JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No. 318 of 2016
Mrs. Khalida Adeeb Khanam
Versus.
Learned Rent Controller, Islamabad & others

Date of Hearing: 22.03.2016
Petitioner by: Ch. M. Ali Imran, Advocate,
Respondents by: Mr. Gul Hussain Jadoon, Advocate for respondent No.2,
Mr. Abid Hussain Mirza, Advocate for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant Writ Petition, the petitioner, Mrs. Khalida Adeeb Khanam, impugns the Order dated 19.12.2015, whereby the Court of learned Rent Controller, (West), Islamabad dismissed the petitioner's application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("C.P.C"), for the rejection of respondent No.2's eviction petition.

2. The facts essential for the disposal of the instant petition are that, on 25.02.2012, respondent No.2 (Bibi Sughra) filed an eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), against respondent No.3 (Pak. Telecom Mobile Ltd.) seeking the latter's eviction from the space measuring 800 Sq. ft. on the roof top of Samma Plaza, Plot No.68-W, Jinnah Avenue, Blue Area, Sector F-7/G-7, Islamabad ("the rented premises"). Initially, the petitioner was not a party to the said eviction petition. The petitioner, on 08.05.2013 filed an application under Order 1 Rule 10 C.P.C. for impleadment as a respondent in the said eviction petition. The petitioner took the position that on the basis of registered sale deeds dated 18.06.2008 and 14.01.2009 regarding 4/6th share and 1/6th share respectively in Samma Plaza, the petitioner and her daughter have become owners of the rented premises. Vide order dated 22.08.2013, the petitioner's said application was allowed with the consent of respondent No.2. Thereafter, on 28.08.2013,

respondent No.2 filed an amended eviction petition. The petitioner and respondent No.3 contested the said eviction petition by filing their separate replies. The learned Rent Controller on 03.10.2014, framed the issues.

3. On 16.11.2015, the petitioner filed an application under Order VII Rule 11 C.P.C. praying for the rejection of the eviction petition. The ground taken by the petitioner in the said application was that respondent No.2 had, on 17.10.2014, instituted a suit for declaration, injunction and recovery before the court of learned Civil Judge, Islamabad, praying for *inter-alia*, a declaration that she was the owner of 1/6th share, (western part of the roof top of Samma Plaza), Plot No.68-W, Jinnah Avenue, Blue Area, Sector F-7 /G-7, Islamabad, vide Family Partition Deed dated 29.03.2009. The petitioner and respondent No.3 were also arrayed as defendants in the said suit. Vide order dated 19.12.2015, the learned Rent Controller dismissed the petitioner's application under Order VII, Rule 11 C.P.C. Paragraph 3 of the said order is reproduced herein below:-

> ***"3. The Civil Procedure Code being not applicable to rent proceedings therefore the touch stone of Order 7 Rule 11 is not available in the instant proceedings. Even otherwise the points raised by respondent No.2 need recording of evidence and the same can only be decided thereafter. In these circumstances the application is dismissed. Now to come up for cross-examination on petitioner evidence on 05.01.2016."*** **(Emphasis added)**

4. The said order dated 19.12.2015 is impugned by the petitioner in the instant writ petition. The prayer clause of the said writ petition is reproduced herein below:-

> ***"In the circumstances, mentioned above, it is most respectfully prayed that the instant Writ Petition may kindly be allowed declaring the proceeding in Eviction Petition as illegal, unlawful and without jurisdiction while setting aside the impugned orders passed by the learned Respondent No.1, and proceedings in the Eviction Petition may graciously be quashed."***

5. Learned counsel for the petitioner submitted that as respondent No.2 had instituted a suit for declaration, injunction and recovery before the court of learned Civil Judge, Islamabad, praying for *inter-alia*, a declaration that she was the owner of the rented premises, she could not have filed the eviction petition unless and until she was able to get a decree from the learned

civil court in her favour as to the ownership of a share in the rented premises; that the learned Rent Controller was bereft of the jurisdiction to adjudicate upon an ownership dispute between the petitioner and respondent No.2; that the petitioner on account of purchasing Samma Plaza, had, in accordance with Regulation No.2.15 of the Islamabad Sector Zoning (Building & Control) Regulations, 2005, become the owner of the roof top of the said Plaza; that on 25.06.2009, a lease agreement was executed with respondent No.3; that from 2009 to 2012, respondent No.2 kept mum and it was not until 25.02.2012 that the eviction petition was filed; and that in 2005, the owners of Samma Plaza (including respondent No.2) had sold their entire share in the building to the petitioner through a sale deed. In support of his contentions that the learned Rent Controller does not have the jurisdiction to resolve ownership disputes with respect to the rented property, the learned counsel for the petitioner placed reliance on the cases of Abdul Qayyum and eight others Vs. Abdul Ghaffar and two others reported as 2015 MLD 605, Abdul Samad Khan and five others Vs. Jamshed and seven others reported as 2015 MLD 1642, Junaid Rasheed and others Vs. Sultan Muhammad and others reported as 2000 SCMR 1525, Rehmat Ullah Vs. Ali Muhammad and another reported as 1983 SCMR 1064, Province of Punjab through Education Secretary and another Vs. Mufti Abdul Ghani reported as PLD 1985 Supreme Court 01, and Mst. Soniya Sharif Vs. Bashir Kundi through Legal Heirs & others reported as 2013 MLD 1786.

