

IN THE HIGH COURT OF SINDH AT
KARACHI

Constitution Petition No.S-324/2012

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioners Pakistan State Oil Company Limited
through M/s. Asim Iqbal & Farmanullah,
Advocates

Respondent No.1-5 : Mr. Shahabuddin K Bhimani & 4 others
Through Mr. Rehan Aziz Malik, Advocate

Date of hearing : 05.01.2016

Nazar Akbar, J. The Petitioners through this constitutional petition have challenged the findings of Rent Controller dated **31.05.2010** in Rent Case No.620/2008 affirmed by 1st Court of Additional District Judge (Central) Karachi by order dated **30.11.2011** in F.R.A. No.169/2010 whereby the Petitioners on the ground of default in payment of rent were directed to vacate the premises constructed on plot No.SF-22, Block-K, North Nazimabad, Karachi and handover it to Respondent Nos.1 to 5. (The Respondents).

2. Briefly stated, the Petitioners acquired the property bearing No.SF-22, Block-K, North Nazimabad, Karachi (hereinafter the tenement) on rental basis vide Agreement to Lease/Lease Deed dated **06.03.1971**, executed between the Petitioners and M/s. Mahmud-ul-Hassan and Khalid Hassan, the then landlord of the tenement. The Respondents through registered Sale Deed acquired the tenement from the previous owner by Conveyance Deed dated **26.09.2002**. The Petitioners were duly informed about the change of ownership by the

Respondents and from Petitioners' own letters dated **27.11.2002** it is clear that the Petitioners had acknowledged and accepted the Respondents as their landlord. The Petitioners has duly executed and signed an agreement to lease dated **26.09.2006** with the Respondents. It was duly stamped on **15.11.2002** by the Stamp Office Karachi. However, somehow or the other Petitioners did not tender rent to their new landlords/Respondents in terms of the aforesaid agreement to lease. Ultimately the Respondents sometimes in 2008 filed rent case for ejectment of the Petitioners on default in payment of rent. The Petitioners filed written reply and after recording evidence and hearing of respective counsel, the Rent Controller by order **31.05.2010** directed the Petitioners to vacate the premises in question.

3. The Petitioners preferred appeal bearing F.R.A. No.167/2010 before the Court of Ist Additional Sessions Judge, Central, Karachi which met the same fate on **30.11.2012**. The Rent Controller and the Appellate Court both on the basis of overwhelming evidence found the Petitioners contumacious willful defaulter and, therefore, ordered the eviction of the Petitioners from the premises in question. The Petitioners have preferred this petition against the concurrent findings of fact which is pending since **13.03.2012**.

4. I have heard learned counsel for the Petitioners and Respondents as well as perused the record. The Petitioners' counsel made several attempts to explain the circumstances in which they defaulted and tried to show that it was not a willful default. The default in payment of rent has been proved on the record through the evidence. He has failed to show that the evidence was not sufficient to come to the conclusion drawn by the two courts below or the default has been wrongly attributed to the Petitioners by the Courts below. Learned counsel has conceded to the execution of agreement of lease, available on court file as Annexure 'B' to the application under **Section 10(3)**

of the Sindh Rented Premises Ordinance, 1979 (hereinafter SRPO, 79). The application under **Section 10(3)** of SRPO, 79 was filed by the Petitioners in **May 2008** on the pretext that the cheque of rent for the period from **October 2002** to **September 2007** amounting to **Rs.26,85,840/-** was sent to the Opponent / Respondents which was returned by them through their letter dated **09.01.2008**. Without going into the detailed of default, the very fact that the cheque was returned by the Respondents in January 2008 and Miscellaneous Rent Case No.321/2008 (M.R.C. No.321/2008) was filed in **May 2008** by itself is sufficient proof of a willful default committed by the Petitioners. No explanation has been given by the Petitioners that why despite having entered into an agreement of lease in the year 2002 specifying the rate of rent and mode of payment of rent, the Petitioners could not even sent a cheque until **September 2007**. Not only that, when confronted with the figure of cheque i.e. **Rs.26,85,840/-** only, the learned counsel for the Petitioners was unable to explain the short payment. However, he himself has taken me to another document which is available at page-287 of court File as Annexure P/91. This is photocopy of cheque which was returned by the Respondents as well as a voucher showing that this is the rent for the period from October 2002 to September 2007 after adjustment of **Rs.3,200/-** upto 03/2007. This cheque was not sent with any covering letter to understand payment and its account head to properly account for against the dues payable by the Petitioners. Again the learned counsel has not offered any explanation that how and why this amount was adjusted and even if it was justified even then the figure of cheque issued in September 2007 shows short payment of rent for the period from October 2002 to September 2007 at the agreed rate of rent i.e. Rs.50000/- per month. The rent was admittedly payable in advance and cheque was issued after completion of five years.

5. The Petitioners are State own corporate body and it is not expected of well-known state enterprises to misuse the law or twist arms of common citizen with whom it comes into a legal obligation to perform a particular duty. The record shows that it is a case of worst abuse of process of Court. The Petitioners for the first five years from September, 2002 to October 2007 did not pay a single penny to the Respondents and even after five years on or about 22.07.2008 only a sum of **Rs.38,25,000/-** was deposited in M.R.C. through annexure P/102 at page 313 of Court file showing rent upto December 2008. This payment according to admitted agreement attached to the memo of Misc. Rent Application was not equivalent to the amount of rent payable until Dec. 2008. The Petitioners deposited increased rent from January 2009 though it was to be increased from November, 2007.

6. In view of the above facts on record and well-reasoned findings of the Courts below on default in payment of rent supported by evidence/admission of witness of Petitioners, the Petitioners have no case for interference. It is settled law that concurrent findings of facts based on undisputed evidence cannot be set aside by the High Court in Constitution Petition. The Courts are not supposed to tolerate willful and deliberate misuse of constitutional jurisdiction of High Court to defeat the very purpose for which Special Laws are enacted. The SRPO, 79 is also a special law which was designed to protect not only the rights of tenant and landlords but also to expeditiously decide the controversy. The amendment to **Section 21** of SRPO, 79 through the Sindh Ordinance XIV of 2001 whereby forum of appeal in rent cases was changed from High Court to the District Court concerned was not intended to provide one more forum of appeal to drag the simplest controversy of “default in payment of rent” in the name of constitutional rights of either party to avoid execution of concurrent findings. In the given facts of the case, the Petitioners

a well-known corporation is not only guilty of default but it has abused the process of law.

7. The conclusion of the above discussion is that the petition is dismissed with cost of Rs.100,000/- to be paid by the Petitioners to the Respondents within 15 days through the Nazir of this Court. In case of default in payment of cost within time the Nazir of this Court should attach accounts of Pakistan State Oil and use any lawful means for its recovery and after realizing the same should pay to the Respondents. The Petitioners are also directed to vacate the tenement within 30 days and handover vacant possession of the same to the Respondents. In case of default, the Rent Controller if seized of execution shall issue writ of possession with police aid without any further notice and if execution has not been filed after a notice to the respondent for 15 days, thereafter writ may be issued with police aid.

JUDGE

Karachi

Dated: _____

MAK/PS**