

*Order Sheet*  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
AT HYDERABAD**

C.P No.S-437 of 2020

*Muhammad Waqas Shaikh v. Vth Rent Controller, Hyderabad and others.*

**22.02.2021**

Mr. Muhammad Nouman Jaffar, Advocate for petitioner.  
Mr. Muhammad Hussain Khan, Advocate for respondent No.2.  
Mr. Wali Muhammad Jamari Assistant A.G. Sindh.

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**ARSHAD HUSSAIN KHAN, J.** - By means of this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 15.09.2020, passed by learned Rent Controller-VI, Hyderabad in Rent Execution Application No.09 / 2020 (Rent Application No.118 of 2018), whereby the Execution Application filed by respondent No.2 was allowed.

2. The facts giving rise to the present constitutional petition are that respondent No.2 / landlord through an agreement dated 13.10.2015 rented out the premises i.e. Bungalow No.128, situated at Block A-3, Street No.9, Bismillah City, Unit No.10, Hyderabad [demised premises], for a period of two years, to the petitioner / tenant on a monthly rental of Rs. 2000/- and on deposit of Rs.7,00,000.00 [Rupees seven hundred thousand only]. Subsequently, respondent No.2 / landlord filed a Rent Application bearing No.118 of 2018 before the Rent Controller and sought eviction of the petitioner / tenant from the demised premises on the ground of bonafide use and default of monthly rentals as well as utility bills. The rent application was contested by the petitioner / tenant by filing written statement. Thereafter, Learned Rent Controller formulated the points of determination and subsequently the parties led evidence in the case. Learned Rent Controller after hearing counsel for the parties, vide his judgment dated 14.12.2019, allowed the rent application. Respondent No.2 / landlord subsequently filed execution application bearing No. 09 of 2020 under Order XXI Rule 11 CPC. The said application was resisted by the petitioner / tenant on the ground that the execution application is not maintainable as the provision of CPC is not applicable in the rent proceedings and the execution application

should have been treated under Section 22 of the Sindh Rented Premises Ordinance 1979, instead under Order XXI Rule 11 CPC. Furthermore, in compliance of the judgment, although the petitioner / tenant paid amount to respondent No.2 / landlord towards the gas bills and up to date monthly rentals however, respondent No.2 / landlord did not return the fixed deposit amount of Rs.7,00,000/- to the petitioner / tenant. The petitioner / tenant also undertook to vacate the demised premises upon receiving the fixed deposit amount. Learned Rent Controller / Executing Court, after hearing the learned counsel for the parties, vide order dated 15.09.2020, [impugned herein] allowed the execution application whereby writ of possession was also issued. The petitioner / tenant being aggrieved, challenged the order dated 15.09.2020 in the instant petition on the ground that all the questions relating to execution, discharge or satisfaction of the order shall be determined by the Controller and not by a separate suit. As such it was the duty of the executing court to decide the objections raised by the petitioner / tenant on the execution application in accordance with law.

3. Upon notice, respondent No.2 / landlord through his counsel contested the present petition.

4. Learned counsel for the petitioner / tenant in his arguments has, *inter alia*, contended that learned Rent Controller has not taken into consideration the material fact that the amount of Rs.7,00,000.00 given to respondent No.2 at time of start of the said tenancy as a fixed deposit was to be returned to the petitioner / tenant by respondent No.2 / landlord before vacation of the rented premises. He further added that the petitioner / tenant is ready to hand over the vacant possession of the rented premises to respondent No.2 / landlord if the deposited amount is returned to him. He has also emphasized that the Rent Controller while deciding the execution application has completely overlooked the scope of Section 22 of Sindh Rented Premises Ordinance 1979. Lastly, prayed for setting aside the impugned order with directions to Learned Rent Controller to decide the questions first and then pass order afresh. In support of his contention, he has relied upon the cases of Mrs. Zarina Khawaja v. Agha Mahboob Shah [PLD 1988 SC 190] and Zahid Iqbal Akhtar, Advocate v. Rehanul Hassan Farooqi [1999 YLR 2282].

