ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Revision No. 75 of 2022
Mst. Attiya Tina Ashraf
Versus
Saleem Mehmood, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.12.2022	Kh. M. Farooq Mehta, Mr. Mudassir Khalid Abbasi & Malik Awais Haider, Advocates for petitioner. Mr. Arif Ch & Mr. Shafqat Ullah Waris, Advocates for respondents. Mian Zain Qureshi, State Counsel. Mr. Khalid Mehmood, ASI.

ARBAB MUHAMMAD TAHIR J: Through the instant revision petition in terms of Section 439 read with Section 435 of the Code of Criminal Procedure, 1898, petitioner namely *Mst. Attiya Tina Ashraf* impugns order dated 05.10.2022, passed by the learned Addl. Sessions Judge, Islamabad-West, whereby in '**complaint**' under section 3 and 4 of the Illegal Dispossession Act, 2005 ('**Act of 2005**'), filed by the respondent No.1 namely *Saleem Mehmood,* application under Section 7 of the Act of 2005, was accepted and the SHO concerned (respondent No.2) was directed to get the house vacated from the petitioner and to restore the possession of the complainant (respondent No.1) within seven days positively.

2- The facts of the case have been mentioned in-detail in the memo of the petition as well as in the impugned order, therefore, need not to be repeated. The *parties-to-lis* i.e. petitioner and respondent No.1 had been in marital bond for quite long time spreading over a period of twenty-five years (1991-2016) and were blessed with three children but unfortunately the tie instead to become stronger by afflux of time went strained and ultimately led to divorce. The rift then led the parties to litigation, both civil as well as criminal, not only in Pakistan but in the USA as well, despite the fact that both sides are well-off, educated having sound antecedents. The bone of contention in the present case is

'House No. 9, Street No. 87, Sector G-6/3 Islamabad' (**disputed property**) wherein the couple, as it then was, had been living as a family.

3- The petitioner came up with the claim that she is actual owner of the disputed property as it was purchased by the respondent No.1 out of her exclusive earnings and the status of the latter is just a '*benami'*. The respondent No.1, on the other hand, not only refuted her claim forcefully but also lodged a complaint under the Act of 2005 through General Attorney-real brother namely *Nasim Mehmood*, whose authority as being General Attorney has also been questioned by the petitioner through a separate lis (*Crl. Revision 73 of 2022- to be decided independently by order of even date*).

4- It was alleged by the respondent No.1 in paragraph-9 of the complaint under the Act of 2005 that "*on 28.02.2020, at about 12:00 pm, the complainant was telephonically informed by Muhammad Arif Guard that some armed persons entered the house by scaling over the wall, thrashed them, forcibly took over the keys of the house. The police was called by the respondent No.1 which arrested the guards of the complainant, instead of taking legal action against the perpetrators who had forcibly taken over the possession of the house by illegally ejecting the occupants*." In paragraph-10 it was alleged that "*the complainant approached the local police, which was collusive with the private respondents, instead of taking proper legal action by way of registering a criminal case of lurking house trespass against the said respondents, proceeded under section 107, 151 Cr PC on 29.02.2020 helping the respondents to take illegal possession of the house."* The petitioner contested the complaint and the learned Trial Court vide its order dated 23.02.2022, dismissed the application under section 7 of the Act of 2005, filed by respondent No.1. The matter then came up before this Court against the said order through Crl. Revision Petition No.27 of 2022 wherein by setting aside the order dated 23.02.2022, the matter was remand for decision on the application under section 7 of the Act

of 2005 afresh as by the time, the said order was passed, the charge was not framed and under the law, application under section 7 of the Act 2005 had to be taken-up and decided after commencement of trial i.e. after framing of the charge, as observed by this Court in its order dated 19.07.2022, passed in Crl. Revision Petition No. 27 of 2022. In post-remand proceedings, the application under section 7 of the Act of 2005, which was earlier dismissed, was accepted vide order dated 05.10.2022, being questioned through the instant petition.

5- The arguments advanced by learned counsel for the petitioner, predominantly, had been on the points that the petitioner was condemned unheard; that consecutive police reports affirm her stance of having possession over the disputed property and that earlier the application of respondent No.1 was dismissed which was subsequently allowed without any material or even remote progress after framing of the charge and that when the matter qua title is *sub judice* before this Court, there was no justification to oust the petitioner from the disputed property as it would amount to pass a final verdict than to make a tentative order. Learned counsel for the petitioner placed reliance upon case law reported as PLD 2010 SC 661, 2019 MLD 1840, PLD 2007 Lahore 231and 2019 YLR 2025.

