. He further submitted that the pleadings in the petitioner's bail petition should not be taken into consideration by this Court, because the bail petition dated 25.08.2012 was not signed by the petitioner; and that when the said bail petition was filed, the petitioner was behind bars.

12. Learned counsel for the petitioner prayed for the writ petition to be allowed and the concurrent orders passed by the learned courts below to be set aside. In making his submissions, learned counsel placed reliance on the law laid down in the cases titled as Rana Abdul Hameed Talib Vs. Additional District Judge, Lahore and others (PLD 2013 Supreme Court 775), Allies Book Corporation through L.Rs Vs. Sultan Ahmad and others (2006 SCMR 152), Afzal Ahmad Qureshi Vs. Mursaleen (2001 SCMR 1434), Pervaiz Zafar Butt Vs. Muhammad Hanif (1997 SCMR 1185), Hakim Ali Vs. Muhammad Salim and another (1992 SCMR 46), Rehmatullah Vs. Ali Muhammad and another (1983 SCMR 1064), Muhammad Akhtar Vs. Mst. Manna and others (2001 SCMR 1700), Fakhar-ud-Din Vs. Mst. Mansab Bibi etc (2004 SCMR 711), Muhammad Akram Khan and another Vs. Awal Zaman and others (2002 CLC 1686), and Dad Karim and others Vs. Ishaq and others (2015 CLC 107).

#### CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS NO.2 TO 7:-

13. Mr. Tariq Mehmood Jehangiri, learned counsel for the respondents No.2 to 7, submitted that in the month of August, 2011, Shahid Ihsan (respondent No.3) gave the disputed premises on rent

to the petitioner for a period of one year; that it was orally agreed that the monthly rent would be Rs.1,30,000/-; that when the oral agreement was made, a stamp paper (Exh.A.2) was purchased on 25.08.2011 by the petitioner on which the lease agreement was to be reduced into writing; that the rent for four months came to Rs.5,20,000/-; that the petitioner paid Rs.20,000/- in cash, and Rs.500,000/- through a cheque No. 0448867, dated 01.09.2011 drawn on SME Bank Limited, Islamabad (Mark-E), in favour of Shahid Ihsan; that the said stamp paper and cheque are the backbone of this case; that the lease agreement was to be written and executed on the stamp paper after the said cheque was encashed; that on 06.09.2011, this cheque was dishonoured on presentation; that consequently, F.I.R. No.357, dated 19.08.2012, was registered under Section 489-F PPC at Police Station Aabpara, Islamabad (Mark-D); that on 25.08.2012, the petitioner filed a petition for bail before arrest before the Court of learned Additional Sessions Judge, Islamabad (West); that in this petition, the petitioner admitted the execution of the lease agreement and the issuance of the cheque; that on 07.05.2015, the petitioner was granted ad-interim pre-arrest bail; that subsequently, the petitioner, in connivance with the police, managed to have himself discharged from the case on 17.05.2013; that on 18.05.2013, the petitioner withdrew his petition for pre-arrest bail; that aggrieved by the said discharge dated 17.05.2013, Shahid Ihsan (respondent No.3) filed W.P.No.1249/2015 before this Court; that on 21.05.2015, this Court was informed by the police that a new F.I.R. bearing No.125/2015 had been registered against the petitioner at Police Station Shalimar, Islamabad; that this Court, vide order dated 21.05.2015, directed the Court of the learned Additional Sessions Judge, Islamabad, before whom the petitioner's bail petition was pending adjudication to decide its fate on the next date of hearing before the said Court.

14. It was further submitted that F.I.R. No.125, dated 06.09.2011, under Section 489-F PPC, was registered at Police Station Shalimar, Islamabad, against the petitioner; that the petitioner again applied for pre-arrest bail on 07.05.2015, and on the same very day, the petitioner was admitted to ad-interim pre-arrest bail; that vide order dated 03.06.2015, the said bail petition was dismissed; that on

06.06.2015, the petitioner, yet again applied for bail before arrest to the Court of the learned Additional Sessions Judge, Islamabad; that on 06.06.2015, the petitioner was admitted to ad-interim pre-arrest bail; that on 31.07.2015, the petitioner's ad-interim pre arrest bail was recalled, because he did not appear before the Court; that on 31.07.2015, the petitioner again filed a petition for pre-arrest bail, and was admitted to ad-interim pre-arrest bail on the same day; and that vide order dated 17.10.2015, the Court of learned Additional Sessions Judge, Islamabad, confirmed the petitioner's pre-arrest bail, because he had deposited Rs.500,000/- in the Court.

