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

**W.P.No.2618 of 2017**
**Humayun Latif**
**Versus**
**Rent Controller, Islamabad and others**

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | **14.07.2017** | **Mr. Iftikhar Ahmad Bajwa, Advocate for the petitioner.** |

Through the instant writ petition, the petitioner, Humayun Laitf, impugns the order dated 04.07.2017, passed by the Court of the learned Rent Controller, under Section 17 (8) of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), whereby tentative rent @ Rs.1,00,000/- per month was fixed, and the petitioner was directed to deposit the arrears of rent in the Court's account for the period between March 2017 to June 2017 within a period of twenty days.

2. The record shows that on 10.05.2011, a lease agreement was executed between Dr. Iftikhar Jamil Khawaja (respondent No.2/landlord) and Mr. Humayun Laitf (tenant/petitioner) whereby apartment No.301, third floor, Savoy Residences F-11/1, Islamabad ("the rented premises") were leased for a period of three years with effect from 20.05.2011. On 07.01.2015, respondents No.2 and 3 executed a sale deed with the petitioner for the sale of the rented premises for a total sale consideration of Rs.31,250,000/-. As per the terms of the sale deed, Rs.7.5 Million was paid as first installment by the petitioner to respondents No.2 and 3 on 27.01.2015, whereas Rs.23,250,000/- was to be paid on or before 30.05.2015. Subsequently, the petitioner and respondent No.2 are said to have executed an agreement, which is

annexed at page 39 of this petition. As per the terms of this agreement, a further amount was paid by the petitioner to respondent No.2. On 26.05.2017, respondents No.2 and 3 filed a petition under Section 17 of the IRRO seeking the petitioner's eviction from the rented premises. In the said eviction petition, it is specifically pleaded that the petitioner failed to pay the remaining sale consideration of Rs.5 Million. On 15.05.2017, respondents No.2 and 3 had filed a suit for specific performance of the said sale deed against the petitioner. This suit is still pending adjudication. Vide order dated 04.07.2017, passed by the learned Trial Court. The petitioner was directed to deposit tentative rent @ Rs.100,000/- from March, 2017 to June, 2017 within a period of twenty days. 26.07.2017 was fixed a s next date of hearing, whereon the petitioner is supposed to submit the deposit receipts in compliance with the tentative rent order. In passing the tentative rent order, the learned Rent Controller was cognizant of the fact that a sale deed had been executed between the petitioner and respondents No.2 and 3 and the entire sale consideration for the rented premises had not been paid. The said order dated 04.07.2017 has been impugned in the instant writ petition.

3. Learned counsel for the petitioner submitted that respondents No.2 and 3 had instituted a suit for specific performance of the sale deed against the petitioner; that subsequently, respondents No.2 and 3 instituted an eviction petition against the petitioner; that since 90% of the agreed sale consideration had been paid by the petitioner to respondents No.2 and 3, they could not institute eviction petition against the petitioner; and that

the petitioner was occupying the rented premises in his capacity as the owner. Learned counsel prayed for the impugned order dated 04.07.2017 to be set aside.

4. I have heard the contentions of the learned counsel for the petitioner, and perused the record with his able assistance. The facts leading to the filing of this petition have been set out in sufficient detail in paragraph 2 above, and need not be recapitulated.

5. The learned counsel for the petitioner could not come up with any explanation as to why the petitioner did not pay the balance sale consideration of Rs.5 Million to respondents No.2 and 3 for the rented premises, especially when respondents No.2 and 3 had instituted a suit for specific performance of the sale deed. Since the sale transaction between respondents No.2 and 3 (sellers) and the petitioner (purchaser) has not been completed, the petitioner cannot claim to occupy the rented premises in the capacity of an owner. The learned counsel candidly admitted that the petitioner's entry into the rented premises was in his capacity as a tenant on the basis of lease agreement dated 10.05.2011.

6. It is well settled that the mere pendency of a suit for specific performance of an agreement to sell/sale deed does not give the tenant the freedom to continue occupation of the rented premises assuming himself to be an owner. In my view, it does not make any difference whether a suit for specific performance is instituted by the landlord or the tenant, the determinative factor is whether the sale transaction is completed or not. In the case at hand, the pendency of the suit for specific performance shows that the sale

transaction qua the rented premises has not been completed. Reference to case law, at this stage, would be apposite:-

(i) In the case of Iqbal Vs. Rabia Bibi, reported as PLD 1991 SC 242, it has been held at page 245 of the report as follows:-

> *"Be that as it may, in some recent judgments this court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a, hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and right the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation, wherein he should try to establish his claim but it should not be at the cost of' landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and. free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano V, Haji Abdul Ghani (PLD 1984 Supreme Court 17), Allah Yar and others v. Additional District Judge and others (1984 SCMR v. Mufti Abdul Ghani (PLD 1985 SC 1)."*

