

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-498 of 2023

Dated: _____ Order with signature of Judge(s)

- 1.For orders on CMA No.3890/2023.
- 2.For orders on CMA No.3891/2023.
- 3.For orders on CMA No.3892/2023.
- 4.For hearing of Main Case.

Dated of Hearing : 25.05.2023.

Petitioner : Abdul Jabbar Soomro through
Mr. Muhammad Asghar, Advocate.

Respondents : Sardar Sher Ali & Others.

ORDER

MUHAMMAD ABDUR RAHMAN, J., This is a Petition that is maintained by the Petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against the Judgment dated 29 April, 2023 passed by the District Judge, Karachi (Central) in First Rent Appeal No. 22 of 2023 which upheld the order dated 10 January 2023 passed by the 1st Senior Civil Judge / Rent Controller, Karachi (Central) in Rent Case No. 368 of 2022, whereby the 1st Senior Civil Judge / Rent Controller, Karachi (Central) had dismissed an application that had been moved under Order 1 Rule 10 read with Section 151 Code of the Civil Procedure, 1908 by the Petitioner.

2. Rent Case No. 368 of 2022 has been instituted by the Respondent No.1 seeking the eviction of Respondents No. 2 and 3 who the Respondent No.1 contends are the tenant of Shop No. A/10/A, Plot No. SP-3, Block-16, F.B. Area Karachi (hereinafter referred to as the "Said Tenement") which are owned by him. The Petitioner maintained an application under Order 1 Rule 10 read with Section 151 of the Code of

Civil Procedure, 1908, in Rent Case No. 368 of 2022 praying that as he was the owner of the Said Tenement, he should be made a party to Rent Case No. 368 of 2022. The application that was moved by the Petitioner was purportedly supported by a copy of a registered General Power of Attorney and a letter from a Market Committee, Karachi appointing him as a licensee of the Said Tenement.

3. The 1st Senior Civil Judge / Rent Controller, Karachi (Central) while dismissing the application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 was pleased to hold that as the jurisdiction of a Rent Controller under the Sindh Rented Premises Ordinance, 1979, did not include determining title to immoveable properties, the application was not maintainable and dismissed the same.

4. Being aggrieved by the order passed by the 1st Senior Civil Judge / Rent Controller, Karachi (Central) the Petitioner impugned the order dated 10 January 2023 passed by the 1st Senior Civil Judge / Rent Controller Karachi (Central) in Rent Case No. 368 of 2022 before the District Judge, Karachi (Central). During the pendency of the appeal the Respondent No.1 filed an application clause (b) of Section 20 of the Sindh Rented Premises Ordinance, 1979 calling for the petitioner to produce his original title document and which application was granted with the consent of the petitioner on 25 March 2023 and a date for production of the title document was fixed on 29 April 2023. On 29 April 2023, the Advocate for the Petitioner appeared and stated that the Petitioner was not willing to produce the original of his title documents in court unless his application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 was granted. On this ground the learned District Judge Karachi (Central) dismissed First Rent Appeal No. 22 of 2023 and while noting that the General Power of Attorney that was being relied upon by the petitioner on the face of it contained certain interpolations whereby the insertion of the number of the

shop “A-10” had been inserted into that document, proceeded to issue notice under Section 193 of the Pakistan Penal Code, 1860 to the Petitioner.

5. Learned counsel for the Petitioner appeared before the Court and stated that the District Judge Karachi (Central) in its order dated 29 May 2023 passed in First Rent Appeal No. 22 of 2023 and even the 1st Senior Civil Judge and Rent Controller Central Karachi in the order dated 10 January 2023 passed in Rent Case No. 368 of 2022 had erred in dismissing the application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 and which orders were decided incorrectly and were liable to be set aside. Learned counsel for the Petitioner did not rely on any case law during his arguments.

6. I have heard the learned Counsel for the Petitioner and perused the record. The Supreme Court of Pakistan in **Afzal Ahmad Qureshi vs. Mursaleen**¹ has held that:²

“ ... In our considered opinion the evidence as led by the petitioner and discussed by the learned appellate Court cannot be considered sufficient to establish title or ownership of the property in dispute. In such view of the matter it has rightly been held that the question of title/ownership be got determined prior to seeking ejection of the respondent. In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller.”

7. I am quite clear that the Petitioner, in an attempt to non-suit the Respondent No. 1, on a claim that he is the owner of the Said Tenement must produce some documentation to confirm his title. The production of a copy of a Power of Attorney with interpolations on it and a letter for a

¹ 2001 SCMR 1434

² *Ibid* at pg. 1436

market committee, which are themselves contradictory documents of title, do not even remotely confirm any apparent title to the Said Tenement in favour of the Petitioner. While there may be an argument that a registered Power of Attorney coupled with payment of consideration may be considered a title document,³ in this particular case the Petitioner has not alleged that he has paid any consideration for the purchase of the Said Tenement nor has he produced the original power of attorney despite an order be passed to do so under Clause (b) of Section 20 of the Sindh Rented Premises Ordinance, 1979 to which the Petitioner had consented. Similarly, a letter from a Market Committee can in no manner be considered to be a title document for the simple reason that the Market Committee is prima facie of the lessor of the land. Clearly neither the the District Judge, Karachi (Central) in First Rent Appeal No. 22 of 2023 nor the 1st Senior Civil Judge /Rent Controller, Karachi (Central) in Rent Case No. 368 of 2022 can carry out an inquiry into such intricate questions of title to the Said Tenement to confirm such purported rights of the Petitioner. I am clear that before the District Judge Karachi (Central) and the 1st Senior Civil Judge / Rent Controller Karachi (Central) have correctly dismissed the Application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 as not being within the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979.

8. More importantly the conduct of the Petitioner in reneging from his commitment to produce the original title document before the District Judge, Karachi (Central) in First Rent Appeal No. 22 of 2023 casts doubt on the veracity of the Petitioners intentions and leaving this court with no doubt that the Application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 that had been filed by the Petitioner

³ See ***Muhammad Aslam vs. Absar Fatima*** 2011 CLC 1521 at pg. 1525; ***Fayaz Ul Haq vs. Ghulam Nabi (Deceased)*** 2022 MLD 688 at pg. 694

was motivated on his part to delay the proceedings in Rent Case No. 368 of 2022 and which entitled the District Judge Karachi (Central) in First Rent Appeal No. 22 of 2023 to dismiss FRA No. 22 of 2023. Similarly, the Petitioner's conduct will amount to having come to this court with unclean hands and will disentitle him to seek relief from this court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 rendering this Petition as also not being maintainable before this Court.

9. I therefore find no infirmity or illegality in either the Judgment dated 29 April 2023 passed by the District Judge, Karachi (Central) in First Rent Appeal No. 22 of 2023 or in the order dated 10 January 2023 passed by the 1st Senior Civil Judge /Rent Controller, Karachi (Central) in Rent Case No. 368 of 2022 who have correctly dismissed the Application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908. In addition, the conduct of the Petitioner indicates that his actions were in fact motivated rendering this Petition liable to be dismissed on that ground alone. On account of the foregoing, this Petition on 25 May 2023 was dismissed by me with costs of Rs. 10,000 to be deposited by the Petitioner with the Clinic of the High Court, and these are the reasons for that order.

Dated: 27 June 2023.

JUDGE

Nasir P.S.