15. It was further submitted that the petitioner's case is full of contradictions; and that the petitioner, with a nefarious motive in mind, tried his best to protract and delay the proceedings before the learned lower *fora*.

16. He further submitted that vide order and decree dated 13.12.2014, the learned Rent Controller decreed the eviction petition instituted by the respondents; that vide judgment and decree dated 25.02.2015, passed by the Court of the learned Additional District Judge, Islamabad, the petitioner's appeal against the said order and decree dated 13.12.2014 was dismissed; that the learned Executing Court, on 02.03.2015 issued a warrant of possession/ejectment against the petitioner; that on 03.03.2015, the learned Executing Court suspended the warrant of possession on the basis of the submission of the petitioner's counsel that the Division Bench of the Hon'ble High Court had, on 01.04.2015, granted an ad-interim injunction in favour of the petitioner; that after the Executing Court was informed that the Hon'ble High Court had, on 07.04.2015, dismissed R.F.A. No.32/2014, for non-prosecution, warrants of possession were once again issued by the learned Executing Court; that on 14.04.2015, the execution proceedings at the site were halted when Ms. Sajada Khanum Awan, Advocate, gave a certificate that the Court of the learned Additional District Judge, Islamabad (West), had stayed the execution proceedings; that on 16.04.2015, the Court of the learned Additional District Judge, Islamabad, dismissed the petitioner's revision petition, and the stay order stood vacated; that thereafter, the bailiff went to the disputed premises along with the warrant of possession; that the eviction was resisted on the ground that the Hon'ble High Court had

on 16.04.2015, stayed the execution proceedings; that Rana Ghulam Dastagir, Advocate, filed an application before the District Judge, Islamabad, for appropriate action against the bailiffs, Arslan Ali and Muhammad Abbas; that on 24.04.2016, the learned District Judge, Islamabad, ordered an inquiry against the said officials and suspended them in the meanwhile; and that the said officials were subsequently exonerated and reinstated.

17. It was further submitted that the petitioner, on 07.05.2013, instituted a suit against the respondents for specific performance of an oral agreement to sell dated 15.11.2011 regarding the disputed premises; that in this suit, it was pleaded that on 15.11.2011, the respondents had agreed to sell the disputed premises to the petitioner for a total sale consideration Rs.345,00,000/-, and that Rs.500,000/- was paid as earnest money / advance payment; that it was further pleaded that possession of the disputed premises was handed over to the petitioner when the oral agreement to sell took place, and that the balance payment of Rs.340,00,000/- was to be paid within three months; that the respondents contested this suit by filing a written statement; that the learned counsel submitted that since the respondents knew that the petitioner's civil suit was based on falsehood, and that the petitioner did not have the amount for the purchase of the disputed premises, the respondents pleaded that if the petitioner is truthful, he should deposit Rs.345,00,000/- in the Court and the respondents will transfer the disputed premises to him; that subsequently, the respondents filed an application under Order VII, Rule 11 C.P.C. for the rejection of the plaint, which application was allowed by the learned Civil Court, vide order dated 18.02.2014, and the plaint in the petitioner's suit for specific performance was rejected; and that the said order dated 18.02.2014 was impugned by the petitioner in RFA No.32/2014, which is still pending adjudication before this Court.

