

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 117 of 2020
Sheikh Muhammad Idrees
Versus
Ghazanfar Ali & others

Appellant by: Mr. Muhammad Ilyas Sheikh, learned ASC,
Respondents by: M/s Khurram Mehmood Qureshi,
Muhammad Akhar Awan and Abdul Rauf
Qureshi,
Date of Hearing: 14.01.2021

FIAZ AHMAD ANJUM JANDRAN, J.- This single Judgment shall dispose of captioned writ petition as well as W.P. No. 118/2020 as both emanate from common order and judgment dated 02.11.2019 & 30.11.2019 passed by the learned Rent Controller and learned Additional District Judge Islamabad-West respectively whereby petitioner's application under Order I Rule 10 of the Code of Civil Procedure, 1908 ('**C.P.C**') for becoming party in eviction petition filed by the respondents 1&2 was dismissed while appeal also met the same fate.

2. Essential and relevant facts for adjudication of the writ petition are that respondents 1&2 (**the respondents**), on 11.10.2017 filed an ejectment petition against the petitioner in respect of Unit No.6, Block 1-L, comprising one flat on second floor, one flat on first floor, two shops on ground floor and two shops in basement, Sufi Plaza, Markaz F-10, Islamabad (**the premises**). Written reply was filed by the petitioner wherein relation of landlord and tenant was expressly denied by alleging that petitioner is not occupying the premises as tenant but is owner-in-

possession of the premises in pursuance of sale agreement dated 16.03.2006 whereby entire sale consideration was received by the owner Muhammad Masud Anwar Malik. Issues were framed by the learned Rent Controller, wherein respondent alleged that they purchased the property which was transferred in their favour on 06.10.2017 by the C.D.A. Issue was also framed qua existence of relationship of landlord and tenant between the parties. Said ejectment petition was dismissed due to non-prosecution on 19.05.2018. Thereafter, on 27.09.2018 the respondents filed second ejectment petition against the petitioner by impleading him as respondent No.2 and the respondent No.1 was one Sheikh Muhammad Hafeez and one Muhammad Akhtar Awan was arrayed as respondent No.3. Written reply was filed by the petitioner side-by-side respondent No.1. Petitioner reiterated the stance contained in previous ejectment petition. On 01.12.2018 respondent recorded his statement to the effect that he is not interested to proceed with the ejectment petition to the extent of petitioner and no relief is sought against him and it was requested to that extent his petition be returned and trial court passed the order accordingly and case was fixed for arguments on statutory provision i.e. section 17(8) of the Islamabad Rent Restriction Ordinance, 2001 (**IRRO, 2001**).

3. On 15.12.2018 petitioner filed an application to be impleaded as party in the ejectment proceedings, wherein written reply was filed. On 02.11.2019, the learned trial Court dismissed the application on the ground that when respondents do not treat him as tenant and petitioner also does not describe himself as tenant, there is no need to

implead him as party. Said order was impugned by the petitioner before the learned ADJ wherein his appeal was dismissed on the grounds that appeal could be filed only by a party to the proceedings and at present petitioner is not a party and order impugned dated 02.11.2019 being not a final order, is only an interlocutory order wherein appeal is not provided under Section 21 of the IRRO, 2001. Against said two order/judgment is the instant writ petition.

4. Learned counsel for the petitioner contended that the impugned order passed by learned ADJ is against the law as Section 21 of the IRRO, 2001, provides that "any party" aggrieved by a final order of the Rent Controller may prefer an appeal but the word aggrieved has been omitted in the impugned order by the learned ADJ, so he has committed illegality by considering the provision of law in isolation because it provides "*any party aggrieved by a final order*" and petitioner is an aggrieved party, to that extent order being questioned was a final order, so appeal was competent; that in the first ejectment petition, respondent admitted the status of petitioner regarding said property and when evidence recorded, stance of petitioner was also admitted by the respondent; that in the second ejectment petition, petitioner was made party by ascribing his role slightly different as of in the first ejectment petition. That order impugned is final to the extent of the petitioner and it is not an interim order and after deletion of his name by the trial Court, he was not party to the proceedings, therefore, only remedy with him was the petition for impleadment as party. Learned counsel relied upon case laws reported as "**Muhammad Mobin Siddiqui v. Mst.Shahzadi Begum and 2 others**" (1982 SCMR 233), "**Habibullah v. Zakir**

Ali and another” (PLD 2000 Karachi 238) and “***Messrs Mahboob Bakhsh (Pvt.) Ltd. v. Moinuddin Paracha and another***” (1989 CLC 1934) Karachi.