5. On the other hand, learned counsel appearing on behalf of respondent No.2 / landlord while supporting the impugned order vehemently opposed the petition as well as the contention of learned

counsel for the petitioner / tenant. It is contended that as per clause-8 of the rent agreement, executed between the landlord and tenant, it was responsibility of the petitioner / tenant to pay all utility bills and in case of failure, such utility amount was to be deducted from the deposited amount. He further contended that since the petitioner failed to clear such utility amount due on him, therefore, he cannot claim refund of the amount so deposited by him in respect of the tenancy of the demised premises. It is also contended that the petitioner / tenant by not challenging the judgment dated 14.12.2019 passed by the learned Rent Controller, infact, has accepted the same and as such he cannot take exception and seek any direction beyond the said judgment/decre. It is also urged that the order impugned in the instant petition is well within the four corners of law and as such the same is not liable to be interfered with by this court under the writ jurisdiction. He lastly prayed for dismissal of the petition in view of the cases of Muhammad Saddiq and another v. Mst. Ruqaya Khanum and others [PLD 2001 Karachi 60] and Khanzada Ainuddin Khan through Legal Heirs and others v. Feroz Khan and others [1992 SCMR 2175].

6. Learned Assistant Advocate General Sindh also acceded that the executing Court cannot go beyond the limits of order or decree as such he also seeks dismissal of the petition.

7. I have considered the submissions of the learned counsel for the parties and have gone through the material placed on the record.

8. From perusal of the record, it transpires that the rent application filed by respondent No.2 / landlord for ejectment of the petitioner from the demised premises was allowed, but Judgment dated 14.12.2019 passed thereon was never challenged by the petitioner / tenant as such the same has attained finality. Relevant portion of the judgment dated 14.12.2019, for the sake of ready reference is reproduced hereunder:

*“In view of the above made discussion, I am of the view that the applicant has remained successful in proving his case, therefore, the instant application under Section 15 S.R.P.O. 1979 is hereby allowed to the extent of the above mentioned prayer clauses A and B of the rent application. The opponent is also directed to pay the further rent amount to the applicant, at the rate of Rs.2000/- per month, till the vacant possession is handed over to the applicant. The opponent is also directed to pay the current dues of Sui-gas charges of the demised premises. The opponent is therefore directed to vacate the demised premises i.e. Bungalow No.128, Block A-3, Street No.9, Bismillah City, Unit No.10, Hyderabad, within the period of (30) days hereof. However, there is no order as to costs.”*

9. Nevertheless, when respondent No.2 filed execution application the petitioner came up, inter alia, with the plea that his fixed deposit amount may be directed to be refunded whereafter he will hand over the physical possession of the demised premises to respondent No.2. It was also the plea of the petitioner that the execution application is not maintainable being filed under the wrong provision of the law. Learned Rent Controller / Executing Court after hearing the counsel of the parties passed the order dated 15.09.2020 (impugned herein) whereby he allowed the execution application of respondent No.2 / landlord. Relevant portion of the order is reproduced hereunder:

*“.....The perusal of the record further reveals that the opponent has objected upon the application in hand on the ground that the orders in the Sindh Rented Premises Ordinance 1979 can only be executed under Section 22 of the Ordinance, and therefore the application is not maintainable. The jurisdiction of this Court is not called into question, however. But, in my humble view, such stance taken by the opponent does not carry any weight, as it is settled law that the heading of an application or for that matter the plaint and or petition was immaterial vis-à-vis the contents and the relief being sought. And as long as the power to hear and decide a matter vested in a Court, mere reference to a wrong provision of law, for invocation of that power was not a bar to the exercise of that power. And all the rules of procedure framed for regulating the proceedings before a Court or Tribunal were meant for advancing the course of justice, therefore, procedural laws and rules could not be used as a means for denying the relief to an aggrieved party on ground of technical non-observance of these rules or procedural laws. And that the Courts had always liberally allowed conversion of proceedings of one kind into another and mis-description in the title of proceedings or mentioning of a wrong provision of law had never been considered fatal to the grant of relief if it was otherwise available under the law to an aggrieved party. And that mentioning of a wrong provision of law in an application would not deprive the Court of the power and jurisdiction, if otherwise the same was available under the law. I place my reliance upon the case-law reported as P L D 2019 Sindh 22 (Messrs Wali Steel Industries PLC V. Messrs Saga Shipping and Trading Corporation LTD. and others).”*

