

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.1619/2015

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)	
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Before: Mr. Justice Nazar Akbar		
Petitioner	:	Aziz Nasir through Mr. Badar Alam, Advocate
Respondent No.1	:	Shafiq Uddini through Mr. Karamtullah, advocate
Respondent No.2	:	IInd Addl. District Judge Karachi East.
Respondent No.3	:	Ist Rent Controller, Senior Civil Judge, Karachi, East.
Date of hearing:		16.10.2015
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Nazar Akbar, J. This constitutional petition is arising out of the findings of Rent Controller in Rent Case No.370/2011 upheld by the Additional District Judge, East, Karachi in FRA No.151/2013 whereby the petitioner was directed to vacate the premises bearing Shop No.5 & 6 Qrt. No.Q-203, Sector 33-A, measuring 120 sq.yards, situated in Korangi No.2, Karachi on the ground of personal bonafide need of Respondent No.1.

2. The facts leading to this petition, in brief, are that Respondent No.1 filed Rent Application No.370/2011 in the Court of Ist Rent Controller East, Karachi against the petitioner on the grounds of default and personal need. The Rent Controller by order dated **17.12.2012** allowed the ejectment only on the ground of personal need and directed the petitioner to vacate the premises within 60 days. The petitioner preferred First Rent Appeal No.15/2013. The learned Appellate Court maintained the order of the Rent Controller and dismissed his appeal by order dated **15.9.2015**. Consequently, the instant petition.

3. I have heard learned counsel for the petitioner and Respondent No.1. Learned counsel for the Petitioner has also filed a list of case laws, relied upon by him during

course of proceeding before the learned Trial Court. He has even quoted following case law in the memo of petition.

- i) Lal Khan through Legal Heirs v. Muhammad Yousuf (**PLD 2011 SC 657**),
- ii) Badruddin H. Mavani v. Government of Pakistan & others (**1982 CLC 44**),
- iii) Muhammad Azizullah v. Abdul Ghaffar (**1984 CLC 2837**),
- iv) Commissioner of Income Tax, Peshawar Zone, Peshawar v. M/s. Sieman A.G. (**PLD 1991 SC 368**)

4. In the memo of petition the learned counsel has reproduced almost the same arguments which he has submitted in writing in the Court of Addl. District & Sessions Judge in support of his rent appeal. Now, he has challenged the concurrent findings of personal need by claiming that personal need was waived by Respondent No.1 in writing through agreement dated **30.4.1991** available at page 125 and it was produced in evidence. According to him, the petitioner has acquired the tenement on goodwill under written agreement dated **30.4.1991** and it was specifically stipulated in the agreement that the tenancy is **forever**, the landlord will have no right to get the shops vacated from the tenant. He wants to take the advantage of the following contents / clauses of the agreement.

“3. That the landlord will have no right to get the shop vacated from the tenant”.

The learned counsel by referring to the tenancy agreement itself wants to defeat the right of landlord as owner of the premises under **Section 15(2)(vii)** of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as **S.R.P.O, 1979**). In my humble view, this argument of learned counsel for the petitioner has no backing of law. It is hit by the provision of **Section 5** of S.R.P.O 1979 and **Section 17** read with **Section 49** of the **Contract Act, 1908**. The provisions of **Section 5** of SRPO, 1979 deal with the agreement in writing, though even if tenancy agreement is not in writing, oral tenancy is sufficient to invoke the provisions of SRPO, 1979. However, in case of tenancy agreement in writing, for its enforceability in law, it is supposed to be in conformity with **Section 5** of S.R.P.O, 1979. The contents of the agreement on which the learned counsel is relying shows that it was compulsorily registerable

under the Registration Act, 1908. It was compulsory registerable since the petitioner claims protection of his right to held tenancy for the rest of his life on the ground that the landlord has abandoned / surrendered his right to seek ejectment of petitioner for valuable consideration. The language and the contents of agreement reflects that the tenancy was covering entitlement of the parties under the agreement beyond one year, therefore, it was supposed to be registered in terms of **Section 17(1)(d)** of Registration Act, 1908 which is reproduced below:-

- 17. Documents of which registration is compulsory.** (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act, came or comes into force, namely:-
- a)
 - b)
 - c)
 - d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

5. In view of the admitted fact that the Goodwill tenancy agreement was not registered, it was neither admissible in evidence nor it was enforceable in law. Irrespective of the fact that relationship of landlord and tenant was admitted, the tenancy agreement itself was not a “valid contract” and any rights claimed by the petitioner under the said agreement cannot be enforced as its non-registration has rendered it meaningless, ineffective, and void by operation of **Section 49** of the Registration Act, 1908. It reads:-

- “49. Effect of non-registration of documents required to be registered.**
No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall—
- (a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, to or in immovable property, or
 - (b) confer any power to adopt, unless it has been registered.

In the case of Commissioner Income Tax (Supra) relied upon by the learned counsel and even quoted in the memo of petition, the Supreme Court has been pleased to hold that for claiming waiver in a contract the parties should have a mutual “**valid**

contract”. The emphasis is on valid contract and a contract which is compulsorily registerable, if not registered is not a valid contract. In these circumstances, the petitioner, in absence of a valid contract, was statutory tenant of Respondent No.1 and the rights and obligatory of Petitioner and Respondent No.1 were covered by the S.P.R.O, 1979. Thus in view of the legal position, all the case law mentioned in the memo of petition and referred before the Appellate Court on the question of waiver was not applicable in the case of the petitioner. Therefore, the contention of the learned counsel that any rights available to the landlord (Respondent No.1) under S.R.P.O, 1979 were waived under the said agreement has no force.

6. The next contention of the counsel that Courts below have not properly examined the evidence and particularly the cross-examination also has no force to deny the landlord of his fundamental right to enjoy his property. In paragraph-H of the grounds of petition, the counsel himself has quoted passages from the evidence to claim that son of landlord was not jobless. Even in the quoted passage from the cross-examination the very fact that the landlord has accepted the suggestion as correct that his son “Saleemuddin is selling samosa on stall” by itself is sufficient proof that he was jobless and obviously by selling samosa on stall, his need to have a shop for business of even samosa cannot be treated as malafide. The other malafide in the need of the landlord has been derived by the learned counsel from the fact that the landlord had a dispute prior to filing of rent case with the petitioner. Any dispute or quarrel between the landlord and tenant cannot adversely reflect on the personal need of the landlord. The record shows that the applicant has required two adjacent shops No.5 & 6 for his personal use and for the use of his son who was jobless. In para-5 and 6 of the memo of application he has categorically stated that he would setup his own business in the shops. His said averments from the rent application have not been shaken in cross-examination. His need cannot be defeated by adversely interpreting evidence to reach to another conclusion. It is settled law that findings arrived at by the two Courts below on the basis of evidence cannot be interfered with by Second appellate Court or even by Revisional Court simply

because the same evidence in the opinion of Second Appellate Court or Revisional Court can lead to a different conclusion.

7. In view of the above facts, since the concurrent findings of facts by the two Courts below does not suffer from arbitrariness non the same are perverse, therefore, it does not call for any interference. The petition is dismissed. The petitioner is directed to vacate shop No.5 and 6 Qrt. No.Q-203, Sector 33-A, measuring 120 sq.yards, situated in Korangi No.2, Karachi within 30 days. In case of default the Executing Court, already seized of execution No.11/2013, should issue writ of possession with permission to break open the locks and police aid and hand over possession to respondent No.1 after removing the petitioner.

JUDGE

Karachi
Dated:18.01.2016

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