

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

**Criminal Original Petition No.1-K of 2023 in Civil
Petition NO.47-K of 2022** (For non-compliance of Court
Order dated 16.06.2022 passed by this Court in CP No.47-
K of 2022)

Mushtaque Ahmed ...Petitioner

Versus

Shahzad Khan ...Respondent

For the Petitioner: Mr. Muhammad Lutufullah Arain, ASC
Mr. Noor Ahmed Memon, AOR

For the Respondent: Mr. Muhammad Arshad S. Pathan, ASC
Mr. Ghulam Rasool Mangi, AOR

Date of Hearing: 29.07.2024

Judgment

Muhammad Ali Mazhar, J: The aforesaid Criminal Original Petition has been moved by the petitioner under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, read with Order XXVII of the Supreme Court Rules, 1980, for initiating contempt proceedings on the violation of Order dated 16.06.2022, whereby the Civil Petition No.47-K of 2022 was disposed of by this Court with certain directions.

2. According to the facts narrated by the petitioner in the instant Criminal Original Petition, he filed Rent Case No.107 of 2014 (Mushtaque Ahmed Vs. Shahzad Khan) under Section 15 of the Sindh Rented Premises Ordinance, 1979 ("Ordinance"). The learned Rent Controller also framed the issue with regards to the relationship of landlord and tenant because the tenant/respondent denied the relationship on the ground that that the petitioner/applicant is not the owner of the rented premises, because only Abdul Sattar and Mst. Zatoon are the legal heirs of the deceased owner. While referring to the judgment and decree passed in Suit No. 25 of 2000 (Abdul Sattar and another Vs. Mst. Sharifan), it was observed by the Rent Controller that in the said suit, the learned Civil Court held that Mushtaque Ahmed (present petitioner) is the son of Shafi Muhammad (deceased owner of the rented premises) and also reproduced the finding

recorded by the Civil Court on Issue No. 2 that "In view of the above discussion on issue No. 1, it has been established that, Mushtaque Ahmed is son of deceased Muhammad Shafi on the basis of documentary evidence produced by the defendants, as discussed above. Nothing has been brought on record to rebut the above documentary evidence i.e. School Leaving Certificate, Driving License, NIC. Order of City Survey, Birth Certificate, Form 'B' of Mushtaque Ahmed and so also permission of Home Department to carry license weapons to Mushtaque Ahmed, being son of Muhammad Shafi. All documents are public documents and there is no reason to disbelieve the same". The learned Rent Controller allowed the ejectment application *vide* order dated 10.05.2019.

3. Being aggrieved, the respondent filed the First Rent Appeal No.29 of 2019 (Shahzad Khan Vs. Mushtaque Ahmed & others) under Section 21 of the Ordinance, but it was also dismissed *vide* order dated 29.11.2019. The respondent filed C.P. No.S-19 of 2020 in the High Court of Sindh which was also dismissed *vide* order dated 26.11.2021 with the directions to the petitioner/tenant to vacate the premises in question and hand over its vacant and peaceful possession to the landlord/respondent No.1 within 60 days from the date of the Order, failing which he will be evicted from the subject premises without any notice, with police aid.

4. Against three concurrent findings recorded by the courts below, the tenant/respondent challenged the said findings in this Court *vide* Civil Petition No.47-K of 2022. The order depicts that during the course of arguments, the learned counsel for the tenant, Mr. Arshad S. Pathan, candidly stated that in case reasonable time is allowed to vacate the demised premises, he would not press the petition, and on his statement the learned counsel for the landlord also endorsed his non-objection. For the ease of reference, the order of this Court dated 16.06.2022 is reproduced as under:

"After arguing the matter at considerable length, counsel submits that in case reasonable time is allowed to the petitioner to vacate the demise premises, he would not press the instant petition. Counsel for the respondent has no objection for the grant of reasonable time to the petitioner for vacation of the demise premises. In the circumstances, this petition is dismissed as not pressed and the petitioner is directed to vacate the demise premises within a period of six months i.e. on or before 15.12.2022, positively, of course, subject to payment of rent and other dues. In case petitioner fails to hand over the peaceful vacant possession of the demise premises to the respondent on or before the specified period, respondent would be entitled to a writ of possession with police aid without further notice."