(ii) In the case of Jumma Khan Vs. Zarin Khan, reported as PLD 1999 SC 1101, the relationship of landlord and tenant was denied by the tenant on the ground that the landlord had executed an agreement to sell

**the rented premises to the tenant, and that a substantial amount had been paid to the landlord, and that a civil suit for specific performance was pending adjudication against the landlord. The landlord had unequivocally refuted the execution of any agreement for sale. The Hon'ble Supreme Court of Pakistan dismissed the tenant's petition in the following terms:-**

> ***"7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effort will be independently determined by the Civil Court. However, in the instant case we are satisfied that issue regarding relationship of tenancy and personal bona fide requirement of respondent-landlord has been correctly decided by the Courts below. There does not appear any material defect or legal infirmity with regard to conclusions drawn in the impugned judgments. Accordingly the petition having no merit is dismissed and leave to appeal is refused."***

**(iii) In case of Barkat Masih Vs. Manzoor Ahmad, reported as 2006 SCMR 1068, it was held that if a tenant denies the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights.**

**(iv) In the case of Syed Imran Ahmed Vs. Bilal (PLD 2009 SC 546), it has been held as follows:-**

> ***"5. It is a principle too well established by now that a sale agreement did not itself create any interest or even a charge on the property in dispute; that un-like the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates; that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted***

*him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a licence to un-scrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice."*

(v) **In the case of Abdul Rasheed Vs. Maqbool Ahmed, reported as 2011 SCMR 320, the petitioner/tenant had denied the relationship of landlord and tenant between parties. The petitioner had claimed that he had purchased demised premises subsequently through a sale agreement. The Hon'ble Supreme Court of Pakistan dismissed the petition by holding as follows:-**

*"5. … It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature.*

*Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller."*

(vi) In the case of Gohar Ali Shah Vs. Shahzada Alam, reported as 2000 MLD 82, the appellant was seeking to avoid eviction from the rented premises by claiming that he had purchased the rented premises. The Hon'ble High Court of Sindh struck off the tenant's defence and directed him to vacate the premises subject to refund by the landlord of the amount of consideration paid towards the price of the premises in question to the tenant after adjustment of rent till the delivery of possession. Furthermore, it was held as follows:-

"*Mere agreement to sell would not absolve the appellant to pay rent only because he was proposed purchaser of the premises when there has been no term that appellant would not pay rent on this executing such agreement of sale when such agreement of sale would not create any right title or interest in or over the property in favour of appellant the proposed purchaser until and unless the said relationship of landlord or tenant is determined by an agreement."*

(vii) In the case of Muhammad Akmal Vs. Faisal Saeed Mirza, reported as 2004 CLC 862, the tenant had denied the existence of relationship of landlord and tenant between the parties alleging that predecessor-in-interest of the landlord had entered into agreement to sell the premises in question in favour of the tenant. The tenant had also stated that he had filed a suit for

specific performance of the agreement to sell. The said assertions of the tenant did not find favour with the Hon'ble Lahore High Court, and in paragraph 8 of the said report, it was held as follows:-

> *"8. ... It may be pointed out here that learned Rent Controller has not to decide the fact of sale and purchase allegedly made between the appellant and predecessor-in-interest of the respondents. The Civil Court, seized of the matter, is competent to decide such dispute and if appellant turns successful in that suit he would have the chance for the recovery of possession, in case of his ejectment. Till the decision of the civil suit proceedings of this case (ejectment petition) cannot be stayed or stalled as held in Iqbal and 6 others v. Mst. Rabia Bibi and another PLD 1991 SC 242. The intention of suit for specific performance of contract cannot furnish a ground to the appellant to get the proceedings before the Rent Controller stayed as held in Muhammad Amjad v. Mst. Rehana Kausar 2001 YLR 939."*

(viii) In the case of Muhammad Parvez Vs. Additional Rent Controller, Lahore, reported as 2013 YLR 1881, an applicant, claiming to be the purchaser of the rented premises, had filed an application under Order I, Rule 10 C.P.C. for impleadment in the eviction petition before the Rent Controller. The landlord's writ petition against the order of the Rent Controller allowing the application for impleadment was allowed by the Hon'ble Lahore High Court, holding as follows:-

> *"6. ...By applying above said principles in the instant case the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will*

*be known to be an illegal occupant. The rent proceedings are between the land owner and tenant and entry or interference by the third party is to be jealously guarded. In this view of the matter, the impugned order is set aside and the writ petition is allowed. Resultantly application under Order 1 Rule 10, C.P.C. filed by respondents Nos.2 and 3 is dismissed."*