18. Learned counsel further submitted that the petitioner deserves no indulgence in the discretionary jurisdiction of this Court, because he happens to be a dishonest person; that other than the registration of FIR Nos.357/12 and 125/15 against the petitioner for the dishonour of cheque dated 01.09.2011, FIR No.12/2013, dated 21.11.2013, has been registered against the petitioner under Sections 462-D, 406 and 109 PPC read with



Sections 5(ii) and 47 of the Prevention of Corruption Act on the complaint of one Mazhar Ali Shah, Sub-Inspector, alleging theft of gas from the main line of SNGPL (Mark-F); that FIR No.115/13, dated 29.11.2013 has been registered against the petitioner under Section 39 of the Electricity Act, 1910, Section 109 PPC, and Sections 5(ii) and 47 of the Prevention of Corruption Act, on the complaint of one Muhammad Khubaib Aziz Baloch, Sub-Inspector, FIA, alleging therein theft of electricity from the main line of IESCO.

19. It was further submitted that the stamp vendor, Muhammad Waheed Anwar (A.W.4), was in jail for some other case when he was brought to the Court of learned Rent Controller for the recording of his evidence; that the stamp paper bears the signature and thumb impression of the petitioner; that the petitioner did not call any expert witness to disprove his signature and thumb impression on the stamp paper; that the petitioner in his written reply did not challenge the jurisdiction of the learned Rent Controller; and that the petitioner did not raise any objection to the respondents' attorney.

20. That the petitioner tried to pressurize respondent No.3 and his attorney by trying to falsely implicate them in a criminal case; that on 02.05.2015, Sadaqat Hussain filed an application under Sections 22-A& B Cr.P.C. for registration of a criminal case and to arrest (i) Imtiaz Khalid Khan (the special attorney of the petitioner), and (ii) 'Shahid Hussain' son of 'Ahsanullah' (who happens to have the same address as the respondents) on the allegation that the said accused persons abused the girls at the hostel/disputed premises and forcibly took away 10 tolas of gold ornaments, 04 laptops, 40 pairs of shoes, branded apparels, cash amounting to Rs.1,50,000/- identity cards, 06 blankets, 06 make-up kits, 117 air coolers, refrigerators, 02 air conditioners etc; that this application was filed by Mr. Hamood-ur-Rehman Awan, Advocate Supreme Court of Pakistan, who also happens to be the counsel for the petitioner; and that the SHO Police Station Aabpara, submitted a detailed reported dated 14.05.2015, with the conclusion that no cognizable offence has been committed by the said accused persons.

21. The learned counsel for the respondents prayed for the writ petition to be dismissed with costs. In making his submissions, learned counsel for the respondents placed reliance on the law laid

down in the cases titled as Syed Abdul Rauf Vs. Abdul Sattar (1998 SCMR 2525), Javaid Ahmed Vs. Muhammad Imran Malik (PLD 2011 Islamabad 30), Mst. Naseem Fatima Vs. Sheikh Ala-ud-Din (PLD 2005 Supreme Court 455), Khuda Bukhsh Vs. Muhammad Sharif (1974 SCMR 279), Messrs King Clothing Vs. Muhabat Khan and others (2012 CLC 939), Ali Haider Vs. Mubarak Din Khan (2012 YLR 1598), Rizwan Najmi Vs. Nusratullah Bhorey Khan (2013 YLR 2526), Muhammad Asad Vs. Muhammad Tariq (2010 MLD 1354), and Muhammad Taj Vs. Muhammad Younis Khilji (2008 CLC 1666).

22. I have heard the submissions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

### FINDINGS

23. Allotment letter dated 09.08.1962 (Mark-A), issued by the Lands Directorate, Capital Development Authority, shows that the disputed premises were allotted to Captain Ihsan Ullah, who is the predecessor of the respondents. Captain Ihsan Ullah subsequently rose to the rank of a Colonel in the Pakistan Army. It is not disputed that Colonel Ihsan Ullah died on 13.12.2005, and was survived by a widow, two sons and three daughters i.e. the respondents. A succession certificate/*Warasatnama* (Mark-C) was issued by the Tehsildar, Islamabad, on 01.04.2006, in favour of the legal heirs of Colonel Ihsan Ullah. The legal heirs of Colonel Ihsan Ullah applied to the CDA for the transfer of the disputed premises in their names, but since the disputed premises have been subjected to non-conforming use, such transfer has, till date, not taken place.