5. Learned counsel appearing on behalf of the respondents contended that suit for specific performance of the agreement filed by the petitioner is pending in the Court of competent jurisdiction and in existence of alternate remedy duly availed by the petitioner, writ petition is not competent, interlocutory order is not appealable, therefore, writ is not competent and petitioner is not tenant of the respondents, therefore, it has rightly held by the two Courts that Rent Controller has no jurisdiction in the matter and preamble of the IRRO, 2001 also endorsed the stance of the respondents. He frankly conceded that it was mistake on the part of the respondents to implead the petitioner previously as party in the proceedings.

6. *Proforma* respondents i.e. Sheikh Muhammad Hafeez and Muhammad Akhtar Awan endorsed the stance of the petitioner. *Proforma* respondent No.2 stated that he never remained tenant in the premises while *proforma* respondent No.1 stated that he was tenant of the previous owner Muhammad Masud Anwar Malik and on his direction he handed over the possession of the premises to the petitioner at the time when entire sale consideration was received by the said Muhammad Masud Anwar Malik from the petitioner.

7. Heard the learned counsel for the parties and perused the record with their able assistance.

8. When record examined with the able assistance of the learned counsel appearing on behalf of the contesting

parties, it transpired that Section 21 of the IRRO, 2001 indicates that any party who is aggrieved by a final order can file appeal. Section 21 *ibid* is reproduced hereunder for ready reference:-

"21. Appeal. - (1) Any party ***aggrieved*** by a final order of the Controller made under this Ordinance may, within thirty days of the date of such order, prefer an appeal to the District Judge.

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....

(8)..... "[Emphasis added]

The learned ADJ omitted the word '***aggrieved***' in the impugned order. It has been further examined that ejectment petition was filed by the respondents for the premises against the petitioner and later on requested for withdrawal of said ejectment petition which was opposed by the petitioner and then ejectment petition was dismissed for non-prosecution. There was no question regarding the premises, the status of petitioner as purchaser but these were the respondents, who themselves impleaded the petitioner twice in the ejectment proceedings as party. The question whether a person who is in possession of the premises before commencement of the ejectment proceedings is liable to be impleaded as party or not?

9. The Hon'ble Apex Court has expounded the law in case of "***Mian Umer Ikram ul Haq v. Dr. Shahida Husnain and another***" (2016 SCMR 2186) wherein it was held as under:-

"Therefore, it follows that where the relationship of landlord and tenant is denied, the Rent Tribunal would lack jurisdiction, on account of the doctrine of

jurisdictional fact, to pass an order for payment of rent due under section 24 of the Act until and unless the Tribunal positively ascertains the relationship of tenancy and establishes that the respondent to the eviction application is infact a 'tenant' in terms of section 2(1) of the Act." [Emphasis added]

It has further been laid down that:-

"The relationship of landlord and tenant is an essential question which has a direct effect upon the assumption and exercise of the jurisdiction of the Rent Tribunal, which (question) must necessarily be positively ascertained before passing an order for payment of rent due under section 24 of the Act." [Emphasis added]

10. Likewise, this Court in the case of "**Yasin Khan v. Additional District Judge No.VII, District Judge West, Islamabad and two others**" (2019 YLR 2894) has laid down that:-

"The I.R.R.O. was promulgated to control some of the terms and incidents of the relationship of landlord and tenant. For the Rent Controller to exercise jurisdiction under the provisions of I.R.R.O, there must be a pre-existing relationship of landlord and tenant between the parties. Where there does not exist such a relationship between the parties, the Rent Controller cannot assume jurisdiction in the matter. An eviction order passed by a Rent Controller against the person in possession of the premises, who is not a tenant, would be an order without jurisdiction. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Court against him. The provisions of the I.R.R.O. are attracted only where a person in possession of the premises is a tenant." [Emphasis added]

11. The Hon'ble Peshawar High Court in the case of "**Muhammad Haroon Abbasi v. Jameel Rabbani**" (2019 YLR 671) has held that:-

"The Learned Rent Controller while passing an order under section 17(8) of the Cantonment Rent Restriction Act, 1963 cannot act mechanically but has to consider

both, the plea of petitioner as well as defence offered by the tenant. Whereas in the present case without waiting for the written reply of the petitioner, the learned Rent Controller has passed an order under section 17(8) of the Cantonment Rent Restriction Act, 1963 without giving any opportunity to the tenant to explain his cause qua put forward his defence. Hence, the subsequent order of ejectment passed by learned Rent Controller is not sustainable in the eyes of law. It is by now settled principle of law that when tenant denies his relationship with the landlord then in such situation the learned Rent Controller shall frame a preliminary issue on the existence of relationship of landlord and tenant and in case landlord establishes the relationship in affirmative to the satisfaction of the learned Rent Controller then the same will follow ejectment order against the tenant."