**(ix) In the case of Refhat Hamidee Vs. Abdul Aziz, reported as 2013 YLR 1898, it has been held by the Hon'ble High Court of Sindh that unless and until a registered sale deed existed between the parties, the relationship of landlord and tenant existed between the parties, the tenant could not get the benefit of a 'sale agreement' to avoid payment of rent. The eviction of the tenant from the rented premises was held to be justified.**

**(x) In the case of Muhammad Rafique Vs. Farida Khan (2016 CLC 1451), I have had the occasion to hold as follows:-**

*"It has become commonplace for unscrupulous tenants/litigants to avoid eviction proceedings by contending that the rented premises had been sold to them. Unless and until the petitioner was able to establish his claim for specific performance on the basis of the alleged sale agreement through a judgment (not an interim order) in his favour passed by a Court of competent jurisdiction, respondent No.1 would continue to enjoy the status of being the owner and landlord of the rented premises. Pendency of a civil suit does not give a license to the tenant to remain in occupation of the rented premises. There is a catena of case law in support of the proposition that ejectment proceedings could not be stayed or stalled on the plea that tenants in possession were holding an agreement to sell. Mere pendency of a suit for declaration or specific performance of an agreement is no ground to avoid eviction of tenants, who claim to have purchased the rented premises."*

7. In the case at hand the impugned order dated 04.07.2017, is an interlocutory order. The said order is not appealable under the provisions of the IRRO. Section 21(1) of the IRRO provides that any party aggrieved by a final order of the Rent Controller may prefer an appeal to the District Judge within thirty days of the date of such an order. Section 21(2) of the IRRO explicitly provides that no appeal shall lie from an interlocutory order passed by the Rent Controller. It is perhaps for this reason that the petitioners have instituted a writ petition to challenge the said interlocutory order dated 04.07.2017. At this stage, reference to case law on the subject would be appropriate:-

(i) In the case of Saghir Ahmad Naqvi Vs. Province of Sindh reported as 1996 SCMR 1168, the Hon'ble Supreme Court of Pakistan has held that where a statute excludes a right of appeal from an interim order, the same cannot be bypassed by bringing under attack such interim orders in the constitutional jurisdiction of the High Court. Furthermore, it was held that the affected party had to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.

(ii) In the case of Muhammad Taj Vs. Muhammad Younis Khilji reported as 2008 CLC 1666, the Hon'ble Islamabad High Court in paragraph 6 of the report *inter-alia* held as follows:-

> *"6. There is another aspect of the matter that the instant writ petition has been filed against interim order and section 21(2) of Islamabad Rent*

*Restriction Ordinance, 2001 specifically bars any appeal against the interlocutory orders of the Rent Controller which does not dispose of the entire case before it. The intention of legislature can be gathered from the provisions of section 21(2) of the Ordinance that to avoid delay in disposal of the cases by the Rent Controller, a specific bar has been imposed to challenge the interlocutory orders passed by the Rent Controller, therefore, the petitioner cannot be allowed to circumvent the legislative intent by filing against the interim order a constitutional petition. There are numbers of judgments under West Pakistan Urban Rent Restriction Ordinance, 1959 and Cantonments Rent Restriction Act, 1963 wherein it has been held that if legislature has not made an interim order appealable, the writ petition cannot be permitted to be filed to challenge such an order."*

**(iii)** **In the case of Jehangir Khan Jadoon Vs. Gul Nigar Manzoor, reported as 2008 CLC 547, a writ petitioner had challenged a tentative rent order passed by the Rent Controller under the provisions of the Islamabad Rent Restriction Ordinance, 2001. The Hon'ble Lahore High Court, upheld the preliminary objection that as the order impugned was interlocutory in nature and the Rent Controller was competent to change and modify it, the same could not be challenged in the constitutional jurisdiction of the High Court. At paragraph 9 of the said report, it has been held by the Hon'ble High Court as follows:-**

*"9. In view of the above, I am of the definite view that the impugned order was tentative in nature and has to be merged in the final order which would be appealable under Section 21 of the Islamabad Rent Restriction Ordinance, 2001, therefore, the petitioner has to wait for it to question the same before the Appellate Court. However, the impugned*

*order is provisional in nature and is not assailable in constitutional jurisdiction of this Court. Consequently, for the foregoing reasons, the instant constitutional petition being devoid of any force is dismissed with no order as to costs."*

(iv) In the case of Sher Bahadur Vs. Civil Judge Takht Bhai reported as 2003 YLR 1722, the learned Rent Controller had struck off the defence of the tenant on account of his failure to produce evidence. This order was challenged by the tenant in the constitutional jurisdiction of the Hon'ble High Court. At paragraph 22 of the said report, the Hon'ble Peshawar High Court, *inter-alia* held as follows:-