24. On 28.11.2013, the respondents filed a petition for the eviction of the petitioner from the disputed premises under Section 17 of the IRRO before the Court of the learned Rent Controller, Islamabad. The grounds on which the said eviction petition was filed were, (i) the petitioner's failure to pay the monthly rent since September, 2011, (ii) the landlords' requirement of the disputed premises for their personal use, (iii) the expiry of the verbal lease agreement. The stance of the respondents was that in August 2011, through an oral lease agreement, the disputed premises were leased for a period of one year by Shahid Ihsan (respondent No.3) to the petitioner for a monthly rent of Rs.1,30,000/-, and the petitioner had paid Rs.5,20,000/- as advance rent for a period of four months –

Rs.20,000/- in cash, and Rs.5,00,000/- through cheque No. 0448867, dated 01.09.2011 drawn on SME Bank Limited, Islamabad.

The said cheque was dishonored on presentation, and FIR No.357, dated 19.08.2012, under Section 489-F PPC, was registered against the petitioner at P.S Aabpara, Islamabad.

25. On the other hand, the stance of the petitioner, in the proceedings before the learned Rent Controller, was that through an oral agreement, the respondents had agreed to sell the disputed premises to the petitioner for a total sale consideration of Rs.3,45,00,000/-, out of which an amount of Rs.5,00,000/- was paid, as advance payment, and the balance Rs.3,40,00,000/- was to be paid later. The petitioner denied the relationship of landlord and tenant with the respondents, and asserted that the petitioner entered the disputed premises on 15.11.2011 as an owner/purchaser, and not as a tenant, and that at no material stage had any tenancy agreement, oral or written, been executed between the petitioner and the respondents.

26. The learned Rent Controller framed the following sole issue:-

*“Whether the relationship of landlord and tenant exists between the parties? OP”*

27. In support of their pleas, the contesting parties produced their respective witnesses whose evidence was recorded. Amongst other witnesses, the respondents’ attorney, Imtiaz Khalid Khan, appeared as AW-1, whereas the petitioner appeared as RW-3.

28. The core dispute between the contesting parties is that the petitioner asserts that he entered into an oral agreement to sell whereunder the respondents agreed to sell the disputed premises for a total sale consideration of Rs.3,45,00,000/-, out of which Rs.5,00,000/- was paid as earnest money/advance payment and balance amount was to be paid later. The petitioner further asserts possession of the disputed premises was handed over by the respondent to him when the said oral agreement to sell took place. On the other hand, the respondents assert that through an oral agreement, the disputed premises were leased to the petitioner for a period of one year for a monthly rent of Rs.1,30,000/-. It is further asserted that the petitioner paid Rs.5,20,000/- as advance rent for four months (Rs.20,000/- in cash, and Rs.500,000/- through a cheque).

29. It is not disputed that on 07.05.2013, the petitioner instituted a suit for specific performance of the oral agreement to sell against the respondents before the Court of Civil Judge, Islamabad. The respondents contested this suit by filing a written statement. The respondents also filed an application under Order VII, Rule 11 C.P.C. for the rejection of the plaint. This application was allowed vide order dated 18.02.2014, and the plaint in the suit was rejected. Against the said order dated 18.02.2014, the petitioner has filed Regular First Appeal No.32/2014, which appeal is still pending adjudication before a learned Division Bench of this Court. As yet the petitioner has not been able to prove that he entered the disputed premises as its purchaser/owner. It is pertinent to reproduce herein below the operative part of the order dated 18.02.2014:-

*“To put the long [story] short the real controversy between the parties is regarding the execution of agreement between the parties. It is contention of the plaintiff that defendant No.1 entered into oral agreement to sell regarding suit property which is admittedly in the name of defendants and such defendant No.1 was not owner of property. Further plaint does not disclose material fact that defendant No.1 was on behalf of others authorized attorney at the time when alleged agreement was executed therefore, even if facts presented in the plaint are deemed true, relief sought cannot be granted.*

*In view of the above discussion it is crystal clear that the plaintiff has no cause of action and locus standi to file the instant suit, therefore, the plaint is hereby rejected U/O VII Rule 11 CPC. No order as to costs. Decree sheet be drawn up accordingly. File to be consigned to the record room after its due completion.”*