12. In the light of above case law, the material available on record has been examined and it is observed that in an ejectment petition, issue qua the relationship of the parties as landlord and tenant was framed, evidence on the issue was recorded and subsequently ejectment petition was dismissed for non-prosecution, thereafter ejectment petition regarding the premises without impleadment of the petitioner and by impleading some other individual, who was admittedly not party in the first ejectment petition was filed. When said newly impleaded respondent unequivocally states that he has no relationship with the respondent, in view of the Court, it would amount to be in contravention of the law laid down by the superior courts (supra) and would also be against the settled spirit of legal principles. The respondent could not be allowed to defeat and abridge the wisdom enunciated by the Apex Court of the country.

13. If decree is passed without impleading the petitioner as party regarding the premises, then he would be afterwards restrained from impugning the said decision in the light of dictum laid down in "**Muhammad Mobin**

Siddiqui case (supra) wherein it has been held that "petitioner having been held to be not a tenant of respondent, no longer remained a party to case after decision of preliminary issue on point and if he at all wished to contest matter he should have gone in appeal since as far as it concerned him such order remained a final order. Not having done so, petitioner not entitled to file appeal against order of ejectment."

14. Petitioner got possession of the premises on 09.04.2011 from the said Muhammad Masud Anwar Malik and this fact has been corroborated by the *proforma* respondent No.1 that the respondents in para-6 of their ejectment petition admitted status of the *proforma* respondent No.1 and that of petitioner as possessor of the premises.

15. Whether an individual who purchases a property in 2017 and wants to have possession of the same having the facts on record that possession of the same had already been handed over by the said seller to the petitioner and there is also a pending suit for specific performance between petitioner and the said seller, respondent has also impleaded him as party under Order 1 Rule 10 C.P.C, claim of the petitioner is that entire sale consideration has been paid, in that eventuality the mode adopted by the respondent for vacation of the premises through ejectment proceedings requires that petitioner should also be heard.

16. When examined the pleadings of the parties, it is manifest that role of the petitioner has been admitted by the respondent himself in his ejectment proceedings. It is worth mentioning that no one can compel any plaintiff/petitioner to implead such and such person in a suit/petition but once he has impleaded someone then for

deletion of the same choice is not vested with the said plaintiff/petitioner. A right could not be conferred in favour of the respondent to agitate same cause again and again and to delete the parties at his whims and if the controversy is decided on merits, there would be no illegality.

17. Much has been alleged in respect of *proforma* respondent No.2 regarding the premises but said respondent who himself is an Advocate appeared in the Court and stated that he has nothing to do with the premises.

18. In addition, the principle of estoppel is applicable in the instant case and the respondent cannot be allowed to blow hot and cold in one breath. No prejudice is caused to the respondent if petitioner is allowed to join the ejectment proceedings as respondent, keeping in view peculiar circumstances of the case.

19. A peroration of above discussion/findings is that respondents themselves impleaded the petitioner as party duly alleging him as tenant, when qua relationship issue was framed, evidence was recorded to that extent, sought deletion of the same amounts scheme not provided under the law and against the settled proposition by the Apex Court, petitioner could not be estopped to impugn the two orders in backdrop of facts of the case, record reveals that petitioner is in possession of the premises much before purchase of the property by the respondents and in proceedings of suit for specific performance by the petitioner and said seller respondents have already become party, purchase of the premises by the respondents is of 2017 while fact of sale agreement by petitioner is of 2006,

no prejudice is caused to the respondents if petitioner is allowed to join/remain in the proceedings wherein respondents themselves impleaded him twice as tenant, that petitioner is necessary and proper party in the proceedings for decision of controversy as per law.

20. The case laws relied upon by learned counsel for respondents entail distinct facts and circumstances, therefore, do not extend any help to the respondents.

21. In view of above, instant writ petition as well as W.P. 118/2020 are **allowed**, impugned orders dated 02.11.2019 and 30.11.2019 are set aside, consequent thereto application under Order I Rule 10 C.P.C filed by the petitioner is allowed. The matter is remanded to the learned Rent Controller for decision afresh in the light of observations supra.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on **17.02.2021**.

JUDGE

Approved for reporting