Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 2384 of 2022

Waqas Qadir
Vs
Mohammad Tousif Mughal, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01)	24.06.2022.	M/s Saad Ahmed Rajpoot and Ch. Najamul Hassan Advocates, for the petitioner.

ATHAR MINALLAH, C.J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the **"Constitution"**] assailing order, dated 22.06.2022, passed by the learned Addl. District Judge-IX, West-Islamabad.

2. The petitioner, Waqas Qadir, had entered into a lease agreement with the respondent, Muhammad Touseef Mughal. The premises rented out were described as House no. 9-B, Street no. 37, Sector F-8/1, Islamabad [hereinafter referred to as the **"Property"**]. The respondent filed an eviction petition before the learned Rent Controller, Islamabad. The petitioner had also filed an eviction petition. However, the eviction petition filed by the respondent was allowed vide judgment and decree, dated 14.12.2021. The petition filed by the petitioner was, however, dismissed. The appeal preferred by the petitioner was subsequently dismissed. The constitutional

petition challenging concurrent findings was also dismissed by this Court. Admittedly, the judgment and decree, dated 14.12.2021, had attained finality. The executing court directed the petitioner to hand over peaceful possession of the Property to the respondent. Pursuant thereto possession was duly taken over by the latter. The petitioner filed an application seeking restoration of possession of Mumty/second floor of the Property. The application was accepted by the learned executing court vide order, dated 14.06.2022. The respondent thereafter preferred an appeal and it was allowed vide the impugned order, dated 22.06.2022.

3. The learned counsel has argued that; the decree, dated 14.12.2021, was confined to the first floor of the Property; the parties had entered into sale agreement regarding the Property; the petitioner has filed two separate suits seeking performance of the agreements to sell and an injunctive order restraining the owners of the Property has also been issued by the competent court; the petitioner was in possession of the first floor of the Property and, therefore, the learned executing court had rightly restored the petitioner's possession.

4. The learned counsel has been heard and the record perused with his able assistance.

5. It is not disputed that the judgment and decree, dated 14.12.2021 has attained finality. It is also admitted that the petitioner claims to have entered into sale agreements regarding the Property while he was in possession as a tenant.

The said suits are pending and an injunctive order has been passed. The sole question was whether the petitioner is entitled to remain in possession of the purported upper storey of the Property. The learned appellate court after carefully perusing the plans approved by the competent authority has concluded that an independent lawful upper storey of the Property does not exist. The petitioner was a tenant and there is nothing on record to even remotely show that a separate lawful portion existed, which was separately rented out to him. It appears that the application was filed merely to frustrate the execution of the decree, which had attained finality. The suits filed by the petitioner are pending and an injunctive order restraining the owners from alienating the Property has been passed. The impugned order does not suffer from any legal infirmity requiring interference.

6. For the above reasons, the petition is meritless and, therefore, ***dismissed in limine***.

(CHIEF JUSTICE)

Tanveer Ahmed/*