

HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.389 of 2009

Present:

Mr. Justice Nazar Akbar, J.

Appellant: Riaz Ahmed in person.
Respondent: Syed Muhammad Yousuf Ali through Mr. Rana Abdul Qayyum, advocate
Date of hearing 12.10.2015
Date of Announcement _____.2015

ORDER

NAZAR AKBAR, J--- The petitioner has challenged the concurrent findings of Respondents No. 2 & 3 in Rent Case No. 398/2007 and FRA No. 114/2000 passed by the 5th Rent Controller and 1st Additional District Judge, East Karachi respectively. After hearing the counsel for the parties, proceedings in Execution Application No.14 of 2009 filed by respondent No.1 were stayed by order of this Court dated **05.08.2009**, till final disposal of the instant petition.

Briefly stated, Respondent No. 1 in September, 2007 filed being Rent Case No.398/2007 against the petitioner for his ejectment from the tenement i.e Suite No.103, Ist Floor, 652-C, Central Commercial Area, PECHS, Karachi on the ground of default in payment of monthly rent to the extent of Rs.90,130/-. The petitioner on receiving notice of rent case instead of filing written statement preferred to write letters addressed to District Judge East, Karachi and Rent Controller. The learned Rent Controller after observing legal formalities delivered *exparte* judgment dated **06.10.2008** against the petitioner. The petitioner filed appeal against the ejectment order before the Court of 1st Additional District Judge Karachi East being First Rent Appeal No.114/2008. The said FRA was also dismissed by judgment dated **20.05.2009**. Thereafter, the petitioner has approached this Court through instant petition.

The petitioner is present in person and argued that learned appellate Court did not look into the documents, in particular two rent agreements, which have been executed by the parties. The fact of execution of said agreements was concealed by respondent No.1 from the trial Court. He further argued that he has been continuously paying monthly rent to respondent No.1 and after filing of above referred case, monthly rent in respect of the demised premises is being deposited in MRC No.291/2007. He lastly argued that learned appellate Court had not appreciated the facts involved in the case and dismissed FRA without application of judicial mind.

Learned counsel for respondent No.1 argued that admittedly, the petitioner joined the rent proceedings before the learned Rent Controller but despite extending full opportunity to him and availing sufficient time, he failed to file his written statement and defend his case. Upon failure of the petitioner to defend his case, his side was closed in accordance with law and *ex parte* judgment was passed. The petitioner filed FRA against the said judgment and the same was also dismissed by 1st Additional District Judge, Karachi East. He lastly argued that learned trial Court as well as appellate Court have rightly come to the conclusion and passed the judgments impugned herein by the petitioner. Both the petitioner and respondent No.1 were also allowed to submit written arguments.

I have carefully heard the arguments advanced by the petitioner as well as counsel for respondent No.1 and perused their written synopsis and the entire record.

The record shows that the petitioner has admittedly failed to file written statement before the Rent Controller despite service and entering appearance before Rent Controller. Letters written by him to District Judge

and to the Rent Controller cannot be treated as written statement on behalf of the Respondent. Not only that the Petitioner has failed to advance any plausible excuse for not filing written statement. Petitioner keep watching the proceeding not from outside the Court but from inside the Court as he was aware of each and every date of proceeding of rent case. He lost appeal against the ejectment on purely factual ground that he was not able to justify his failure to appear before the Rent Controller despite notice. However, he is insisting the Court to look into the documents which he has not produced before the Rent Controller. The default has been accepted by the two Courts below on merits and therefore, entire controversy is factual and no case of misreading is possible in case in which petitioner himself has failed to appear in witness box nor cross-examine the landlord/respondent despite knowledge.

In view of the above facts and the circumstances, this constitution petition against concurrent findings is dismissed. However, petitioner has already enjoyed almost 05 years under the cover of pendency of this petition. He is directed to vacate the premises in question within fifteen days. The trial Court is already seized of Ex.No.14/2009 is directed to issue writ of possession against the petitioner within 15 days to be executed on 10.12.2015 with police aid in case petitioner fails to vacate the premises within 15 days.

Karachi
Dated:_____

JUDGE

SM