ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-[redacted] of 2023

Order with signature of Judge(s)

For hearing of main case.

20.07.2023

M/s. [redacted] Amjad Ali Shar,
Advocates for the Petitioner a/w petitioner.
Mr. Ghulam Mustafa, Advocate for Respondent No.1.

*****

Learned counsel for the petitioner points out that the impugned orders were passed in utter lack of jurisdiction of the part of the Court of Rent Controller as infact there was no relationship of landlord and tenant between the parties. Per learned counsel, the parties infact were governed by the agreement which is at page No.19 which for all intent and purpose was a sale and purchase agreement and upon signing of the agreement, the petitioner became part-owner of the property as he had paid a substantial amount to the Respondent No.1 and the said Respondent was only holding the balance of property in trust, and since the apartment was under construction, two years' hypothetical period was agreed between the parties for project's completion at which juncture, the seller/Respondent No.1 was to proceed to have his interests in the property transferred in the name of the petitioner (buyer), but in the intervening period it was agreed that a reasonable monthly rental of the property would be paid to the seller prorate to his diminishing interest in the property. The petitioner present in person states that infact the project was completed speedily in the next four months, whereafter the seller was obligated to transfer his interest in the property to the buyer, of which liability he was reminded time and again but the seller failed in doing so, and in such a stipulation he mischievously chose to continue to charge rent in violation of the sprit of the sale agreement which amount was paid by the petitioner for a few months, but when the project was ready, the interim arrangement of compensating the seller diminished, at

Scanned with CamScanner
Scanned with CamScanner

which juncture the relationship of landlord and tenant envisaged by the agreement ceased between the parties and the agreement became a pure sale agreement needing specific performance for which a suit is already pending when the petitioner has even deposited the balance sale consideration leaving no substantial residual element of a rent agreement.

The point to consider in such diminishing interest matters is to whether the transferee entered in the premises as a tenant or landlord, and in these circumstances Section 53A of the Transfer of Property Act, 1882 comes forward to safeguard interests of the transferee (tenant) who had taken possession of the property in accordance with the terms of a written sale agreement, in which peculiar cases, contrast to generality, a tenant can claim on-going possession of the property and seek part performance from the transferor.

In the case at hand the petitioner walked into the property as a part-owner and the rent was only payable till the project was completed, which milestone in the case at hand was achieved within four months, therefore, for all intent and purposes, the petitioner was not obligated to pay rent from that point onwards that is what he adhered to and kept seeking performance of the contract.

In these compelling circumstances, I do not see any merit in both the orders impugned here, which have already been suspended by this court through order dated 31.03.2023 and I set aside both the impugned orders. Let the parties resolve their dispute in the pending suit for specific performance before the concerned trial court where this matter is already pending preferably in the next 90 days, but until the final judgment thereof, the petitioner not to be dispossessed from the said flat.

Zulfiqar Ahmad Khan
Judge

Hyder/PA

SEAL OF THE HIGH COURT OF SINDH

Scanned with CamScanner
Scanned with CamScanner