6- Conversely, learned counsel for respondent No.1 repelled the above stance with vehemence by contending that as a matter of fact, the petitioner attempted to blow hot and cold in one breath as her various stances are self-contradictory and even her own assertion confirms the facts of ownership and possession of the respondent No.1 over the disputed property. It was added that her first suit seeking prohibition was dismissed and plaint in subsequent suit was also rejected, thus looking from all angles, the petitioner has no claim at all against the disputed property, therefore, petition is liable to be dismissed.

7- Heard the learned counsel for the parties at-length and gone through the record made available on record and subsequently through civil misc. applications with their able assistance.

8- The reasons prevailed with the learned Trial Court while accepting the application under section 7 of the Act of 2005, *inter alia*, had been to the effect that in civil litigation, it was observed that the petitioner was not in possession of the disputed property; that in her application to the I.G. ICT, she admitted the possession of the respondent No. 1; that she herself admitted the possession of the latter since 15.07.2017 and that the police report duly supported the version of the respondent No. 1 while *rapat roznamcha* dated 29.02.2020 also reflects that the dispute had arisen between the parties over the possession of the disputed property.

9- It is necessary to mention that in pre-remand proceedings, the application under section 7 of the Act of 2005 filed by the respondent No. 1 was dismissed by observing that *"The case set up by the complainant in Para 9 of the complaint is that a Guard Muhammad Arif telephonically informed the complainant regarding the forcibly entry of armed persons in the disputed house but no such person had been produced before Faiz Ahmed Gondal ASI who has submitted report in the instant case. Both the parties have divergent claims regarding the ownership and possession of the house in dispute and unless and until the evidence is recorded in the instant complainant no final findings can be recorded that the respondent is not in law full possession of the house in dispute."*

10- The report of the police referred to above dated 11.11.2022 did not state explicitly that the respondent No. 1 had allegedly been dispossessed. It was also mentioned in the said report that on 29.02.2022, they went to the disputed property in response to call of the petitioner while the respondent No. 1`had not produced any material in support of alleged illegal act. Besides the report dated 11.11.2020, the

petitioner is also relying upon the Inquiry Report dated 29.11.2017 of the Addl. Superintendent of Police (Security), Operations Division Islamabad (**1st Report**) and the Inquiry Report dated 20.02.2018 of the Assistant Superintendent of Police, Aabpara Circle, Islamabad (**2nd Report**).

11- The recommendations of the 1st Report had been to the effect that *"Apparently, it seems that there is a dispute over transaction of money and possession of said house between the parties which is case of civil nature. Complainant of the case has tried to cover the civil issue in criminal case. Variation of statements of complainant (complainant was general attorney of respondent No.1 herein) shows that the said case was registered with malafide intention. Offence 406-PPC does not attract in the instant case. Hence, it is recommended that case FIR No. 289/17 U/s 406-PPC Police Station Aabpara Islamabad may be discharged please.*"

In the said report, under the Head 'FINDINGS', it was mentioned that "***Before 15.07.2017, the possession of the said house was not under control of Mr. Naseem Mehmood (complainant of case). The said house was remained under possession of Mst. Attiya Tina Mehmood up till 14.07.2017.***"

12- The recommendations of 2nd Report were in terms that *"**Since the applicant has now provided evidences in support of her version of FIR No. 225/17 and her possession prior to 15.07.2017 is prima facie established,** it would be appropriate to investigate the case afresh. The applicant has accordingly been advised to approach the court with the evidences to obtain order of re-investigation.*"

13- In presence of the reports ibid, there exists no justification to disturb the possession of the petitioner as, *prima facie*, she is found to be not in unlawful possession of the disputed property. It is necessary to mention that order in terms of Section 7 of the Act of 2005 is tentative in nature and the fate of the case shall be subject to final

outcome of the complaint filed by the respondent No.1, therefore, in order to avoid making the issue more complex and throwing the parties in further litigation, it would be just to decide the controversy once for all.

14- In view of above, the impugned order is not legally sustainable. It is accordingly set-aside and resultantly application under section 7 of the Act of 2005, filed by the respondent No.1 is dismissed. However, it is made clear that the observations made hereinabove shall have no impact upon merits of the case, to be decided on the basis of evidence of the parties. The complaint under the Act of 2005 filed by respondent No.1 pertains to the year 2020, though the charge has been framed but as apprised, no material progress in the case has since been made, therefore, the learned Trial Court is directed to make every endeavor to decide the main case at the earliest by keeping it on fast track preferably within a period of one month from the receipt of this Order. It is expected that the learned counsel for the parties shall extend full cooperation for achieving the task and to give an end to endless litigation between the ex-spouses.

15- The instant revision is **allowed** in above terms with no orders as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court_____12.2022

JUDGE

//Kamran//