

JUDGMENT SHEET
HIGH COURT OF SINDH, KARACHI
Constitution Petition No. S- 1521of 2016

PETITIONER : Through Mr. Muhammad
Khaliquzzaman Advocate

RESPONDENTS : Nemo

DATE OF HEARING : 11.11.2016

DATE OF JUDGMENT : 11.11.2016

JUDGMENT

Muhammad Humayon Khan, J:- This is a petition against the impugned Order dated 10.03.2016 passed by the learned VIIIth Additional District Judge, Karachi-East, in First Rent Appeal No. 79 of 2014, whereby, the learned Judge dismissed the appeal and upheld the Order dated 17.03.2014 passed by the learned IIIrd Rent Controller, Karachi-East, in Rent Case No. 316 of 2012, whereby, the learned Rent Controller allowed application under Section 16 (2) of the Sindh Rented Premises Ordinance of 1979 (hereinafter referred to as “the said Ordinance”) and struck off the defence of the petitioner and directed him to vacate Office No. M-1, Mezzanine Floor, Raza Arcade, Plot No. SLCC-33/1, Shaheed-e-Millat Road, Karachi (hereinafter referred to as “the demised premises”) within 30 days from the date of order.

2. The facts in nutshell for the decision of this petition are as under:-

- a) the respondent No.1 is owner of the demised premises, which was let out to the petitioner by Tenancy Agreement dated 30.07.2001;
- b) the respondent No.1 filed ejectment application under Section 15 of the said Ordinance against the petitioner for his ejectment on two grounds namely (i) default in payment of rent and(ii) personal bonafide use bearing Rent Case No. 316 of 2012;
- c) the petitioner filed his written statement; wherein, he denied the case of the respondent No.1;
- d) subsequently, the respondent No.1 filed an application under Section 16 (1) of the said Ordinance on 14.12.2012 for direction to the petitioner to deposit rent in Court;
- e) against the aforesaid application, the petitioner filed his counter affidavit on 18.05.2013;
- f) against the aforesaid counter affidavit, the respondent No.1 filed affidavit-in-rejoinder on 02.07.2013;
- g) the learned Rent Controller on 06.08.2013 passed conditional Rent Order, whereby, the learned Rent Controller directed the petitioner to deposit future monthly rent at the rate of Rs.8,000/- per month in Court from the month of August 2013 on or before 10th day of each English calendar month subject to the condition that the said amount remained withheld with the Court till further order;
- h) later on, the respondent No.1 on 21.08.2013 filed an application under Section 16 (2) of the said Ordinance for striking off the defence of the petitioner on the specific

ground that the first rent due was to be deposited on 10.08.2013, which has not been deposited till the filing of this application as per directions in Rent Order dated 06.08.2013;

- i) against the aforesaid application, the petitioner filed his counter affidavit on 30.10.2013; wherein, his only defence was that he could not deposit rent in time due to the reason that he went out of city for emergent work and family meeting and hence the said delay was neither intentional nor deliberate but it was beyond his control.

3. The learned Rent Controller by his Order dated 17.03.2014 allowed the said application under Section 16 (2) of the said Ordinance and struck off the defence of the petitioner with direction to the petitioner to hand-over vacant possession of the demised premises to the respondent No.1 within 30 days from the date of order.

4. Against the aforesaid Order, the petitioner filed first rent appeal, which was dismissed by the learned Additional District Judge vide Order dated 10.03.2016.

5. Against the concurrent findings of both the Courts below, the petitioner has filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. I have heard the learned counsel for the petitioner and perused the material available on the record.

7. The learned counsel for the Petitioner contended that there is no default in payment of rent as the suit for specific performance of

contract is pending and therefore the Rent Controller should not have passed rent order in the instant case. He further contended that the petitioner could not deposit rent in time due to the reason that he went out of city for emergent work and family meeting and therefore the delay in depositing rent was neither intentional nor deliberate nor willful but it was beyond his control and in the circumstances, the learned Rent Controller should have condoned the delay in depositing rent. However, the learned counsel for the petitioner has not cited any law or case-law in support of his arguments.

8. Upon my query that the petitioner has admitted default in his counter affidavit by not depositing rent in time, the learned counsel for the petitioner conceded. Upon my further query to point out the legal error in orders of both the Courts below, the learned counsel for the petitioner has failed to point out any non-reading or misreading of evidence or misinterpretation of law by both the courts below. Finally, when I dictated the short order then, the learned counsel for the petitioner requested that time of 60 days may be allowed to the petitioner to vacate the demised premises.

9. It is well settled principle of law that once a person acknowledges himself to be a tenant of a landlord, the principle of estoppel as provided in Article 115 of the Qanoon-e-Shahadat Order, 1984 would come into play, debarring such tenant to deny the title of his landlord. It is also settled principle of law that the order of deposit of rent should have been complied with by the tenant to qualify him to be heard in support of his defence plea raised in the written statement. Reliance can be placed upon the cases of (i)

WaheedUllah Vs. Mst. RehanaNasim and others (2004 SCMR 1568), (ii) Muhammad Iqbal Haider and another Vs. Vth Rent Controller/Senior Civil Judge, Karachi Central and others (2009 SCMR 1396) and (iii)Mst. Seema Begum Vs. Muhammad Ishaq and others (PLD 2009 Supreme Court 45).

10. Admittedly, the petitioner has not complied with the rent order in letter and spirit but committed default in depositing rent. According to sub-section (2) of Section 16 of the said Ordinance, if the tenant fails to deposit the rent in terms of rent order passed under sub-section (1) of Section 16 of the said Ordinance, his defence shall be struck off. It is well settled proposition of law that the provisions of Section 16 (2) of the said Ordinance are mandatory in nature and even one day's delay in depositing rent would be default within its meaning and the Rent Controller has no power either to extend the time or to condone the default. Reliance can be placed upon the cases of (i) Muhammad Yousaf Vs. Muhammad Bashir and others (1990 SCMR 557), (ii) M.H. MussadaqVs. Muhammad Zafar Iqbal and another (2004 SCMR 1453) and (iii) Mushtaq Ahmed Kiani Vs. Bilal Umair and others (2009 SCMR 1008).

11. It is also well settled principle of law that the High Court in its constitutional jurisdiction can only interfere in concurrent findings of two courts below if such findings are found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction. Reliance can be placed upon the cases of (i) Abdul Aziz Mysorewala v. Manvadar Sadargh Memon Jamat, through President and 2 others reported in

2013 YLR (Sindh) 1405, (ii) Mst. RehanaHafeez v. Muhammad Ali alias Ehsan through L.Rs. reported in 2014 CLC (Sindh) 1242 and (iii) Muhammad Sanawar Khan v. Akhtar Khan and 2 others reported in 2015 CLC (Sindh) 1253.

12. I have carefully gone through the entire record and both the Orders of both the Courts below and found that both the Courts below have correctly appreciated the pleadings and correctly applied the law in deciding the instant case.

13. Above are the reasons for short order dated 11.11.2016, whereby, I have dismissed this petition in limine alongwith listed applications with the following directions:-

“Subject to payment of regular monthly rent and payment of all utility bills, sixty (60) days’ time is granted to the petitioner to vacate the demised premises.”

This short order may be read as part and parcel of this Judgment.

JUDGE