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

W.P.No.1982 of 2016
Sameer Anwar Baig & another
Versus
Mrs. Nazli Siddiqui & another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.05.2016	**Mr. Khurram M. Hashmi, Advocate for the petitioners**

Through the instant Writ Petition, the petitioners, Sameer Anwar Baig, and his wife Sania Sameer Baig, impugn the Orders dated 16.05.2016 and 23.05.2016, passed by the learned Executing Court.

2. The petitioners' case is that on 11.06.2008, a lease agreement was executed through which the petitioners' leased House No.50, Street No.57, G-6/4, Islamabad ("the rented premises") from respondent No.1 (Mrs. Nazli Siddiqui). The lease period was extended from time to time. Respondent No.1 filed an eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") before the Court of learned Rent Controller, Islamabad, seeking the eviction of the petitioners from the rented premises. Vide judgment and decree dated 10.11.2014, the said eviction petition was allowed by the learned Rent Controller. Petitioner No.1 assailed the said judgment and decree in Rent Appeal No.29/2014, but the same was dismissed by the learned Appellate Court, vide Order dated 30.11.2015. The said appellate order was assailed by petitioner No.1 in W.P.No.340/2015, before this Hon'ble Court. Vide Order dated 06.03.2015, this

Court disposed of the said petition in the following terms:-

> *"3. In view of above statement made by learned counsel for respondent No.2, the instant petition is disposed of in the following terms:*
> *The petitioner shall,*
> *i) vacate above mentioned premises by 30.06.2015,*
> *ii) shall pay the monthly rent as agreed between the parties till the vacation of the premises.*
> *iii) The execution proceedings before the learned Rent Controller shall remain pending and*
> *iv) in case the petitioner does not vacate above mentioned premises by 30.06.2015, respondent No.2 shall be entitled to obtain possession of the referred premises in the pending execution proceedings.*
> *4. Disposed of in the above terms."*

3. Learned counsel for the petitioners submits that on 17.02.2016, an agreement to sell was executed between respondent No.1 and petitioner No.2 (Mrs. Sania Sameer Baig), whereunder the former agreed to sell the rented premises to the latter. On 11.02.2015, respondent No.1 had instituted proceedings for the execution of the judgment and decree dated 10.11.2014. Vide order dated 16.05.2016, the learned Executing Court, *inter-alia*, ordered warrant of possession through the bailiff of the learned Executing Court to be issued against the judgment debtor/petitioner No.1 for delivering possession to respondent No.1 on 30.05.2016. Furthermore, the bailiff was directed by the learned Executing Court to handover the peaceful possession of the rented premises to respondent No.1.On 23.05.2016, petitioner No.1 filed an application for the suspension of the warrant of possession issued by the learned

Executing Court, vide Order dated 16.05.2016. Vide order dated 23.05.2016, the learned Executing Court dismissed the said application. Paragraph 5 of the said Order is reproduced herein below:-

> *5. Till 16.05.2016 the parties did not reached to a mutual settlement, therefore, as per law and procedure the possession warrant was issued on 16.05.2015. So far as instant application is concerned the judgment debtor submitted that he has filed suit for specific performance of agreement in the Hon'ble Islamabad High Court, Islamabad, and judgment debtor annexed the certified copy of order dated 20.05.2016 passed by the Hon'ble Islamabad High Court, Islamabad in C.S. No.49/2016, the perusal of the same shows that no injunctive order has been passed by the Islamabad High Court, Islamabad. Moreover, mere pendency of suit for specific performance does not give valid ground to stay the execution proceedings, even otherwise admittedly the judgment debtor is a tenant against whom eviction order has been passed which cannot be stopped due to pendency of suit for specific performance because both are the entire separate proceedings and the petitioner/judgment debtor is yet to establish his right of specific performance, hence the application in hand stands dismissed."*

4. The said orders dated 16.05.2016 and 23.05.2016, have been impugned by the petitioners in the instant writ petition.

5. Learned counsel for the petitioners submitted that as respondent No.1 had already entered into an agreement to sell, the rented premises to petitioner No.2, and that the petitioners had already instituted a suit for specific performance and permanent injunction before this Court seeking the specific performance of the said agreement to sell dated 17.02.2016, the learned Executing Court ought to have not proceeded with the matter until the

adjudication of the said civil suit. He further submitted that in part performance of the petitioners' obligations under the said agreement to sell a substantial amount had already been paid to respondent No.1. Learned counsel was of the view that the proceedings before the learned Executing Court should be stayed until the suit for specific performance was decided.

6. I have heard the arguments of the learned counsel for the petitioners and perused the record with his able assistance.

7. Now the agreement to sell dated 17.02.2016 was allegedly executed when the execution proceedings instituted by respondent No.1 were pending. Petitioner No.1 and respondent No.2 had been in litigation against each other since 2014. It does not appeal to reason as to why no mention about the said litigation was made in the said agreement to sell. The petitioners had an opportunity to have settled all differences with respondent No.1 in the said agreement to sell. This, they did not do.

8. The entire edifice of the petitioners' case stand on the claim that the rented premises have been purchased from respondent No.1 by petitioner No.2, vide agreement to sell dated 17.02.2016. The mere fact that respondent No.1 is pursuing the execution proceedings shows that she is denying the said agreement to sell. This denial on the part of respondent No.1 has necessitated the petitioners to institute a suit for specific performance and permanent injunction before this Court. In the suit, the petitioners *inter-alia* pray for a judgment &

decree for specific performance directing respondent No.2 to perform her part of the agreement. The petitioners also pray for an injunction restraining respondent No.1 from dispossessing the petitioners from the rented premises. Copies of the pleadings in the said suit have been placed on record. This suit is at its initial stage, and vide order dated 20.05.2016, summons were issued by this Court to respondent No.1. Until a judgment and decree for specific performance in favour of the petitioners is passed by this Court in the said suit, they cannot, in my view, resist their eviction from the rented premises. Unless and until, the petitioners obtained a judgment and decree in their favour, they cannot continue to remain in occupation of the rented premises. They must, first vacate the rented premises and re-gain possession of the same, in the event, the petitioners are successful in establishing their title to the same through a judgment and decree to that effect from a Court of competent jurisdiction. 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 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."

(v) **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 sale 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."

(vi) 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."

(vii) **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."

(viii) **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.

(ix) In the judgment dated 24.03.2016, passed in Writ Petition No.1050/2016, titled "Muhammad Rafique Vs. Farida Khan and others", 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."*

9. The above mentioned case law pertains to a person who claims to be the owner of the rented premises on the basis of an alleged agreement to sell. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises on the basis of an agreement to sell and has instituted a suit for specific performance in this regard.

10. In the result, there is no merit in this petition, and it is, accordingly, *dismissed in limine*, but in the circumstances of the case, there will no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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