

IN THE HIGH COURT OF SINDH AT KARACHI

II-Appeal No.117 of 2016

Present: Mr. Justice Nazar Akbar

Appellant : M/S City School (Pvt.) Limited
through Mr. Ravi R. Pinjani, Advocate.

Respondent : Muhammad Fazil Khan
through Mr. Qadir Khan Mandokhel,
advocate.

Date of hearing : 09.5.2017

Date of decision : 09.5.2017

J U D G M E N T

NAZAR AKBAR, J:- This IInd Appeal is directed against the judgment dated 20.9.2016 passed by IInd Additional District Judge, Karachi, Central in Civil Appeal No.10/2016 whereby the appellate Court has upheld the judgment in Civil Suit No.811/2009 whereby the suit of the respondent was decreed in the following terms:-

In view of the above foregoing reasons, the suit of the plaintiff is hereby partly decreed to the extent of amounting to Rs.14,32,300/- with prevailing market rate from the filing of the suit & till realization of the said amount.

2. Precisely the facts of the case are that the appellant was tenant of respondent in premises bearing No.D-73, Block-B, North Nazimabad, Karachi and were running a City School (Pvt.) Limited in the said premises. They had vacated the premises on **30.6.2009** after giving one month's notice to the respondent. It is pertinent to mention here that the respondent lives on the second floor of the same building and yet the applicant sent the keys of the premises to the respondent through TCS. The respondent admits that he has received the same but he has returned to the appellant. However, after the vacation of the premises the dispute between the parties is only to the extent that the appellant was supposed to pay three

month's rent and that there were dues of electricity and water charges etc and, therefore, the respondent has filed a suit for recovery of Rs.29,53,247/-.

3. The appellant in their written statement had denied that they were not under obligation of making any further payment of three months' rent and they have already sent notice to respondent one month before vacating the premises. Appellant claimed that all the bills have already been paid and cleared by them.

4. The trial Court from pleadings of the parties has framed several issues, in which only first three issues were relevant regarding non-payment of electricity bills of Rs.102,300/- and the arrears of rent for the said three months' notice in lieu of notice. The issues framed by the trial Court are as under:-

1. *Whether defendant is defaulter in payment of rent since 15.6.2009, Electricity bill of Rs.102,300/- since 22.10.2009 and water sewerage charges of Rs.20,947/- in respect of suit properties?*
2. *Whether defendant served any notice prior 03 months for vacating the suit premises?*
3. *Whether defendant is liable to pay the arrears of rent since 15.6.2009 to 15.10.2009, 03 months advance notice rent and utility bills total amounting to Rs.29,53,247/-?*
4. *Whether suit is not maintainable in its present form?*
5. *Whether this court has no jurisdiction as per clause in lease agreement?*
6. *Whether plaintiff has no cause of action to file this suit?*
7. *Whether suit is barred by any law?*
8. *What should the decree be?*

The burden of proof was on the plaintiff and the record shows that the plaintiff has failed to discharge the burden and unfortunately both the learned trial Courts ignored the evidence.

5. I have gone through the evidence, it is an admitted position on the record including statement of the respondent before the trial Court that right under his nose all the articles of school business and other have been removed by the appellant from the premises of the ground floor and the first floor, whereas respondent himself lives on the second floor of the said premises. In evidence the respondent has admitted that he has received the keys of the premises, however, he had returned the same. It is not disputed by the respondent that right from 30.6.2009, the appellant have not used and/or entered in the premises.

6. In view of the fact that the respondents are living on the second floor, the return of the keys does not make a sense because the premises are one and the same. Be that as it may, the record does not show that the premises have been used by the appellant ever since vacation on 30.6.2009. The respondent has not produced any document showing the arrears of electricity and water charges for a period prior to June, 2009. I have also gone through the lease agreement with the help of the learned counsel for the plaintiff/respondent and he concedes that there is no mention of three months' prior notice for vacating the premises or payment of rent for three months period in case notice is not sent by appellant. He relied mostly on the proposition that this is a normal practice of the many tenants.

7. In view of the above, it was a case of no evidence against the appellant, therefore, both the judgments/orders passed by the trial Court and appellate Court are hereby set aside and the appeal is allowed.

J U D G E