10. Insofar as the contention of learned counsel for the petitioner with regard to maintainability of execution application same being filed under wrong provision of law, is concerned, there is no cavil that mere wrong mentioning of a provision of law, would neither deprive a party from the relief for which it is otherwise entitled to, nor it would deprive the Court of the power and jurisdiction if otherwise the same is available under the law. In this regard reliance can be made on the cases of Pakistan Fisheries Ltd., Karachi and others v. United Bank Ltd. [PLD 1993 SC 109] and Jane Margrete William v. Abdul Hamid Mian [1994 SCMR 1555].

11. As regards the refund of the fixed deposit amount is concerned, since judgment dated 14.12.2019, passed by learned Rent Controller whereby he allowed the ejectment application, is silent in this regard and the petitioner / tenant did not prefer any appeal, it attains finality and as such the petitioner / tenant cannot seek any order of refund of fixed deposit amount from the Executing Court as the same is not part of the decree. It is not the mandate of the Executing Court to go beyond the decree as such the learned Executing Court has rightly declined the request of petitioner for refund of the fixed deposit amount. It may be observed that when the tenant is ejected from the premises without any order of refund of any of his amount lying with the landlord, then the decree has to be executed without supplementing any order for recovery of the same, as the recovery of said amount lying with the landlord either in shape of fixed / security deposit or otherwise cannot be repelled, however, the mechanism and forum may be shifted from Rent Controller to Civil Court, where an aggrieved party may recover the amount by filing a civil suit.

12. It is also well settled that the Executing Court could not extend its jurisdiction to go behind the decree. It could not entertain application which may change and alter terms of decree. Executing Court could neither go behind the decree nor it had jurisdiction to re-determine the liability of any party or reconsider law for such purpose or award a relief not granted in the judgment. A party aggrieved of the decree, could only assail it before appropriate appellate forum only or any other remedy provided by law. Reference in this regard can be made to Province of Punjab through Collector, Bahawalpur v. Ghulam Rasool and others [1990 SCMR 1106], Allah Ditta v. Ahmed Ali Shah and others [2003 SCMR 1202], Irshad Masih and others v. Emmanuel Masih and others [2014 SCMR 1481].

13. In view of the above facts and circumstances, on examination of the impugned order, I did not find any illegality and infirmity in it, which was passed by the Rent Controller under vested jurisdiction. The questions raised by the petitioner beyond the judgment passed in rent application appears to be irrelevant as the Executing Court has to act in accordance with the order or decree passed in the main case do not go beyond it. In the instant case, the decision arrived at in favour of respondent No.2 / landlord was not called in question by the petitioner / tenant, hence, it has attained finality and the Executing Court has rightly acted to satisfy it in the execution proceedings. Learned

counsel for the petitioner / tenant has failed to make out a case of interference in the impugned order. Case law relied upon the by learned counsel for the petitioner are distinguishable from the facts of the present case as such the same are not applicable to the present case.

**14.** In view of the foregoing discussion, I am of the opinion that this petition being devoid of merit is liable to be dismissed. However, the Petitioner, may approach an appropriate forum for recovery of any of his amount, he claims, in accordance with law, if so desires. These are the reasons for my short order dated 22.02.2021 whereby instant petition was dismissed along with all listed applications.

JUDGE

**Dated: 03.03.2021**

**\*Abdullah Channa/PS\***