30. Far too much emphasis was laid by the learned counsel for the petitioner on the contents of the written statement of the respondents in the civil suit to show that an oral agreement to sell was executed between the contesting parties. I do not see the need and purpose of going into the pleadings of the contesting parties to the said civil suit to see whether an oral agreement to sell was entered into or not. Whether or not the learned Civil Court was correct in rejecting the plaint is for the Division Bench of this Court to determine in Regular First Appeal No.32/2014. Nevertheless, the present position is that petitioner's assertion that an oral agreement to sell was entered into or that he entered into an oral agreement to purchase the disputed premises or that he got possession of the disputed premises as a purchaser/owner, stands negated, on account of the said order dated 18.02.2014 passed by the learned

Civil Court rejecting the plaint in the petitioner's civil suit, which order still holds the field.

31. Now, on 06.09.2011, the above mentioned cheque No. 0448867, issued by the petitioner in favour of respondent No.3 was dishonoured on presentation. Consequently, F.I.R. No.357, dated 19.08.2012, was registered under Section 489-F PPC at Police Station Aabpara, Islamabad, against the petitioner. On 25.08.2012, the petitioner filed a petition for bail before arrest before the Court of learned Additional Sessions Judge, Islamabad (West). Ground (a) of the said petition for pre arrest bail, reads *inter alia* as follows:-

*“a. That the instant case is absolutely false, fabricated, concocted, based on malafide and is against the facts. The alleged transaction was not made within the limits of P.S. Aabpara, Banks of the petitioner or the complainant are not situated in the jurisdiction of P.S. Aabpara, therefore the instant FIR is result of collusiveness of the complainant and the Local Police.*

*The brief facts of the case are that in the last week of August 2011, the Complainant, being one of the legal heir of the deceased Col. Ehsan-ul-Ilah rented out Ladies Hostel established by the complainant party at House No.13, street No.62, Sector G-6/4 Islamabad, to the petitioner at the monthly rent of Rs.130,000. The petitioner handed over a cheque amounting to Rs.500,000 as refundable security at the time of termination of lease agreement. The petitioner regularly paid monthly rent to the complainant till November 2011 when the complainant asked the petitioner to vacate the said house for the reason that other legal heirs (co-sharers) want to sell out the said house to receive their respective shares in the house. The petitioner expressed his willingness to purchase the said house. The proposal of the petitioner was accepted by the complainant and his brother in law namely Khalid. Resultantly the petitioner and complainant entered into an oral agreement to sell regarding the said House (Ladies Hostel) against a sale price of Rs.345,00,000. The petitioner paid a sum of Rs.500,000 cash to the Complainant in the presence of witnesses.”*  
(Emphasis added)

32. The said petition for bail before arrest bears the signature of the petitioner. The learned counsel for the petitioner's contention that the petitioner could not have signed this petition because he was behind bars is not believable, because the said petition is for 'bail before arrest' and not 'bail after arrest'. At no material stage after 25.08.2012, when the said petition was filed, did the petitioner take any step to correct the factual position narrated/pleaded by him in the said petition. In contradiction to the pleadings in the said petition for bail before arrest, the petitioner's present stance is that he had never agreed to take the disputed premises on rent from respondent No.3, and therefore, never paid any rent.

33. The petitioner chose not to make any mention of the said petition for bail before arrest in this writ petition. The said bail petition was brought on record by the respondents through C.M. No.2105/2015. It may also be mentioned that on 17.05.2013, the petitioner was discharged by the police from the case - F.I.R. No.357. Aggrieved by the said discharge dated 17.05.2013, Shahid Ihsan (respondent No.3) filed W.P.No.1249/2015 before this Court. The said bail petition is also part of the record of the High Court in W.P.No.1249/2015. The petitioner was represented by counsel in the said writ petition and did not take any step to change his stance so as to bring it in consonance with his present one. I called for the record of W.P.No.1249/2015 to confirm this. The said bail petition is a public document in terms of Article 85(3) of the Qanun-e-Shahadat Order, 1984. Its certified copy has been brought on record by the respondents. The Court cannot shut its eyes to a clear position adopted by the petitioner in his pleadings (petition for pre arrest bail) before the Court of Additional Sessions Judge, Islamabad, even though the said petition has not been exhibited in the proceedings before the learned Rent Controller. The mere fact the petitioner is now adopting a position in stark contrast to the one adopted earlier before a Court of law, in my view, disentitles him from any relief in the discretionary and equitable jurisdiction of this Court under Article 199 of the Constitution. It is well settled that a party cannot be permitted to approbate and reprobate to the detriment of the opponent. The doctrine of estoppel would apply to a party who attempts to blow hot and cold. The petitioner must be held to his position taken earlier in 2012 that he entered the disputed premises as a tenant.