5. According to the petitioner, the respondent/tenant failed to vacate the demised premises, hence he has committed contempt of this Court. It is further alleged that Execution Application No.74 of 2019 was filed for execution of eviction Order passed by the Rent Controller which is pending.

6. The learned counsel for the petitioner argued that despite clear directions of this Court, the respondent has failed to handover the possession of the demised premises to the petitioner. Since the execution application was adjourned *sine die* by the Executing Court, therefore, the petitioner has already moved an application for its revival and for fixing an early date for the hearing of the Execution Application. It was further argued that though the Executing Court passed an order for the issuance of a writ of possession with police aid, but even up until now, the possession of the demised premises has not been handed over to the petitioner.

7. The learned counsel for the respondent/alleged contemnor though could not deny the proceedings initiated against his client as tenant under the Ordinance for ejectment, which culminated in this Court after three concurrent orders were passed against him. However, the learned counsel referred to an Order passed by the learned Sindh High Court in Civil Revision No.199 of 2018 in respect of the same premises and argued that some other persons are also claiming the rights on the ground of being the legal heirs of the deceased owner of the rented premises and his deceased wife, which delayed the proceedings.

8. Heard the arguments. The issue was simply related to a tenancy matter between the landlord and tenant. The ejectment order passed by the Rent Controller was affirmed in the First Rent Appeal, and thereafter it was further affirmed by the learned High Court, and finally, the litigation culminated in this Court when the learned counsel for the tenant voluntarily gave a statement on behalf of his client that he shall vacate the premises if some reasonable time is accorded to him, which request was acceded to by the petitioner's counsel, and the civil petition in this Court was disposed of accordingly, as reflected from the order reproduced by us. The ejectment order, on affirmation, was merged into the appellate order, which was further merged into the High Court Order, and in the end, all previous orders were merged into the final order passed by this Court. According to the Corpus Juris Secundum, Volume 57, at page 1067, the

word 'Merge' is defined as meaning to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished, to be combined or be swallowed up, while the word 'Merger' is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.

9. The expression 'non-obstante clause' is by and large engrossed in a provision to connote that the provision should predominate regardless of anything to the contrary or incongruous in any other provision. This turn of phrase, in fact, comes up with a statutory provision envisioned to impart an overriding effect over other provisions or enactments. With the same spirit, Section 3 of the Ordinance unambiguously provides that notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance. In Section 2 (f) (Definitions Clause) the term "landlord" means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises; whereas in clause (j) "tenant" means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes (i) any person who continues to be in possession or occupation of the premises after the termination of his tenancy; (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant. While Section 13 of the same Ordinance accentuates that no tenant shall be evicted from the premises in his possession except in accordance with the provisions of this Ordinance, which demonstrates, in well-defined terms, that for all intents and purposes, all tenancy issues where this Ordinance applies shall be regulated and decided under the provisions of this Ordinance and not otherwise. In the current scenario, the issue correlates only to the execution of the ejectment order, and despite the defeat of the tenant at all levels, the ejectment order could not be satisfied by the Executing Court due to flimsy and insubstantial pretends and pretexts which unnecessarily dragged the execution proceedings. While we are on the subject, Section 22 of the Ordinance is also of great magnitude, as it expounds that the final order passed under this Ordinance shall be

executed by the Controller and all questions arising between parties and relating to the execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit. The attached explanation to this provision further represents that in the execution proceedings relating to the order of ejectment, no payment, compromise or agreement shall be valid unless such payment, compromise or agreement is made before or with the permission of the authority passing the order.