*"22. Another aspect of the case is that the writ petitions have been filed against interlocutory/interim order dated 12.04.2002. Their Constitution petitions are not maintainable because the appeals against interim order are barred under Section 15 of the Ordinance, which clearly indicated that there was ouster clause specifically barring appeal against interim order of the Rent Controller as only final order was amenable to appeal. The impugned orders being interim orders are not appealable under the relevant law, in such circumstances, question would arise whether such orders could be assailed in constitutional jurisdiction? Where the law itself has not given the right of appeal against certain orders then same cannot be challenged in any other forum to gain similar object which has been barred by statute itself. It was well-settled principle that the remedy which is not directly available cannot be sought indirectly through indirect means."*

(v) In the case of Iqbal Ahmed Vs. Muhammad Nasir reported as 2016 MLD 624, the Hon'ble High Court of Sindh, after referring to Section 21 of the Sindh Rented Premises Ordinance, 1979, which prohibits an appeal

against an interim order passed by a Rent Controller, held at paragraph 8 of the said report as follows:-

> *"8. A perusal of the above provisions of law clearly indicates that the legislature has specifically prohibited filing of an appeal against interim order. Thus, I am of the view that the legislature did not intend to make the interim order challengeable . Interim order is to merge in the final verdict which shall be appealable and going against that arrangement by exercising writ jurisdiction would not be proper because in that case the object of legislature shall be frustrated. This dictum is laid down in the case of Mrs. Syeda Tahira Mubashar (supra) and Abdul Farooq and another Vs. Maqsood Ahmed and another, reported as 2015 CLC 363."*

(vi) In the case of Abdul Farooque Vs. Maqsood Ahmed reported as 2015 CLC 663, the landlord had moved an application for recovery of arrears of rent in an eviction petition, which application was accepted and a tentative rent order was passed by the Rent Controller. The contention of the tenant was that the Rent Controller could not, without framing and deciding a preliminary issue with regard to the existence of a relationship of landlord and tenant, pass a tentative rent order. The Hon'ble High Court of Sindh at paragraph 9 of the report *inter-alia* held as follows:-

> *"The impugned tentative rent order of the learned Rent Controller is interlocutory/interim in nature and the same is even not appealable under the Ordinance, 1979. No order has yet been passed by the learned Rent Controller under Section 16(2) of the Ordinance, 1979. The provision of appeal has been provided under Section 21 of the Ordinance, 1979 by the legislature against the final order of the Rent Controller. The petitioners will have opportunity to file the appeal if the final order goes against them and they can raise*

> ***the afore-stated ground too. Therefore, the instant constitutional petition is not maintainable against an interlocutory/interim order of Rent Controller. The reason being that if constitutional petition were to be entertained, the very purpose of Section 21of the Ordinance, 1979 would be defeated. Reliance can be placed in this regard on the case of Mst. Seema Begum Vs. Muhammad Ishaq and others (PLD 2009 SC 45).”***

**8. Law to this effect has also been laid down in the cases of Abdul Majid Khan Vs. Rent Controller, Civil Judge, Gujranawala reported as 1997 CLC 1822, Mahmood-ul-Hassan Vs. Special Judge, Rent Tribunal, Lodhran reported as 2010 CLC 1590, and Muhammad Saghir Abbasi Vs. District Rent Controller reported as 2015 MLD 417.**

**9. The principles which may be distilled from the aforesaid judgments and the observations made therein, would be the following:-**

**10. As Section 21(2) of IRRO expressly bars a right of appeal from an interim order passed by a Rent Controller, the same cannot be circumvented by challenging such an interim order in the constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a Rent Controller passes a final order and then to challenge it under Section 21(1) of the IRRO before the Court of the learned District Judge. The purpose behind barring an appeal against an interim order of the Rent Controller is to avoid delays in disposal of the cases by the Rent Controller. An interim order merges into the final verdict which is appealable under Section 21(1) ibid. In an appeal against the final verdict, the interim order can also be subjected to challenge.**

**11. However, it is my view that exceptional circumstances which could justify invoking the**

jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, ***mala fide***, void or ***coram non judice.*** The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Rent Controller. The impugned order is neither without jurisdiction, nor ***mala fide***, void or ***coram non judice.***

12. The order dated 04.07.2017 being purely interlocutory in nature could not be subjected to challenge by filing a constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 21(2) of the IRRO. In view of the law laid down by the superior courts, I am not inclined to interfere in the interlocutory order dated 04.07.2017, passed by the learned Rent Controller.

13. For the foregoing reasons, the instant writ petition, being devoid of merits, is dismissed *in limine*, with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

Qamar Khan*

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