34. To be precise, the petitioner as RW-3, in his cross-examination recorded on 29.09.2014 deposed that it was incorrect that a lease agreement regarding the disputed premises was made between the petitioner and Shahid Ihsan; that it was also incorrect that Shahid Ihsan had agreed to rent out the disputed premises for a monthly rent of Rs.1,30,000/- to the petitioner; that it was incorrect that a lease agreement was made and Rs.20,000/- advance was taken in the presence of witnesses. Now, is this deposition made under oath correct or the petitioner's pleadings in the pre-arrest bail filed before a Court of law. Either way the petitioner has misled one

Court, and liable to be proceeded against in accordance with the law. Such conduct is obnoxious to a Court exercising equitable jurisdiction.

35. The stamp vendor, Muhammad Waheed Anwar (A.W.4) was in police custody in some case when he was brought to the Court to give evidence. He produced Ex.A-2, which is a blank stamp paper. He deposed that he had issued the stamp paper to the petitioner for a tenancy. He also deposed that the petitioner had affixed his thumb impression and signature on the stamp paper as well as the register maintained by AW-4. His statement regarding purchase of the stamp paper by the petitioner and his thumb impression and signature on the back of the stamp paper have gone unrebutted. On account of the objection raised by the learned counsel for the petitioner, the register was not allowed to be tendered in evidence. Now, the blank stamp paper by itself does not establish the existence of a tenancy, but given the endorsement on the back of the stamp paper, it does show that the petitioner had purchased the stamp paper for a tenancy agreement with Shahid Ihsan (respondent No.3). The petitioner had filed the blank stamp paper with his writ petition, but had not filed the page bearing the endorsement on its back, which also bears the petitioner's thumb impression and signature. The stamp paper bearing the endorsement on its back was filed by the respondent along with the C.M. No.2105/2015. The endorsement reads as under:-

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36. This endorsement is indicative of the fact that the petitioner had purchased the stamp paper for a tenancy agreement with respondent No.3. Although, the petitioner has denied all this, but a simple denial by itself is not sufficient. If indeed the thumb impression and the signature on the back of the stamp paper were not the petitioner's he should not have lost a moment in having it forensically examined to prove that they were not his. The purchase

of the stamp paper by the petitioner for a rent agreement with Shahid Ihsan indicates that an oral rent agreement between the said parties had taken place, and was to be reduced into writing on the said stamp paper.

37. Coming back to the suit for specific performance of the agreement to sell the disputed premises, instituted by the petitioner against the respondents, it was contended by the learned counsel for the petitioner that even though the plaint in the suit has been rejected by the learned Civil Court, since the petitioner has filed an appeal before the Hon'ble High Court, he could remain in possession of the disputed premises. This contention is against the law well settled by the Superior Courts. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for specific performance or declaration in this regard. Reference to case law, at this stage would be apposite:-

- (i) 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 ride 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).”*

- (ii) 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.”*

- (iii) 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.
- (iv) 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."*

- (v) 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 sell 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."*

- (vi) 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."*

- (vii) 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."*

(viii) 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.

(ix) In the case of Muhammad Rafique Vs. Farida Khan (2016 CLC 1451), I have had the occasion to hold as follows:-

*"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."*

38. As regards the contention of the learned counsel for the petitioner that the expiry of the lease agreement cannot be a ground

for the eviction of a tenant under Section 17 of the IRRO, suffice it to say that in this case there is an admission on the part of the petitioner that at no material stage did he pay any rent. The petitioner's stance is the since he had occupied the disputed premises as a purchaser, there was no obligation on him to pay any rent. As the petitioner had admittedly not paid any rent, this ground is sufficient for his eviction from the disputed premises. It may be recalled that in his petition for bail before arrest, the petitioner had pleaded that he had been paying rent to the respondents. This is yet another contradiction in the petitioner's case.