10. The ejectment order passed by the learned Rent Controller articulates that the issue of the relationship between the landlord and tenant was decided in favour of the landlord. Furthermore, the order depicts the reference of some civil suit judgment and decree wherein the present petitioner was found to be the legal heir of the deceased owner of the demised premises, and if some other persons are claiming lineage or inheritance through Mst. Sharfan, that has got nothing to do with the ejectment proceedings which have been culminated against the respondent/tenant up to this Court, and even his counsel before this Court did not take any such plea on merits but volunteered on behalf of his client to vacate the premises if some reasonable time is accommodated which was done by consent, and the civil petition was disposed of accordingly. Now, in essence, and rather for all practical purposes, the litigation has culminated *vis-à-vis* the tenancy issues and the same cannot be frustrated by embellishing or aggravating and/or maneuvering a new set of circumstances with the sole aim of prolonging and frustrating the eviction order and decaying the execution proceedings.

11. Now let us take the order dated 01.12.2022, passed by the Sindh High Court in R.A No.199 of 2018, which was referred to with great emphasis and prominence by the learned counsel for the alleged contemnor to defend. For the ease of convenience, the aforesaid Order is reproduced as under: -.

"Learned counsel(s) present after arguing the matter at some length finally agreed that this revision application be accepted without prejudice to their stands in the proceedings by setting- aside the impugned judgment(s) and order(s) passed in the matter i.e. the order(s) passed on the application(s) under Order 1 Rule 10 CPC and application under Order 6 Rule 17 CPC by the learned trial Court as well as the resulting final order of the trial Court along with the order of the learned appellate Court on account of the earlier remand order not having been complied-with. The learned trial Court be required to ensure that the remand order dated 05.03.2004 as passed by this Court in R.A No.39 of 2001, in the first round requiring production of original documents and the opportunity of cross-examination is to take place where-after the matter is to be concluded Ordered accordingly. It is reasonably expected that the learned trial Court shall make a sincere attempt to conclude the same within a period of three (03) months. However, the parties

herein are restraint from creating any third Interest till the conclusion of said proceedings.

It is also agreed that M.A No.559 of 2022 irrespective of its maintainability be also disposed of being an application by the tenant pertaining to shop No.2 occupied by Shahzad Khan in respect of which proceedings starting from Rent Application No.107 of 2011 and concluding before the Honourable Supreme Court by way of Civil Petition No.47-K of 2022, wherein the Honourable Supreme Court had passed the order dated 16.06.2022 requiring the possession to be handed over to the legal heirs of Mst. Sharifan. **[Emphasis supplied by us]** The same be complied with by the said tenant now making an enhanced payment of rent of Rs.4000/- [Rupees Four Thousand] per month to be paid in the first week of every month from the next calendar month with the Additional Registrar of this Court treated as being in constructive possession thereof. A copy of this order be communicated to the learned Executing Court viz. 5th Senior Civil Judge, Hyderabad for information as to the constructive possession managed by this order.

With the above observations, this revision application along with listed application stand disposed of with no order as to costs."

12. Though in the above Order, the learned Judge of the Sindh High Court refers to the main Order passed by this Court on 16.06.2022 in Civil Petition No.47-K of 2022, but it is quite inexplicable, rather perplexing, that how the learned Judge observed in his Order in the Revision Application that this Court had passed the order dated 16.06.2022 requiring the possession to be handed over to the legal heirs of Mst. Sharifan while, as a matter of fact, the civil petition was dismissed as not pressed and the tenant was directed to vacate the demised premises within a period of 6 months with a further rider that in case he fails to hand over the peaceful vacant possession of the demised premises to the respondent (landlord/present petitioner) on or before the specified period, he would be entitled to a writ of possession with police aid without further notice. It appears to us that either the aforesaid order of this Court was not produced before the learned judge of the Sindh High Court or due to some misunderstanding or oversight, such observations are not jotted down in the order. However, it is a ground reality, which clearly manifests from the order of this Court, that the matter came to this Court between the landlord and tenant under the Ordinance and after a lapse of 6 months, the possession was to be handed over by the tenant to the landlord, who has fought the case from Rent Controller to this Court, and nothing was mentioned by this Court regarding giving possession to any other alleged legal heirs of Mst. Sharifan; therefore, such findings of the learned Judge of the Sindh High Court are misconceived with respect to the issues of tenancy, the ejectment order, and the directions to hand over the possession to the wrong person due to misinterpretation of the aforementioned order of this Court.

