ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W. P. No. 2086 of 2022

Nasir Khan

Vs.

Ms. Nadia Ali Butt etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.06.2022	Mr. Shahid Mehmood Mughal, Advocate.

Through the instant writ-petition, petitioner impugns order dated 21.06.2021, ex-parte judgment and decree dated 31.07.2021 and judgment and decree dated 19.04.2022, passed by the learned Rent Controller and learned ADJ Islamabad-East respectively whereby he was proceeded against ex-parte in rent petition filed by the respondent No.1, his application for setting aside ex-parte proceedings was dismissed with costs of Rs. 5000/-, ejectment petition was decreed ex-parte while appeal was also dismissed.

2- Heard. Precisely, relevant facts gathered from the documents made available on file, are to the effect that on **22.04.2021**, respondent No.1 filed ejectment petition against the petitioner on the grounds of willful default, expiry of lease agreement and breach of terms and conditions of agreement. The petition was taken up on the same day when notices were ordered to be issued for procuring attendance of the petitioner for 30.04.2021. On the date fixed, nobody entered appearance on behalf of the petitioner despite service through his brother. Upon this, the learned Rent Controller by adopting alternate mode, ordered to cause service of the petitioner through affixation and

by publication in the daily newspaper and fixed the case for 07.05.2021.

3- It is significant to note that before resorting penal action against the petitioner, the case remained pending and adjourned on five consecutive dates i.e. 07.05.2021, 25.05.2021, 03.06.2021, 09.06.2021 and 16.06.2021 but the petitioner did not put appearance and ultimately proceeded against ex-parte on 21.06.2021.

4- After the recording of oral as well as documentary evidence on 10.07.2021, petitioner filed an application for setting aside ex parte proceedings which was resisted by the respondent No.1 and the learned Rent Controller dismissed the same and also decreed the ejectment petition ex parte through a composite order dated 31.07.2021.

5- The reasons prevailed with the learned Rent Controller for dismissing application of the petitioner were to the effect that petitioner was served through his brother but failed to join the proceedings and waited till recording of evidence and that claim of bonafide purchaser is without any proof; that petitioner, at the first instance, had to vacate the premises and thereafter pursue his lis. The application was dismissed with costs of Rs.5000/- and ultimately ejectment petition was decreed with direction to handover the vacant possession of the demised premises forthwith. The appeal, filed by the petitioner, also remained unsuccessful, hence instant writ petition.

6- The core of the submissions advanced by the learned counsel is that respondent No.1 is not real owner of the demised premises; that real owner of the same is one Akram Bhutta from whom petitioner purchased the demised premises against sale consideration of Rs. 35,000,000/- and that there exists no relationship of landlord and tenant between the petitioner and the respondent No.1.

7- Record is evident of the fact that after filing of ejectment petition by the respondent No.1 in April, 2021, petitioner filed suit for specific performance and mandatory injunction against Akram Bhutta before learned Civil Court Rawalpindi in the next month i.e. May, 2021. In the said suit, petitioner claims ownership on the basis of a sale agreement dated 04.12.2020. In the said suit, petitioner also filed an application for temporary injunction which was dismissed by the learned Civil Judge 1st Class, Rawalpindi vide order dated 01.03.2022. Perusal of said order reveals that respondent No.1 Ms. Nadia Bibi along with others had been declared legal heirs of original owner deceased Shazia by a court of competent jurisdiction at Sialkot vide judgment and decree dated 17.10.2020. It was also observed in the said order that though the defendant No.1 Akram Bhutta also got a decree as well in respect of legal heir ship of Shazia vide judgment and decree dated 02.06.2021 however, at the time of execution of alleged agreement to sell, the defendant No.1 Akram Bhutta was not declared as legal heir and that both the judgments have been suspended on the application of the rivals.

8- Apart from above, the other documents annexed with the petition indicate that the demised premises were originally owned by late Mst. Shazia while the respondent No.1 along with others including one Akram Bhutta, stepped into the shoes of the late being legal heirs. The petitioner, as noted above failed to appear and defend the ejectment petition despite service and publication in the newspaper. The suit for specific performance of the sale agreement is later-in-time i.e. after filing of ejectment petition by the respondent No.1 and his claim to have no relationship of landlord and tenant appears to be an attempt to frustrate the ejectment proceedings. There is also no dispute with regard to status of respondent No.1, being one of the legal heirs of original owner Mst. Shazia.

9- The claim of ownership on the basis of any sale agreement in an ejectment petition has already been answered by

the Hon'ble Apex Court in the case of *Muhammad Nisar Vs. Izhar Ahmed Shaikh & others* (**PLD 2014 SC 347**) in following terms:-

> ***"6.*** It would be seen that in the affidavit in evidence filed by the appellant before the learned Rent Controller, the father of the appellant viz. Nabi Bux was stated to be the tenant of the father of respondent No.1. In Para 8 therefore it has been particularly averred that after the demise of Nabi Bux the premises were in the possession of his family members other than the appellant when it was purchased by him. In our opinion such averment cannot displace the law itself since per section 2(j) of the Sindh Rented Premises Ordinance, 1979 each legal heir of the tenant after his demise becomes a tenant and consequently the learned lower forums below have correctly held that there was a relationship of landlord and tenant between the parties. **Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has already been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again**. In this regard reference can be made to the cases cited at the bar by the learned Advocate Supreme Court appearing for the respondents.(Shamim Akhter Vs. Muhammad Rashid PLD 1989 SC 575, Mst. Azeeman Nisar Begum Vs. Mst. Rabia Bibi PLD 1991 SC 242, Muhammad Rafique Vs. Messers Habib Bank Ltd 1994 SCMR 1012 and Mst. Bore Bibi Vs. Abdul Qadir 1996 SCMR 877)." [**Emphasis added**]

10- For the foregoing reasons, there exists no justification to put the respondent No. 1 under notice and to proceed further with the instant writ petition as in the attending circumstances, impugned order, judgment and decree and judgment in appeal are well reasoned and do not call for any interference. Consequently, instant writ petition is **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran*//