39. Now, Section 5 of the IRRO, requires a tenancy agreement to be in writing. In the case at hand, admittedly, the tenancy agreement was not reduced into writing. The use of the word "shall" in Section 5 *ibid* implied that the requirement for a tenancy agreement to be in writing is mandatory. However, Section 5 *ibid* or for that matter any other provision of the IRRO does not take the matter out of the jurisdiction of the Rent Controller if the rent agreement is not in writing. At best it can be termed as a contravention or a failure to comply with the provisions of the IRRO as contemplated by Section 28 thereof. Section 28 (1) of the IRRO provides that whoever contravenes, or fails to comply with any provisions of IRRO or the rules made thereunder shall, if no other penalty is provided in the IRRO for such contravention or failure, be punishable with fine which may extend to five thousand rupees. More importantly, Section 28 (2) of the IRRO provides that no Court shall take cognizance of an offence under Section 28 except upon (a) a complaint of facts which constitute such offence filed with the sanction of the Rent Controller in writing; and (b) a report in writing of such facts made by the Rent Controller. In the case at hand, it is not disputed that neither any complaint as to the tenancy not being in writing has been filed nor has any report in writing of such a fact been made by the rent controller. Therefore, absent these essential statutory pre-requisites, the question of imposition of any penalty on the respondents did not arise.

40. I find merit in the submission of the learned counsel for the respondents that there are material contradictions in the petitioner's case. The petitioner in his civil suit for specific performance had pleaded that the oral agreement to sell the

disputed premises took place in the presence of Danish Mehmood and Rana Usman. But in the proceedings before the learned Rent Controller, the petitioner (R.W.3), in his affidavit-in-evidence (Exh.R.3), deposed that the agreement to sell was arrived at in the presence of Danish Mehmood and Aziz Ahmad. Ijaz Ahmad Abbasi (R.W-2), in his affidavit-in-evidence filed before the learned Rent Controller, deposed that the oral agreement to sell took place in his presence. Danish Mehmood in his affidavit-in-evidence before the learned Civil Court in the petitioner's civil suit for specific performance deposed that the agreement to sell took place in his presence and one Muhammad Asif. In view of all this the petitioner's stance cannot be termed as kosher.

41. As regards the petitioner's objection to the special power of attorney executed by the respondents in favour of Imtiaz Ahmad Khan, I am of the view that the said objection is hyper-technical, the authority given by the respondents to the attorney through the said special power of attorney (Exh.A.3) is as follows:-

*"To file a case, sign and file appeal, review, revision in district court or high court, Supreme Court of Pakistan, to appear, plead and act in the said case, to record evidence/statement, to make or present written statements, applications or petitions to the court, to withdraw and receive documents and any money from the Court or from the opposite party, either in execution of the decree or otherwise and on receipt of payment thereof, to sign and delivers for us proper receipts and discharge from the same and to do all the other lawful acts and thinks in connection with the case as we effectually could do the same if we were personally present our said attorney is also authorized to engage and appoint any advocate or advocates whenever said Attorney things proper to do so. To compound, compromise or withdraw cases, confess judgments and to refer cases to arbitration."*

42. Given the wide ranging authority to the attorney, it cannot be asserted that the proceedings instituted before the learned Rent Controller for the eviction of the petitioner were without lawful authority.

43. The contention of the learned counsel for the respondents that the petitioner tried to protract the proceedings by filing frequent transfer applications before the learned lower *fora*, I find myself bound to agree with. On 20.02.2014, the petitioner filed an application for the transfer of the eviction petition from the Court of the learned Rent Controller presided over by Mr. Adnan Jamali, to another Court. Vide order dated 27.02.2014, the said transfer application was allowed, and the eviction petition was transferred

to the Court presided over by Mr. Omer Shabbir. On 24.07.2014, the petitioner filed another application for the transfer of the eviction petition from the Court of the learned Rent Controller presided over by Mr. Omer Shabbir to another Court. Vide order dated 16.09.2014, the said transfer application was dismissed. The petitioner also filed an application on 06.05.2015 for the transfer of the execution proceedings from the Court presided over by Mr. Ehtisham Alam Khan, learned Rent Controller, Islamabad. Vide order dated 21.05.2015, the said transfer application was allowed and the matter was transferred to the Court of Mr. Shoaib Bilal Ranjha.

