

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-913 of 2010

Jameel-ur-Rehman
versus
Masood Hussain Antria and others

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 06.10.2016
Date of Announcement : 10.10.2016
Petitioner : Through Raja Aftab Ahmed Khan,
Advocate
Respondent No.1 : Mr. Badrudduja Khan, Advocate

JUDGMENT

Zulfiqar Ahmad Khan, J.:- The instant constitutional petition finds its roots from the orders of the Rent Controller, wherein after detailed examination of the evidence presented before it, the Controller reached to the conclusion that the tenant has committed default and while giving negative findings on the conversion of shop into godown, ordered ejectment of the tenant within 30 days from the date of the order. The tenant filed an appeal against the said order, which was decided in FRA No. 201 of 2005, where the appellate Court maintained that default was committed and directed the tenant to vacate the premises within 60 days.

2. The key contention of the arguments forwarded by the learned counsel for the petitioner here was that the trial Court failed to examine the postman, which allegedly delivered (or failed to deliver) the money order of the tenant on 21.02.1996. Per counsel, the case was that since the landlord refused to accept the rent from January 1996 onwards, the tenant sent the rent via money order on 21.02.1996 for the period commencing from Jan-1996 to Jun-1996. Learned counsel for the petitioner also

submitted that the appellate Court did not hear his application filed under Section 21(3) for calling the postman, who allegedly delivered/failed to deliver the money order. On these two grounds, the learned counsel submitted that grave irregularity has been committed and the impugned judgment has to be set aside. In support of his contention, the learned counsel placed reliance on PLD 1991 Karachi 2005, 1993 CLC 334, as well as, in respect of his application under Section 21(3), he placed reliance on the cases reported as 2001 SCMR 188 and 2008 CLC 1499.

3. These assertions were vehemently challenged by the learned counsel for the landlord, who took me to Page No.77 of the instant file, which is the affidavit in evidence of the tenant filed before the trial Court, wherein in Paragraph-7 the tenant submitted that after refusal from applicant (landlord), he sent money on 21.02.1996 via money order, which was refused by the landlord and thereafter he started depositing the rent in MRC No.324 of 1996. Under said paragraph, he says that he had produced copies of the money order form and certificate of delivery issued by the concerned Post Office. The learned counsel took me to those documents, which are annexed on Page Nos. 87 & 89 and submitted that these are fake and fabricated money order forms, which were never sent, as they do not carry any stamp of the concerned Post Office. The learned counsel submitted that the issue of money order being sent (or not sent) was fully addressed in the order of the Rent Controller, where in page-5 of his order, relying on the material and evidence before him, the Rent Controller observed that no date of signing on the money order was mentioned, nor there was any stamp of the Post Office. The Rent Controller further held that it was the duty of the tenant to prove the payment of such remitted amount and that having been received by the landlord. The tenant having failed to

do so, there was no escape from reaching to the conclusion that no payment of rent of the stipulated period has been evidenced.

4. The learned Rent Controller on Page No.5, even went a step ahead to say that while the mode of payment through money order was not ascertained, even after depositing the rent in Court, the tenant gave no notice of intimation to the landlord, and basing his finding of the Superior Court's judgment, concluded that such payment of rent amounts to harassment of the landlord and the same is *default in legal way* as it is statutory right of the landlord to receive the rent and such payment is not to be treated as made in charity.

5. Taking me to Page Nos. 4 & 5 of the judgment passed in FRA, the learned counsel for the landlord showed that even in FRA the appellate Court has taken cognizance of the material present before the Rent Controller and its rational as to reaching to the conclusion and on the grounds mentioned in the said judgment, the Appellate Court eventually reached to the conclusion that the default was committed. With regards to Section 21(3) application, the learned counsel for respondent No.1 submitted that the said contention of calling of the postman in the witness box for an act done about 10 years ago was inconceivable, as the Post Office clearly mentioned vide document reproduced on Page No.99 that the Post Office does not keep records of documents for that long period. The learned counsel for respondent No.1 also took me to page-5 of the order of the learned Rent Controller, where he held that it was the duty of the tenant to examine the postman concerned and to prove his contention that the landlord had accepted or refused to accept the money. Since the tenant failed to discharge this duty, default was affirmed. Therefore, the application made under Section 21(3) is frivolous, since the finding

on the matter has already been given by the Rent Controller and it was the duty of the tenant to show his need to put the witness in the witness box. In support of his contention, he relied on NLR 1992 HCJ 23, 2001 SCMR 1455 and 1983 NLR 417.

6. Heard the counsel and reviewed the material present on file. To start with, as it is evident from the fore-mentioned paragraphs that the dispute in the matter relates to facts that: (a) whether the money was sent by money order or not; and (b) the money order is fake or genuine. While this Court in the constitutional jurisdiction cannot look at the contentious factual issues, I am satisfied that these issue have been agitated at both the forums and judicial findings have been given thereon. With regard to the determination of application made under Section 21(3) calling for the examination of the postman after the lapse of nearly 10 years, when the said postman would definitely not be available and when it was already evident from the letter of the Post Office that records in relation to such payment are not maintained after so long, I do not find any practical utility of such exercise taking place at the appellate forum when the tenant had already denied this opportunity at the trial stage and had failed to bring any evidence in his support that the money order was returned unaccepted by the landlord, which was not difficult at all since whenever money orders are returned, Post Office always returns money sent along with a chit detailing reasons as to why money couldn't be delivered.

8. In the light of the apex court's judgment with regards to limited constitutional interference this court can make in rent matters (viz 2001 SCMR 338), I do not find any reason to intervene in the impugned judgment and dismiss the instant petition with cost of Rs.10,000/-

JUDGE