THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. D – 87 of 2024
[Sheikh Muhammad Afzal v. Muhammad Asim & another]

Petitioner	:	Sheikh Muhammad Afzal son of Sheikh Muhammad Yameen through Mr. Ziauddin Qureshi, Advocate.
Respondent 1	:	Muhammad Asif son of Abdul Majeed Siddiqui, through Mr. Usman Farooq, Advocate.
Respondent 2	:	Nemo.
Date of hearing	:	05-11-2026
Date of decision	:	05-11-2026

O R D E R

Zulfiqar Ali Sangi J.– Through the instant constitutional petition, the petitioner has called into question the legality and propriety of the order dated 13.01.2024 passed by the learned XIIth Additional District Judge/Model Civil Appellate Court, Karachi South, in First Rent Appeal No.330 of 2023, whereby the appeal preferred by the petitioner was dismissed and the order dated 03.11.2023 passed by the learned Vth Senior Civil Judge/Rent Controller, Karachi South, in Rent Execution No.33 of 2012, was maintained. Through the said order, the learned Executing Court had allowed the application filed by respondent No.1 under Section 144, C.P.C., and directed restitution of possession of residential premises bearing No. G-3, Plot No.SR-II/III-2, Serai Quarters, near Nigar Hotel, Haqqani Chowk, Karachi.

2. Briefly stated, the facts giving rise to the instant petition are that the father of the petitioner, namely Sheikh Muhammad Yamin, had instituted Rent Case No.4629 of 1980 against Zafar Ahmed, in respect of Cabin/Shop No. G-4, situated at Plot No.SR-II/III-2, Serai Quarters, near Nigar Hotel, Haqqani Chowk, Karachi, on the grounds of default in payment of rent. The said rent application was allowed ex-parte vide order dated 16.12.1982. Subsequently, the

petitioner, being one of the legal heirs of the original landlord, initiated Rent Execution No.33 of 2013 for execution of the said order. An application under Section 12(2), C.P.C., filed by the judgment-debtor was dismissed vide order dated 24.11.2020, whereafter the execution application was allowed vide order dated 07.12.2020 and a writ of possession was issued. In consequence thereof, possession of the premises was delivered to the petitioner through the Court Bailiff.

3. Subsequently, respondent No.1, Muhammad Asim, approached the Executing Court through an application under Section 144, C.P.C., contending that the execution proceedings were confined to Cabin/Shop No.G-4, whereas, by misrepresentation and misidentification of the property, the petitioner had obtained possession of his separate residential premises bearing No.G-3, situated in the same building, measuring 53 square yards. It was further contended that respondent No.1 had lawfully acquired the said premises through a registered conveyance deed dated 08.04.2021 and that the property in question was entirely distinct from the premises forming the subject matter of the original rent proceedings.

4. The petitioner contested the said application, maintaining that possession had been obtained strictly in accordance with the orders passed by the competent Court through its Bailiff. He further asserted that he was the lawful owner of premises bearing Nos.G-1 and G-4 by virtue of the relevant ownership/transfer documents and that respondent No.1 had no lawful concern with the property in dispute. It was also contended that respondent No.1 had instituted separate civil proceedings concerning the property and, therefore, the application under Section 144, C.P.C., was not maintainable.

5. The learned Executing Court, after considering the respective contentions and obtaining a report from the Assistant Commissioner, Arambagh, Karachi South, allowed the application vide order dated 03.11.2023 and directed issuance of a writ of possession for restoration of the premises bearing No. G-3 to respondent No.1. The petitioner, being dissatisfied, preferred First Rent Appeal No.330 of 2023 under Section 21 of the Sindh Rented

Premises Ordinance, 1979. The learned Appellate Court, after examining the record and hearing the parties, dismissed the appeal vide order dated 13.01.2024, thereby maintaining the order passed by the learned Executing Court. Hence, the instant constitutional petition.

