

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-284 of 2016

Present: Mr. Justice Nazar Akbar

Petitioner: Muhammad Muslim through Mr. Muhammad Sadiq Hidayatullah, Advocate.

Respondent No.1: Azeem Ahmed through Mr. Asghar Bungash, Advocate.

Respondent No.2: Muhammad Farooq.

Respondent No.3: VIIth Additional District Judge at Karachi South.

Date of hearing: **31.3.2017**

Date of announcement: **18.04.2017**

J U D G M E N T

NAZAR AKBAR, J:- This constitution petition is directed against the judgment dated 11.12.2015 passed by the VII Additional District Judge, South Karachi whereby First Rent Appeal No.111/2014 filed by the petitioner was dismissed.

2. Brief facts of the case are that the petitioner Muhammad Muslim sold out a Flat No.15, 5th Floor, Zainab Manzil, Burns Road, Gali No.1, Karachi (hereinafter the said tenement) to respondent No.1 through a registered sale deed executed and registered with the relevant Sub-Registrar on **13.06.2011**. At the relevant time respondent No.2 Muhammad Farooq was already a tenant in the said tenement. By legal notice dated 05.1.2013 under **Section 18** of the Sindh Rented Premises Ordinance, 1979, (S.R.P.O, 1973) the respondent No.1 requested respondent No.2 (the tenant) to pay rent of the said tenement to him. However, respondent No.2 did not pay rent to him, even after receiving notice under **Section 18** of the

SRPO, 1979 and therefore, respondent No.1 filed Rent Application No.85/2013 before the IVth Rent Controller, South Karachi under **Section 15** of the SRPO, 1979 for ejectment of respondent No.2 from the said tenement.

3. Respondent No.2 was duly served with eviction proceedings against him and he filed written statement in which he categorically admitted in para-5 that he was approached for payment of rent by respondent No.1 and in para-6 he also admitted that a notice under **Section 18** of the SRPO, 1979 through TCS was also received by him. However, he denied that he was in default of rent. Ultimately, by order dated **14.3.2013**, the Rent Application was decided by the Rent Controller against respondent No.2. The respondent No.1 filed execution application No.9/2013. However, to defeat the execution, the petitioner herein filed an application under **Order 1 Rule 10 C.P.C** to be impleaded in execution proceedings. Respondent No.1 contested the same. The learned Rent Controller by order dated **28.5.2014** converted application under Order 1 Rule 10 CPC to an application under **Section 12(2) CPC**. The Rent Controller further ordered to record evidence on the following issues:-

- i) *Whether the order (ejectment) was obtained by the decree holder/ applicant by way of misrepresentation and concealment of facts?*
- ii) *What should the order be?*

4. The aforesaid order of the Rent Controller dated **28.5.2014** in execution proceedings was challenged by respondent No.1 in F.R.A. No.111/2014 which was allowed by the impugned order dated **11.12.2015**. The petitioner has challenged the order of the First Appellate Court through this Constitution Petition. The respondents have filed comprehensive objections to this petition.

5. I have heard both learned counsel for the parties as well as perused record.

6. Learned counsel for the petitioner has vehemently contended that the observation of the First Appellate Court that provisions of Section 12(2)CPC are not applicable in the rent proceedings is contrary to law. He has also contended that the conversion of application under Order 1 Rule 10 CPC into an application under Section 12(2) CPC by the Rent Controller was justified. He has relied on case law reported in PLD 1987 Karachi 86 and 1992 SCMR 1908. Learned counsel for respondent No.1 vehemently contended that this petition is not maintainable in rent proceedings and the order passed by the first appellate Court is to be treated as final. He has further contended that the petitioner has admitted execution of sale deed and he has only disputed that payment of certain amounts of sale consideration has not been paid to him. He has referred to para-5 of his objection wherein he has categorically stated that the petitioner's suit for cancellation of sale deed executed by petitioner himself in respect of the said tenement bearing **suit No.1004/2011** against respondent No.1 had been dismissed way back on **18.10.2011** and the petitioner has not sought restoration of the said suit. However, after three years he has filed a fresh suit bearing Suit No.**683/2014**, which is still pending. The petitioner has not filed any rejoinder affidavit to the counter affidavit.

7. Irrespective of the fact that the provisions of **Section 12(2) CPC** are applicable in rent proceedings or not, in the given facts of the case, if we apply the provision of Section 12(2) CPC to challenge the rent order obtained by respondent No.1, we have to see whether any fraud or misrepresentation has been committed by respondent

No.1 in obtaining the eviction order. The registered sale-deed has not been disputed by the petitioner. Respondent No.1 was admittedly tenant in the said tenement and he has filed written statement in the rent proceeding after having received notice under **Section 18** of the SRPO, 1979. Therefore, it cannot be said that the tenant after entering into rent proceedings, if chosen not to contest, the order of his eviction from the said tenement was fraudulently obtained. In fact once respondent No.2 entered appearance in rent proceedings and filed written statement, the disposal of the rent case was on merit. The contention of the petitioner that Rent Controller has rightly converted application under **Order 1 Rule 10 CPC** into application under **Section 12(2) CPC** was misconceived. The ingredients of **Section 12(2) CPC** were totally missing from the contents of application under **Order 1 Rule 10 CPC**. It was not the case of the petitioner in his application under **Order 1 Rule 10 CPC** that respondent No.1 has played any fraud and misrepresentation or that even the Court of rent controller had no jurisdiction to entertain the rent case No.85/2013. The dispute and allegations leveled by the petitioner against respondent No.1/the beneficiary of the registered sale deed were all in the nature of civil dispute which were outside the scope of Rent Controller. The petitioner has prayed to be impleaded as intervener in the execution proceedings. He has not contended that the eviction order of the tenant was without jurisdiction or on account of any misrepresentations. As long as the registered sale deed executed by the petitioner in favour of respondent No.1 is in the field for the purpose of jurisdiction of Rent Controller, Respondent No.1 is landlord and the tenant has no say in the matter of ownership once he is being informed that the ownership

of the tenement stand transferred by a registered sale deed and he has received notice under **Section 18** of S.R.P.O, 1979.

8. Therefore, pending the claim of the petitioner that the registered sale deed is liable to be cancelled before a competent civil Court, the ownership of the said tenement through an admitted registered document cannot be frustrated by the petitioner through a collateral proceedings between respondents No.1 and 2 in respect of the said tenement before the Rent Controller. The petitioner is neither landlord nor tenant in the said tenement from the date of execution of registered sale deed by him in favour of respondent No.1. The title of the tenement stand transferred in favour of respondent No.1 by operation of law.

9. In view of the above discussion, I do not find any force in this constitution petition, which is dismissed with no order as to cost. However, the executing Court, if already seized of execution proceedings, may evict whoever is in the possession of the said tenant in execution of its order in Rent Case No.85/2013. The execution proceedings must come to an end within thirty days from the date of this order and compliance be reported to this Court through the MIT-II for perusal in chamber.

J U D G E

Karachi
Dated:18.04.2017.

*Ayaz Gul/P.A**