13. After the tenant has availed all possible rights and remedies, the doctrine of finality of judgments is also attracted for the conclusion and culmination of the judicial process. The controversy between the parties must come to an end and the judgments must be allowed to gain finality, which is not only indispensable and domineering but myriad sacrosanctity is also attached to the principles of finality of the judgment in the administration of justice that is also exemplified in the legal maxim '*interest Republicae ut sit finis litium*' which means that it is for the public good that there be an end of litigation after a long hierarchy of appeals. The notion of finality of lawsuit or legal proceedings is structured and systematized on a principle of public policy across the board. The doctrine of finality/*res judicata* is progressed with the aim of averting overabundant litigation triggered with *mala fide* intention or to drag the proceedings by dishonest means, and if this principle is not followed religiously, it will nurture never-ending or interminable litigation. It also offends the Public Policy doctrine which accentuates the framework of different laws in field, rules, regulations, and actions of government, to put into effect social and economic aspirations for catering to communal challenges. The origin and concept of public policy is time immemorial. Even in ancient civilizations like Greece and Rome, the rulers made various laws to regulate societal issues.

14. What is the effect of noncompliance of the ejectment order? It is a well-defined legal standpoint and approach that the power of execution of any order passed under the Ordinance vests with the Rent Controller under Section 22 for which the successful party is obligated to file an execution application which, according to the petitioner, has already been filed but adjourned *sine die* for which also an application has been moved for resurrection. In our firm view, the last order passed by this Court has been merged in the earlier orders passed against the respondent/tenant which should have been executed and satisfied by the Rent Controller in the execution proceedings. It is a well-settled exposition of law that the executing court cannot go beyond the decree; neither can it rescind nor modify the decree/order sought to be executed. The final order passed under the provisions of the Ordinance are executable by the Rent Controller and all questions arising between parties and relating to the execution, discharge, or satisfaction of the order shall be determined by the Controller and not by a separate suit. So in all fairness, the Rent Controller is bound to execute the ejectment order expeditiously which

has now attained finality after the tenant has exhausted all remedies by the tenant.

15. One more important aspect that cannot be lost sight of is that even if there is any civil dispute pending in any civil court instituted by some other persons against the petitioner and they are claiming the right of inheritance or lineage in the estate of Mst. Sharifan, even then, how can the tenant take any benefit or advantage of any such dispute or litigation which has nothing to do with him? The decision in any such legal proceedings, if any, will remain restricted to resolving the rights between the alleged legal heirs but will not grant any independent or proprietary rights to the tenant, who is bound to vacate the premises in accordance with the ejectment order affirmed by the appellate court, High Court, and finally, this Court, in view of the statement of the counsel representing the tenant. Hence, after a lapse of 6 months from the date of the order, and in the event of failure to vacate the demised premises, it was an onerous responsibility of the Rent Controller/Executing Court to execute the ejectment order fervently and diligently rather than beating around the bush and repressing its own order and delaying the proceedings unreasonably.

16. As a result of the above discussion, the Executing Court is directed to execute the ejectment order expeditiously in accordance with law without any further delay or hindrance and hand over the possession of the demised premises to the petitioner/landlord and submit the compliance report to this Court. This Criminal Original Petition is disposed of accordingly.

Judge

Judge

Karachi
29.07.2024
Khalid
Approved for reporting