44. Now, regretfully the petitioner chose not to file, along with his writ petition, documents which were a part of the record of the learned lower Courts. These documents were brought on record of this Court through application (i.e. C.M.No.2105/2015) filed by the respondents. Some of these documents are (i) copy of FIR No.357, dated 06.09.2011, under Section 489-F PPC, P.S. Aabpara (Mark-D), (ii) copy of cheque along with bank memo (Mark-E), (iii) copy of FIR No.12/2013, dated 21.11.2013, under Sections 462-D, 406 and 109 PPC read with Section 5(ii) and 47 PCA, Police Station FIA/CCC (Mark-F), (iv) copy of FIR No.115/2013, dated 29.11.2013, under Section 39 of the Electricity Act, 1910, Section 109 PPC, and Sections 5(ii) and 47 of the Prevention of Corruption Act (Mark-G), (v) copy of stamp paper issued for lease agreement (Annexure-E), (vi) copy of verification regarding issuance of stamp paper for the purpose of lease agreement by stamp vendor (Exh.A.6), (vii) copy of register of stamp vendor showing issuance of stamp paper (Exh.A.7), (viii) copy of affidavit of Danish Mehmood (Exh.A.8), (ix) copy of affidavit of Khushnood Ahmad (Exh.R.3), (x) copy of F.I.R. No.125, dated 06.09.2011, under Section 489-F PPC, Police Station Shalimar, Islamabad.

45. A litigant, who approaches a Court, is bound to produce all the documents which are relevant to the litigation. For instance, in a petition seeking a writ of *certiorari*, the entire record of the court or a tribunal below has to be filed. The practice of filing documents which favour the petitioner and avoiding to file those which go against him, should not just be deprecated but met with a penalty of summary dismissal of the petition. The superior courts in innumerable cases have refused to exercise discretionary power

for issuance of a writ on the ground that the petitioner had not approached the Court with clean hands by withholding the material facts/documents. Writ jurisdiction is equity jurisdiction, and he who seeks equity must come with clean hands.

46. I feel that in this case I have delved deeper into the facts of the case than necessary. Limited jurisdiction is available to High Courts while considering the question, whether a writ of certiorari, as claimed by the petitioner, can be issued. Under Article 199 of the Constitution, the High Court will not interfere with weighing of evidence led before the Rent Controller as if the High Court were sitting in appeal. A finding of fact cannot also be challenged on the ground that relevant materials and evidence adduced before the Rent Controller was insufficient or inadequate to sustain the findings recorded by the Rent Controller. The adequacy or sufficiency of evidence and the inferences to be drawn from the evidence are the exclusive domain of the Rent Controller and the same cannot be agitated before the High Court exercising writ jurisdiction. This is so because the Court of the Rent Controller is constituted under a special legislation (i.e. IRRO) to resolve the dispute of a kind qualitatively different from ordinary civil disputes. This is so because the Tribunals are not bound by strict rules of evidence. Merely because more than one view is possible on the evidence led before the Rent Controller, the High Court exercising writ jurisdiction would not be justified to interfere with the findings recorded by the Rent Controller. Of course, if the findings recorded by the Rent Controller are perverse or irrational or arrived at by ignoring materials on record or arbitrary or contrary to the principles of natural justice, the same can be interfered with by the High Court in a petition under Article 199 of the Constitution. In the case at hand, I do not find any perversity, irrationality or violation of the principles of natural justice in the proceedings before the learned Rent Controller or the appellate Court below.

47. In view of the above, this writ petition is dismissed.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2016**

**(JUDGE)**

**APPROVED FOR REPORTING**

**Qamar Khan\***

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