6. Learned counsel for the petitioner has contended that both the Courts below have failed to appreciate the actual controversy and the documentary material available on record. He submits that the petitioner lawfully obtained possession of Shop No. G-4 in execution of the order passed in Rent Case No.4629 of 1980, whereas possession of premises No. G-1 was obtained independently through Rent Case No.949 of 2015 and its execution proceedings. According to learned counsel, respondent No.1 has deliberately confused the identity of two separate properties in order to obtain possession of premises belonging to the petitioner. He further contends that the petitioner holds valid ownership documents in respect of premises Nos.G-1 and G-4, whereas respondent No.1 has failed to establish any lawful right or interest in the property claimed by him. It is further argued that the application under Section 144, C.P.C., was not maintainable, particularly when the original eviction order had neither been varied nor reversed. Learned counsel has also questioned the manner in which the order dated 03.11.2023 was passed, contending that the matter had been adjourned to 17.11.2023, yet the order was passed on 03.11.2023 without affording a proper opportunity of hearing. He, therefore, submits that the concurrent orders passed by the Courts below are contrary to law and the material available on record and are liable to be set aside.

7. Conversely, learned counsel for respondent No.1 has supported the impugned orders and contended that the original rent proceedings were exclusively concerned with Cabin/Shop No. G-4, whereas the petitioner, by misguiding the Court Bailiff, obtained possession of the separate residential premises bearing No. G-3, belonging to respondent No.1. He submits that the report furnished by the Assistant Commissioner, Arambagh, Karachi South, categorically establishes that premises Nos.G-3 and G-4 are separate properties and that the eviction order related only to premises No. G-4. He further submits that respondent No.1 has

produced the relevant chain of title documents establishing his lawful ownership of premises No. G-3 and that the petitioner has no lawful entitlement to retain possession thereof under the cover of an eviction order passed in respect of another property. Learned counsel has, therefore, prayed for dismissal of the instant petition.

8. I have heard learned counsel for the parties and examined the available material, including the impugned orders and the record of the proceedings before the Courts below.

9. The controversy requiring determination is whether the petitioner, in execution of the eviction order passed in Rent Case No.4629 of 1980, was entitled to obtain possession of premises bearing No.G-3, or whether the said execution was confined to Cabin/Shop No.G-4, and whether the Courts below committed any jurisdictional defect or material illegality in directing restoration of possession of premises No.G-3 to respondent No.1.

10. Perusal of the record reflects that the original Rent Case No.4629 of 1980 was instituted by the father of the petitioner in respect of Cabin/Shop No. G-4, situated at Plot No.SR-II/III-2, Serai Quarters, near Nigar Hotel, Haqqani Chowk, Karachi. The eviction order dated 16.12.1982 was also passed in respect of the said premises. Thus, the subject matter of the original eviction proceedings was confined to premises No. G-4 and did not extend to any other property situated in the same building. The learned Appellate Court, while examining the controversy, has undertaken an appraisal of the relevant documentary material, including the report submitted by the Assistant Commissioner, Arambagh, Karachi South, bearing No.AC/ABSK/03/1354/2023 dated 04.05.2023. The said report, submitted pursuant to the direction of the Executing Court, categorically records that premises Nos.G-3 and G-4 are two separate properties; that G-4 is a cabin, whereas G-3 is a residential premises; and that although the Court order related to eviction of G-4, possession of both G-3 and G-4 had been taken and handed over to the decree-holder. The report further clarifies that, in terms of the original Court order, only premises No. G-4 were liable to be evicted and handed over.

11. The above report is of considerable significance, as it independently corroborates the contention of respondent No.1 regarding the distinct identity and nature of the two premises. Furthermore, the learned Appellate Court has examined the chain of title documents produced by respondent No.1, which demonstrate that premises No. G-3 originally stood in the name of Riaz Ahmed, whose widow, Askari Begum, obtained a letter of administration in respect thereof. The property was subsequently transferred through a registered sale deed dated 27.07.1967 in favour of Sheikh Rehman Elahi, followed by a registered declaration of gift dated 21.09.1981 in favour of Mst. Hameeda Khatoon. Thereafter, the said premises were transferred to respondent No.1 through a registered conveyance deed dated 08.04.2021. On the other hand, the ownership documents relied upon by the petitioner pertain to premises Nos.G-1 and G-4 and do not, by themselves, establish any right or entitlement in respect of the separate premises bearing No.G-3. The distinction between the properties is, therefore, not merely a matter of nomenclature or identification but is supported by the relevant documentary record and the report of the competent revenue authority.

12. The principal contention of learned counsel for the petitioner that the original eviction order has never been reversed or varied and, consequently, the provisions of Section 144, C.P.C., could not have been invoked, also requires consideration. It is correct that the ordinary doctrine of restitution contemplated under Section 144, C.P.C., generally operates where a decree or order is varied or reversed and the Court is required to restore the parties to the position they would have occupied but for such decree or order. However, the controversy in the present case is distinguishable. Respondent No.1 was not seeking restitution of possession of the very premises which formed the subject matter of the original eviction order; rather, his specific grievance was that possession of an entirely separate property, which was never the subject matter of the rent proceedings, had been delivered to the petitioner during execution of the order relating to premises No. G-4.

13. In such circumstances, the substance of the controversy was required to be examined with reference to the principles governing execution proceedings, particularly the provisions of Order XXI,

Rules 100 and 101, C.P.C. Rule 101 provides for adjudication of questions relating to right, title or interest in the property arising between the parties to proceedings under the relevant preceding rules, whereas the object of the said provisions is to ensure that a person who is not bound by the decree or order is not deprived of possession of his property through an execution proceeding to which such property was not subject.

14. The learned Appellate Court has rightly observed that the Executing Court, while exercising its jurisdiction under Section 22 of the Sindh Rented Premises Ordinance, 1979, was competent to examine the grievance arising out of the execution proceedings and to adopt an appropriate procedure in order to prevent an unlawful deprivation of possession. Mere reference to an incorrect or inapplicable provision of law would not, by itself, invalidate an order where the Court otherwise possesses the requisite jurisdiction to grant the relief warranted by the facts and circumstances of the case. It is also significant that the petitioner himself relied upon a separate civil suit, being Suit No.66 of 2022, before the Executing Court. However, as noticed by the learned Executing Court, the said suit was instituted for declaration and permanent injunction and was not a suit seeking recovery of possession. The mere pendency or institution of such proceedings, therefore, did not, by itself, disentitle respondent No.1 from seeking appropriate relief against dispossession allegedly effected through execution proceedings concerning a different property.

15. The contention of learned counsel for the petitioner that the petitioner had acquired possession through the Court Bailiff and, therefore, such possession could not be questioned, is equally misconceived. The process of execution is confined to the property identified in the decree or executable order. An executing Court cannot permit delivery of possession of property which does not form part of the subject matter of the order under execution. Any possession delivered beyond the scope of the executable order cannot be justified merely on the ground that the same was obtained through a Court Bailiff.

16. As regards the objection concerning the alleged denial of an opportunity of hearing, the record of the proceedings, as discussed

by the learned Courts below, reflects that notice of the application under Section 144, C.P.C., was issued to the petitioner and the parties were afforded an opportunity to advance their respective submissions. The Executing Court also called for a report from the Assistant Commissioner in order to ascertain the actual position at the spot. The petitioner has not been able to demonstrate, through any cogent material, that the proceedings were conducted in a manner which resulted in any material prejudice to his defence or otherwise vitiated the impugned order. It is a settled principle that the constitutional jurisdiction under Article 199 of the Constitution is not intended to function as another forum of appeal for reappraisal of evidence or substitution of one possible view for another. Interference with concurrent findings of the Courts below is warranted only where such findings are shown to be perverse, arbitrary, based upon misreading or non-reading of material evidence, or suffer from a patent jurisdictional defect or material illegality. In the present case, the petitioner has failed to point out any such infirmity in the impugned orders.

17. The learned Appellate Court has considered the respective contentions of the parties, examined the relevant documentary evidence, particularly the report of the Assistant Commissioner and the title documents produced by respondent No.1, and recorded a finding that premises Nos.G-3 and G-4 are separate properties and that the original eviction order related exclusively to premises No. G-4. The said findings are supported by the material available on record and cannot be termed arbitrary, perverse or the result of misreading or non-reading of evidence.

18. For the foregoing reasons, I am of the considered view that the petitioner has failed to establish any jurisdictional defect, material illegality or irregularity in the orders passed by the learned Courts below warranting interference by this Court in its constitutional jurisdiction. Consequently, the instant constitutional petition, being devoid of merit, is **dismissed** along with pending applications, if any.

JUDGE