

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-241 of 2003

Present: Mr. Justice Nazar Akbar

Petitioner : M/s E.M.E Corporation,
Respondent No.1 : M/s Ebrahim Brother's (Pvt.) Ltd.
Respondent No.2 : III-Additional District Judge, Karachi West.
Respondent No.3 : III-Senior Civil Judge and Rent Controller,
Karachi West.
(None present for respondents).

Date of hearing : 29.5.2018

Date of decision : 13.6.2018

J U D G M E N T

NAZAR AKBAR,J:- This constitution petition is directed against the concurrent findings of IIIrd Rent Controller Karachi (West) in Rent Case No.80/1999, whereby ejectment application filed by Respondent No.1/Landlord was allowed by order dated **03.5.2000** and the III-Additional District Judge Karachi West dismissed FRA No.69/2001 by Judgment dated **18.2.2003** and upheld the said eviction order.

2. Precise facts of the case are that Respondent No.1/landlord had filed rent case No.80/1999 in respect of property bearing Room No.1 & 2, 2nd Floor, rear side in Ebrahim Building, 20 West Wharf Road, Karachi West Road, Karachi (hereinafter the tenement) alleging default in payment of water charges and betterment taxes for the first time after 18 years vide debit Note dated 20.5.1998 for the year 1996-97, 1997-98 and 1998-99 amounting to Rs.5,380/-. The petitioner/tenant has refused to pay the water charges and betterment taxes. The Petitioner filed written statement in which he raised preliminary

objection to the jurisdiction of the learned Rent Controller on the ground that water, conversancy and betterment taxes were neither part of the rent nor liability of the tenants of the building as such no cause of action has accrued to Respondent No.1. It was also argued before the Rent Controller that the plot is owned by KPT and, therefore, Rent Controller has no jurisdiction to entertain the said ejectment application.

3. After recording evidence and hearing counsel for the parties, learned Rent Controller allowed the Rent application and directed the Petitioner to hand over the vacant possession of the tenement to Respondent No.1 within 30 days. On appeal, learned appellate Court after thorough examination of the evidence concluded that the order of Rent Controller is legal and proper and dismissed the appeal.

4. The Petitioner has preferred the instant petition against the concurrent findings on the question of default and on **18.7.2003** obtained order of suspension of impugned orders. Then from **16.4.2004** the instant petition was tagged with C.P No.181/2003 and its order sheets reveal only one sentence "Same Order as in C.P No.181/2003" ever since. In C.P No.181/2003 for almost 15 years the counsel for the Petitioner has only obtained adjournments. The connected/tagged petition has been dismissed.

5. I have gone through the material available on record.

6. On examination of impugned judgments of Rent Controller as well as Appellate Court I found that the two Courts below have relied on the definition of rent in **Section 2(i)** of the SRPO, 1979 which says that rent include **water charges**, electricity charges and such other charges which are payable by the tenant but not paid. The evidence

show that the landlord/Respondent No.1 has demanded water charges from the Petitioner and upon his refusal to make payment of water charges, even a registered post letter was sent by Respondent No.1 but it was not replied by the Petitioner. Even in written statement the Petitioner has not denied that Respondent No.1 has demanded water charges from the Petitioner. In para-6 of written statement it has been categorically stated by the Petitioner that “*it is specifically denied that water charges and betterment taxes are liable to paid to the applicant by the answering opponent*”. Therefore, the default in payment of water charges was admitted even from day one and as it was rightly held by the learned Courts below with reference to the statutory definition of rent. It was, in fact, statutory liability of the Petitioner.

7. As far as the question of jurisdiction raised by the Petitioner’s counsel with reference to the existence of plot on the KPT land is concerned, suffice it to say that this question has already been answered in favour of Respondent No.1 by the Hon’ble Supreme Court in the case of Messrs Lalazar Enterprises (Pvt.) Limited Karachi vs. Messrs Oceanic International (Pvt.) Limited Karachi and others reported in **2006 SCMR 140**. Even otherwise the Petitioner in para-2 of his written statement has admitted that *the opponent (Petitioner) is lawful tenant in respect of the tenement referred in para under reply*, therefore, neither the question of jurisdiction nor the factual controversy of default in payment rent towards water charges suffers from mis-reading and non-reading of evidence.

8. In view of the above, the petition is dismissed alongwith pending application. The Petitioner is directed to vacate the tenement within 30 days from the date of this order. In case of his failure to

vacate the same, the executing Court may issue writ of possession with police aid without notice to the Petitioner.

J U D G E

Karachi
Dated:13.06.2018.

*Ayaz Gul/P.A**