

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3484/2019.

Zaheem Shoukat Qureshi

Versus

CCDC Drilling Company etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.	11.10.2019	Mr. Waqar Ahmed Gondal, Advocate for the petitioner.
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Through the instant writ petition, the petitioner has assailed the order dated 30.03.2019, passed by learned Rent Controller (West) Islamabad and judgment and decree dated 25.09.2019, passed by learned Additional District Judge (West) Islamabad, whereby eviction petition filed by respondents No.2 to 8 has been allowed against respondent No.1.

2. Learned counsel for the petitioner contends that House No.56, Street No.01, Sector F-6/3, Islamabad was owned and possessed by Pir Sibghatullah pursuant to consent decree dated 05.06.1996; that the said house was sold out to Ameer Afzal Qureshir through general power of attorney dated 22.12.1996 and subsequently Ameer Afzal Qureshi sold the said house to Adeel Shaukat, Azeem Shoukat and their parents; that thereafter the said house was transferred to Raheel Shaukat and Azeem Shoukat on the basis of gift deed dated 10.04.2003, whereas the transfer was effected in CDA office on 13.04.2006; that the last owners Raheel Shaukat and Azeem Shaukat sold the said house to the petitioner through registered sale deed dated 27.07.2007; that the petitioner rented out the said house vide lease agreement executed on 09.09.2008 to respondent No.1, which was extended time to time, lastly extended till 2023; that respondents No.2 to 8 filed an application U/S 12(2) CPC and challenged the consent

decree dated 05.06.1996 in favour of Pir Sibghatullah the first owner and the said application was allowed vide ex-parte order dated 25.11.2011; that said order was assailed by the petitioner in appeal before learned District Judge but the appeal was returned and the petitioner filed appeal before this Court, which was dismissed on the ground of limitation vide order dated 14.12.2015; that the order of this Court was assailed in CPLA No.413/2016 before Hon'ble Supreme Court, which was allowed and converted the same into civil petition, which is pending adjudication; that main civil suit is still pending before Civil Court and the last date of hearing was 10.10.2019, however, respondents No.2 to 8 filed eviction petition against respondent No.1, which was resisted by respondent No.1, whereby relationship of landlord and tenant was denied, however, learned Rent Controller passed eviction order on 30.03.2019, which was assailed by respondent No.1 before the Court of learned Additional District Judge in appeal, which was dismissed vide judgment dated 25.09.2019 and the eviction order has been maintained; that both the Courts below have not considered the legal position on record nor answered core question of relationship of landlord and tenant in its true perspective and both the judgment of Courts below are contrary to law.

3. I have heard the arguments and gone through the record.

4. Perusal of the record reveals that respondents No.2 to 8 filed eviction petition against the tenant/respondent No.1, which was allowed by learned Rent Controller as well as Appellate Court. The petitioner, who claims to be owner of the suit house on the basis of consent decree, which was passed in favour of first owner Sibghatullah was set aside and at present the suit is pending, however, learned counsel for the petitioner has been confronted as to whether the petitioner approached learned Rent

Controller at first instance in order to claim his right, whereby he contends that the petitioner filed an application under Order I Rule 10 CPC before the learned Rent Controller in eviction proceedings but the same was dismissed by learned Rent Controller vide order dated 16.02.2013 and the said order was not assailed further, which has attained finality.

5. I have gone through the order of learned Rent Controller dated 16.02.2013, whereby application under Order 1 Rule 10 CPC was dismissed on the ground that the petitioner is challenging ownership of the landlord, which cannot be determined by learned Rent Controller in eviction proceedings and dispute qua title or ownership can only be settled through the Civil Court but surprisingly the petitioner has not resorted such remedy and kept watching the proceedings till final order/judgment up to the Court of Additional District Judge, whereby eviction order was upheld and the petitioner filed the instant writ petition before this Court for the first time.

6. Besides the above referred background, there is no denial to the proposition that claim of the petitioner is pending before competent Civil Court as consent decree passed in civil suit titled *Pir Sibghatullah vs. Tanveer Jehan and others* dated 17.04.1996 was set aside in application under section 12(2) CPC vide order dated 25.11.2011 passed by Civil Court and at present the matter is pending before Apex Court, therefore, at this stage, the petitioner cannot claim and challenge the eviction orders on any account unless he has been able to get final relief in the pending proceedings of the Apex Court or any separate civil proceedings. Even otherwise, the petitioner if at all is aggrieved of the order of learned Rent Controller dated 16.02.2013, he could have filed appeal before District Court, however, such course was not adopted.

7. For what has been discussed, the instant writ petition bears no merits, therefore, the same is hereby *dismissed in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam