

Stereo HCJDA-38
JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.81565/2022

Ali Hassan, etc.

Versus

Major (Retired) Masood Saeed Khan, etc.

JUDGMENT

Date of Hearing:	09.05.2023
Petitioners by:	Mr. Muhammad Nawaz Hashmi, Advocate.
Respondent No.1 by:	Mr. Ameer Hamza Khan Balouch, Advocate.
Respondent No.2 by:	Mr. Sakhawat Ali, Advocate.
Research Assistance by:	Ms. Sanam Aziz Bhatti, Civil Judge/ Research Officer, Lahore High Court, Lahore

Anwaar Hussain, J:- Through the present petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenge has been laid to the judgment dated 01.12.2022, passed by learned Additional District Judge, *Ferozwala* by virtue of which the order dated 26.10.2022 passed by learned Rent Tribunal, *Ferozwala*, has been set aside and the application of respondent No.2, under Order I Rule 10 of the Code of Civil Procedure, 1908 (“**the CPC**”) for impleadment as a respondent, in the eviction petition filed by the petitioners, has been accepted.

2. Learned counsel for the petitioners submits that the appeal, preferred by respondent No.2, against order dated 26.10.2022, was not competent in terms of Section 28 of the Punjab Rented Premises Act, 2009 (“**the Act**”) inasmuch as the said order was interlocutory in nature and no appeal can be preferred against an interim order passed in the eviction proceedings. Conversely, learned counsel for respondent No.2

submits that the petitioners are nephews of respondent No.2 and the rented premises is part of the joint property, which the predecessor-in-interest of the petitioners and respondent No.2 inherited and respondent No.1 was admittedly inducted as tenant by respondent No.2, therefore, respondent No.2 was necessary and proper party. Adds that the order of the learned Rent Tribunal dated 26.10.2022 dismissing the application of respondent No.2, by all means, was a final order determining the rights of said respondent and, hence, appeal was maintainable in terms of Section 28 of the Act. Learned counsel for respondent No.1 has adopted the arguments of learned counsel for respondent No.2 and averred that respondent No.1 has handed over the vacant possession of the rented premises to respondent No.2.

3. Arguments heard. Record perused.

4. The legal issue involved in the petition is to opine whether order dated 26.10.2022, dismissing the application filed by respondent No.2 under Order I Rule 10 of the CPC, passed by the learned Rent Tribunal was final order under the Act and the appeal was maintainable or not before the learned Appellate Court below.

5. Section 2(b) of the Act provides definition of the term 'final order' whereas Section 28 confers the right of appeal on the aggrieved party against the final order only. Section 2(b) reads as under:

“2. **Definitions.**— In this Act:

(a)

(b) “final order” means a final order passed by a Rent Tribunal *culminating the proceedings* including an order in respect of adjustment of *pagri*, advance rent, security, arrears of rent, compensation or costs but shall not include an order passed in an execution proceeding;”

(Emphasis supplied)

Whereas Section 28 of the Act reads as under:

“**28. Appeal.**— (1) A person aggrieved by a final order may, within thirty days, prefer an appeal in writing to the District Judge of the district.

(2) No appeal shall lie against an interlocutory order passed by a Rent Tribunal.”

(Emphasis supplied)

The learned Appellate Court below while examining the interplay of both the above-quoted provisions, relied upon case reported as “Tariq Siddique v. Additional Rent Controller and others (2018 YLR 313) and held that when application under Order I Rule 10 of the CPC, filed by respondent No.2, was dismissed by the learned Rent Tribunal, the proceedings to the extent of respondent No.2 have been culminated, therefore, the order of dismissal of said application was final, hence, the appeal was competent under the law. Learned counsel for the petitioners laid a lot of emphasis on the point that the learned Appellate Court below has erred in placing reliance on case of Tariq Siddique supra as the judgment thereof was rendered by this Court in exercise of its constitutional jurisdiction which in itself implies that appeal is not available against the order of the Rent Tribunal where an application under Order I Rule 10 of the CPC is decided, and hence, recourse to constitutional jurisdiction of this Court is the appropriate remedy and the learned Appellate Court below has misconstrued the said judgment of this Court, by entertaining the appeal under Section 28 of the Act. He argued that in fact in case reported as Tariq Siddique supra, it has been clearly held that the order dismissing an application under I Rule 10 of the CPC is an interlocutory order. The argument of learned counsel for the petitioners is misconceived inasmuch as in case of Tariq Siddique supra, primarily the constitutional petition was allowed by setting aside the order of the Rent Tribunal on the ground that the application under Order I Rule 10 of the CPC had been allowed on the basis of an agreement to sell and such an agreement does not confer any title. No appeal in that case had been filed and the constitutional jurisdiction was invoked. Moreover, the question whether order dismissing application under Order I Rule 10 of the CPC is a ‘final order’ for the purposes of Section 28 of the Act or not did not come directly under adjudication in case of Tariq Siddique supra as the

aggrieved party therein did not approach the learned Appellate Court below in the said case. The exercise of constitutional jurisdiction in the said case has not been objected to by learned counsel for the petitioners, however, he asserts that the recourse to the appellate jurisdiction was not appropriate course of action as the order dismissing application under Order I Rule 10 of the CPC was not 'final order' as defined under the Act. Therefore, it is imperative to examine the meaning and scope of the term 'final order' as contemplated under the Act.

6. The legislature has used the words 'means' as well as 'including' while defining the term 'final order' under Section 2(b). The first part defining the term 'final order' uses the words 'means' followed by the expression 'culminating the proceedings' whereas the second part uses the word 'including'. The first part provides the principle and test to determine what is 'final order' and perusal of the definition indicates that any order which culminates and concludes the proceedings is a 'final order'. The second part lists down some of the matters such as adjustment of *pagri*, advance rent, security, arrears of rent, compensation or costs which when dealt with by the learned Rent Tribunal also are in the nature of the final order(s) or part thereof. No doubt that it is accepted canon of interpretation that in the definition or interpretation clause in a Statute, the word 'means' is employed to restrict the meaning whereas the word 'includes' is used to widen the meanings of the term so defined. A bare perusal of the definition 'final order' under Section 2(b) indicates that the legislature intended to widen the scope of the term 'final order' by use of the word 'including' so as to ensure that the learned Tribunal while deciding the ejectment petition also adjudicate the issues, if any, related to *pagri*, advance rent, security, arrears of rent, compensation or costs so that the ejectment proceedings under the Act, when culminate, clearly settle these issues between a landlord and a tenant. Here it is imperative to analyse the meaning of the term 'culminating the proceedings' used in Section 2(b) of the Act. According to "Webster's Encyclopaedic Unabridged

Dictionary of the English Language”, the term ‘**culminate**’ means *to terminate at the highest point meaning thereby to have result or be the final result of a process*. The term ‘**proceeding**’ has not been explicitly defined under the Act. It is *a noun and often pluralized as proceedings and is used in legal parlance to show that something is happening, or moving forward referring to all methods of invoking the jurisdiction of a Court/Tribunal, and as per “P Ramanatha Aiyar’s, Advanced Law Lexicon-The Encyclopaedic Law Dictionary, 4th Edition, Volume 3”, the term ‘proceedings’ includes any suit, appeal, or application and in general acceptance, a proceeding is an act which is done by the authority or direction of the Court, express or implied, and act necessary to be done in order to attain a given end. It may be used and it is often used to express the specific steps taken in the course of suit or appeal.* The term proceeding(s) has been also used in Section 24 of the CPC and defined in a non-exhaustive manner to include not only the suit but the execution proceedings as well so as to include within its ambit all matters coming up for adjudication.

7. Having analyzed the words ‘culminating the proceedings’, it is pertinent to observe that when an ejectment petitioner (in the instant case, the petitioners) files an eviction petition against another person/tenant (in the instant case, respondent No.1), proceedings are initiated between them under the Act, however, within these main (ejectment) proceedings, when a third person (in the instant case respondent No.2) approaches the Rent Tribunal with an application under Order I Rule 10 of the CPC, another set of proceedings commence as between the said applicant and the ejectment petitioner as well as the tenant inasmuch as the term ‘proceedings’ is a general word and, as analysed hereinabove, not limited to the proceedings in the main ejectment petition but to include within its ambit all matters coming up for adjudication. Therefore, the term ‘final order culminating proceedings’, under Section 2(b) of the Act viz. the ejectment petitioner and the applicant of the application under Order I Rule 10 of the CPC, means the order by virtue of which the said

application is decided, thus, culminating the proceedings initiated by an applicant to become a party by filing an application under Order I Rule 10 of the CPC as for all practical purposes, climax or point of highest development in such proceedings comes when such application is dismissed and the applicant is not allowed to be part of the main proceedings before the learned Rent Tribunal. Case reported as “Muhammad Mobin Siddiqui v. Mst. Shahzadi Begum and 2 others” (1982 SCMR 233) can be referred wherein, the landlady, who was the respondent before the Supreme Court of Pakistan, filed an ejectment petition against one Muhammad Abdul Alam Khan and the petitioner before the Supreme Court, namely, Muhammad Mobin Siddiqui, filed an application under Order I Rule 10 of the CPC to become party as a tenant that was allowed. However, the landlady denied having inducted the said Muhammad Mobin Siddiqui as tenant, and hence, issue to the extent of existence of relationship of landlord and tenant was decided against Muhammad Mobin Siddiqui but no appeal was preferred against the same whereas the matter proceeded against Muhammad Abdul Alam Khan who never contested the case and eviction order was passed. When Muhammad Mobin Siddiqui preferred an appeal against the eviction order that was dismissed by the Additional District Judge concerned and the constitutional petition against the findings also met with the same fate, the Supreme Court of Pakistan in this factual backdrop, held as under:

“6. The learned counsel strenuously urged on behalf of Mobin Siddiqui, petitioner, that he was in fact the tenant of Mst. Shahzadi Begum with respect to the shop in question. He, however, admitted that he had not filed an appeal against the order of the Rent Controller dated 31-5-1978 holding that he was not her tenant. He explained that the petitioner did not file an appeal against it since it was interlocutory order, and waited till the final decision of the ejectment application by the learned Rent Controller which was given vide his order dated 19-9-1978.

7. This argument has no force because after the decision of the preliminary issue holding that Mobin Siddiqui was not a tenant under Mst. Shahzadi Begum, he was no longer a party to the case. If he, at all, wished to contest the matter

“further, he should have filed an appeal against the aforementioned order of the Rent Controller dated 31-5-1978 because as far as he was concerned that was the final order in this case. Not having done so he was not entitled now to file an appeal against the order of the ejectment before the Additional District Judge and the High Court, as he was not a party to the case in which that order was passed.”

(Emphasis supplied)

Dealing with somewhat similar situation where the application under Order I Rule 10 of the CPC was dismissed by the learned Rent Controller, in case reported as “Syed Sarfaraz Ali v. Shahjehan Begum and another” (1996 CLC 1034), Sindh High Court while placing reliance on the ratio laid down in case of Muhammad Mobin Siddiqui supra, held as under:

“10. In respect of the first issue there appears to be little doubt after the decision of the Supreme Court in Muhammad Mobin Siddiqui v. Mst. Shahzadi Begum and 2 others, (1982 SCMR 233) that an order passed by a Rent Controller rejecting an application for impleadment under Order I, Rule 10 of the C.P.C is appealable, inasmuch as that, the same order amount to a final order and cannot be termed as interlocutory. This decision of the Supreme Court is well-reasoned since such an order amounts to a final adjudication as regards the intervenor as to whether he is or is not entitled to participate in proceedings”

(Emphasis supplied)

8. Keeping in view the above referred analysis, this Court is of the opinion that had the impugned order been passed on the application of respondent No.1 or the petitioners and then such an application had been dismissed, it would have left a room for the petitioners and respondent No.1 to have an opportunity to wait for the final outcome of the eviction proceedings and then prefer an appeal whereas in instant case application under Order I Rule 10 of the CPC had been filed by a third party (respondent No.2), who, on the basis of certain material facts/documents, seeks permission of becoming party, in the ejectment petition. If such third party is non-suited and his application is dismissed, proceedings against him have certainly been culminated

before the learned Rent Tribunal. Denial to such intervener to be impleaded as party would either prejudice his right or open up multiplicity of litigation once the eviction petition is ultimately decided, which would bring about either abuse of process of law or cause injustice. Therefore, this Court is of the opinion that order dismissing the application of third parties under Order I, Rule 10 of the CPC, is a final order in terms of Section 2(b) of the Act and the appeal of respondent No.2 was maintainable in terms of Section 28 of the Act and the impugned order passed by the learned Appellate Court below does not suffer from any infirmity or jurisdictional error.

9. Having held that the appeal of respondent No.2 was competent, it will be in fitness of things to examine whether the application of the said respondent under Order I Rule 10, of the CPC had merit. The learned Appellate Court below has examined the controversy and has put forth convincing reasons. Operative part of the impugned order is reproduced hereunder:

“7.....his impleadment in the ejectment petition prima-facie seems necessary as the initial lease deed on the basis of which the respondents No.1 & 2/ejectment petitioners want to eject the respondent No.3 Major Masood Saeed Khan and appellant Aman Ullah was executed and registered 'between the appellant Aman Ullah and respondent No.3 Major Masood Saeed Khan, hence his impleadment is necessary to meet the fate of ejectment petition because once the respondent No.3 is being treated as the tenant of respondents No.1 & 2 on the basis of lease deed dated 17.03.2007, albeit, stood cancelled by the learned Civil Court through this judgment and decree dated 24.07.2015, then why the present appellant who was shown to have been the landlord in that lease deed can (*sic*) be treated as party to the present ejectment petition, in which the present respondents No.1 & 2 want to step in as the ejectment petitioners. Besides this, there is nothing on record from which it could be inferred that there exists any legal partition amongst all the co-owners of the property.”

(Emphasis supplied)

This Court finds that it would be unjustified to refuse respondent No.2 to be impleaded as party, as the lease deed with respect to the rented

premises, on the strength of which the ejectment petition was filed by the petitioners, was actually executed by him and respondent No.1/tenant and admittedly, the possession is with respondent No.2.

10. In view of the above discussion, this Court is of the opinion that the learned Appellate Court below has correctly appreciated the legal and factual aspects of the matter. Learned counsel for the petitioners could not point out any mis-appreciation of record, jurisdictional defect or procedural impropriety in the findings of the learned Appellate Court below, hence, this petition is **dismissed**. No order as to costs.

11. Before parting with, valuable assistance of Ms. Sanam Aziz Bhatti, Civil Judge/Research Officer, Lahore High Court, Lahore is appreciated.

(Anwaar Hussain)
Judge

Approved for reporting

Judge