6. On the other hand, learned counsel for respondent No.2 contended that respondent No.2 along-with five other relatives had purchased Plot No.68-W, Jinnah Avenue, Blue Area, Sector F-7/G-7, Islamabad, in order to construct a commercial plaza thereon; that after the allotment of the said plot, respondent No.2 along-with the other co-owners constructed a four storey commercial plaza on the said plot; that the share of respondent No.2 in the said plot and building was 1/6th; that the owners of the said plaza leased out 800 square foot on the western part of the roof top of Samma Plaza to respondent No.3; that the co-owners

of Samma Plaza partitioned the roof top between themselves through a Partition Deed dated 29.03.2008; that under the said partition deed, 1/6th share of the western part of the roof top of Samma Plaza belonged to respondent No.2; that the portion of the roof top where installations were made by respondent No.3, came within the share of respondent No.2; that respondent No.2 issued a notice to respondent No.3 about the change in the ownership of the said portion of the roof top; that respondent No.3 was under an obligation to pay rent to respondent No.2, but since April 2009, no rent has been paid; that the default on the part of respondent No.3 caused respondent No.2 to file an eviction petition before the court of the learned Rent Controller; that in the reply to the eviction petition, respondent No.3 has taken the position that it is a tenant of the petitioner; that the petitioner was impleaded as a party to the eviction petition with the consent of the parties; that respondent No.2 is the full owner of 1/6th share of the western part of the roof top of Samma Plaza under the deed of family partition; that in the civil suit instituted by respondent No.2, all the other co-owners have admitted the claim made by respondent No.2; that the petitioner is the purchaser of 5/6th share of the roof top of Samma Plaza; that respondent No.2 did not sell her 1/6th share in the roof top to any one else; that the sale deed would show that respondent No.2 did not sale her share in the roof top; and that the sale deed on the basis of which the petitioner claims to be the owner of Samma Plaza and its roof top has deliberately not been filed along-with the writ petition.

7. Learned counsel for respondent No.2 further contended that any of the co-owners of the rented premises can institute an eviction petition against the tenant; and the learned Rent Controller did not commit any jurisdictional irregularity in passing the impugned order. In support of his contentions, the learned counsel for respondent No.2 placed reliance on the cases of Pakistan Burmah Shell Vs. District Judge and others reported as 1996 MLD 391, Mst. Safia Bai Vs. Abdul Sattar PLD 1983 Karachi 419, Syed Abid Ali Vs. Ghulam Moinuddin Khan and two others

2012 CLC 143 and Muhammad Hussain Munir and others Vs. Sikandar and others PLD 1974 SC 139.

8. Learned counsel for respondent No.3 submitted that he would have no objection if the proceedings before the learned Rent Controller are stayed or adjourned *sine die* until the decision of the learned civil court in the suit instituted by respondent No.2.

9. I have heard the arguments advanced by the learned counsel for the contesting parties, and perused the record with their able assistance.

10. At the very outset, it is pertinent to mention that the petitioner chose not to bring on record the sale deeds through which she claims to have become the owner of Samma Plaza including its rooftop. The perusal of the sale deeds was necessary in order to determine whether respondent No.2 sold her share in the rooftop of Samma Plaza. Hence, the learned Rent Controller was correct in holding that grounds raised by the petitioner in her application under Order VII, Rule 11 C.P.C. "*need recording of evidence and the same can only be decided thereafter".*

11. The impugned order dated 19.12.2015 is an interlocutory order. In the said order, as mentioned above, the learned Rent Controller has observed that the objections raised by the petitioner need recording of evidence, and only thereafter, can a decision be made. The said order dated 19.12.2015 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) explicitly provides that no appeal shall lie from an interlocutory order passed by the Rent Controller. It is perhaps for this reason that the petitioner has instituted a writ petition to challenge the said interlocutory order dated 19.12.2015, passed by the learned Rent Controller.

12. As reference to case law, at this stage, would be apposite:-

(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 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)."***

13. 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.

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

15. 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.

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.*

16. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Rent Controller. Issues in the case have already been framed. The petitioner has been impleaded in the proceedings before the learned Rent Controller and therefore, she can adequately defend her position before the said forum. The impugned order is neither without jurisdiction, nor *mala fide*, void or *coram non judice.*

17. The order dated 19.12.2015 being purely interim 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 19.12.2015, passed by the learned Rent Controller. A discussion on the merits of the case is, therefore, un-necessary.

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

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

Qamar Khan*

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