

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.S-367 of 2021

Abdul Aziz Brohi through his L.Rs Petitioner

Vs.

M/s Dad Steel Mill & others Respondents

Mr. Abbas Rasheed Rizvi a/w Shoib Khatyan, advocate for petitioner

Mr. Mustafa Lakhani a/w Shahzad Bashir, advocate for respondent

No.1.

Mr. Hafeezullah, advocate for respondent No.5/SITE

25.09.2024.

ORDER

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MUHAMMAD IQBAL KALHORO J: This petition questions an order passed by learned VI-Additional District Judge, Karachi West dated 21.04.2021 in FRA No.43/2021, whereby the learned Judge, treating said appeal as not maintainable and *coram non judcie*, has dismissed the same. He has further advised the parties to approach the court of competent jurisdiction for redressal of their grievance. This appeal was filed against an order passed by learned Rent Controller on an application in rent execution No.08/2018 in rent case No.841/1985, u/s 47 r/w section 151 CPC and u/s 20 of Sindh Rented Premises Ordinance, 1979 (Ordinance, 1979) for determining question of legal character of intervener/respondent No.1 to take possession of the demised premises. This application was filed when this court while dismissing C.P.No.S-757/2020 filed by petitioner had upheld an order dated 28.11.2000 in FRA No.408/1998 setting aside an order passed against purported tenant in rent case No.841/1985 filed by the petitioner.

2. The case history shows that initially aforesaid rent case was filed by predecessor in interest of the petitioners, who happened to be their father namely Abdul Aziz Brohi in respect of a plot admeasuring 4161 Sq. Yds situated in SITE opposite Haroonabad, Karachi. This rent case was allowed against which FRA No.408/1998 was filed by the purported tenant which was allowed and the rent case was dismissed, against which C.P.No.S-757/2020 was filed by petitioner which was dismissed.

3. It appears that meanwhile writ of possession dated 25.02.2019 was issued in respect of demised premises. When the court official went to take possession of the demised premises, he found respondent No.1 in occupation thereof and not the purported tenant. Yet writ of possession was executed and

possession was taken over and given to the petitioner. Subsequent to which, respondent No.1 appeared before the Rent Controller and filed three applications, one u/s 12(2) CPC, other u/s 1 rule 10 CPC pleading to be made party in the case and third one for stay of execution proceedings. However, all three applications were dismissed which were vainly challenged in FRA. Ultimately all these applications landed before this court in C.P.No.S-1270/2019.

4. This court vide order dated 08.09.2020 remanded all three applications to the Rent Controller for a decision afresh within a period of one month. After the matter was remanded, respondent No.1, who was intervener in terms of application u/o 1 rule 10 CPC filed an application u/s 144 CPC seeking restoration of possession. This application was decided by the Rent Controller vide order dated 06.10.2020. He has held a lengthy discussion tracing every aspect of the case and the fact that the order in rent case No.841/1985 on the basis of which execution application was filed, had ultimately been dismissed by this court in constitution petition. It has been further observed by the Rent Controller that writ of possession was issued and the possession was handed over to the petitioners in absence of any ejectment order in the field as subject case was finally dismissed by this court. Finally, it is held in the order that the execution proceedings in compliance of which possession was handed over to the petitioner were void *abinitio* and therefore, intervener/respondent No.1 was entitled to restoration of possession of the demised premises. In the end, Rent Controller has ordered that the possession of intervener/respondent No.1 be restored and while doing so, he issued writ of possession through a bailiff.

5. It appears that this order was challenged by the petitioners in C.P.No.S-757/2020 which was dismissed by this court vide order dated 10.12.2020 in the terms whereby while declining request of the petitioner, this court has observed that executing court shall ensure that the possession is given to the party as per legal character. It was in that context, the petitioner filed instant application u/s 47 r/w section 151 CPC and 21 of Ordinance, 1979, which was rejected by order dated 10.04.2021 and when challenged in appeal has been dismissed by the impugned order.

6. Learned counsel for petitioner has argued that Rent Controller while deciding the rent case has determined legal character of the party which jurisdiction is not vested with him. However, it has been admitted that meanwhile the petitioners have filed a civil suit before this court seeking

declaration, segregation/measurement, modification of lease deed, mandatory and permanent injunction in which very question of determination of legal right and title of the parties over the subject plot is pending. Learned counsel in view of the fact that the rent case was ultimately dismissed upto this court, has failed to justify possession of the demised premises in favour of the petitioners in terms of execution proceedings. In fact, there was no rent order which needed execution and could justify issuance of writ of possession and handing over possession of demised premises to the petitioners. The Rent Controller upon gaining knowledge of such fact has only rectified the error and restored possession of the demised premises to respondent No.1 from which it was taken away in execution proceedings. No exception can be taken to such an act of the Rent Controller and, therefore, neither application u/s 47 (2) CPC was maintainable nor it could be allowed. Not the least when a civil suit between the parties over the same issue is pending before this court. This being the position, I do not find any merit in the instant petition and dismiss it alongwith pending applications.

The petition stands disposed of.

These are the reasons of my short order passed today in court, whereby this petition was dismissed alongwith pending applications.

Judge

A.K.