

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1128 of 2017

Present: Mr. Justice Nazar Akbar

Petitioner : Shoukat Ali,
Through Mr. Muhammad Waseem Samo,
advocate.

Respondent No.1 : Muhammad Jamil @ Saleem through L.Rs

Respondent No.2 : IVth Addl. District Judge, Karachi-Central.
(Nemo)

Respondent No.3 : XIIth Rent Controller, Karachi-Central,
(Nemo).

Date of hearing : **14.11.2018**

Date of decision : **14.12.2018**

J U D G M E N T

NAZAR AKBAR, J:- The Petitioner through this constitutional petition has challenged the findings of Rent Controller dated **22.12.2016** in Rent Case **No.579/2012** which were affirmed by IVth Additional District Judge (Central) Karachi by order dated **08.05.2017** in F.R.A. **No.04/2017** whereby the Petitioner was directed to vacate the First Floor of House No.2/768, Liaquatbad, Karachi and hand over it to Respondent No.1.

2. Brief facts of the case are that Respondent No.1 is sole and absolute owner of the property bearing House No.2/768, situated at Liaquatbad, Karachi. Respondent No.1 had rented out first floor of the said premises to the petitioner/opponent on **15.06.2002** by virtue of tenancy agreement on rent at the rate of Rs.2500/- per month. The petitioner had paid a sum of Rs.15,000/- to the Respondent No.1 on account of fixed security deposit refundable at

the time of handing over the peaceful, vacant possession of the premises to Respondent No.1 subject to adjustment of loss, damages and arrears of rent etc. The petitioner has failed to pay the monthly rent from 2011 to Respondent No.1 and also not paid the utility charges. The petitioner has committed willful default I payment of monthly rent as well as utility charges. Respondent No.1 filed eviction proceedings bearing Rent Case No.579/2012.

3. The Petitioner on being served with notice of rent case filed written statement. He denied averments of Respondent No.1 and further averred that he is the employee of One Muhammad Hanif who had given him the premises i.e. A-4 situated on second floor of Zubaida Cottage situated on Plot No.768, Block-2 Liaquatabad, Karachi and tenancy agreement is false/bogus and the signature appeared on the agreement is managed, forged and fake since he was inducted in the above said flat in the year 2003 by Muhammad Hanif who is the lawful owner of the Flat. He categorically denied the relationship of landlord and tenant between the petitioner and the respondent. It is further averred that he is residing at the second floor and I had no connection with the first floor. However, it is averred that petitioner is regularly paying all utility bills and the copies of the same are being supplied to his employer Muhammad Hanif. It is averred that applicant / Respondent No.1 tried to cocked up some story for some ulterior motives unknown hidden reasons best known to them in order to evict the petitioner from the premises, therefore, he prayed for dismissal of rent case.

4. After hearing learned counsel for the parties, learned Rent Controller has dismissed the Rent case filed by petitioner by order dated **22.12.2016** holding that; “there is relationship of landlord and

tenant between the parties and from the opponent side there is complete willful default in payment of rent, therefore, ejectment application was allowed. The opponent was directed to handover peaceful vacant possession of the demised premises viz; First Floor of House No.786, Block-02, Liaqutabad, Karachi to the applicant within thirty (30) days.”

5. The order of Rent Controller dated **22.12.2016** was challenged by petitioner in F.R.A. **No.04/2017** before the IVth Additional District Judge Central Karachi which was also dismissed by the impugned order dated **08.05.2017**. The petitioner has challenged the concurrent findings through the instant petition.

6. It is averred by the learned counsel for the petitioner that learned Courts below have misread the evidence inasmuch as one of the witnesses of the Respondent did not support his version and stated that he was not present when the tenancy agreement was allegedly signed by the petitioner and Respondent. It is further averred that the learned Courts below have not considered the evidence produced by the petitioner by examining himself and his witnesses No.6. It is further averred that there was ample evidence to show that the Respondent had entered into a Sale Agreement with the petitioner’s employer Muhammad Hanif who had given the premises to petitioner for his residence and the learned Courts below have failed to consider the evidence of the Appellant and his witnesses who clearly stated that the tenement in question was purchased by the petitioner’s employer on payment of substantial amount towards advance payment of the sale consideration. The Courts below have failed to consider the fact that once the relationship of landlord then the issue is to be first decided and the

learned Courts below has exceeded its jurisdiction by deciding the ownership of the premises in favour of the Respondent.

7. On **17.4.2018** learned counsel for the respondent filed para-wise comments on behalf of Respondent No.1 (B to E) and denied all the averments made by the petitioner. It is averred by the Respondent that both the Courts below have passed the proper order for ejectment after considering the whole evidence. It is further averred that petitioner deliberately and willfully failed to produce / submit the copy of cross-examination of witness of petitioner, on the basis of which the learned lower Courts decided the issue of existence of relationship. It is further averred that lower Courts passed the order after proper examination and considering of facts and record as well as evidence and prayed for dismissal of the petition.

8. Learned counsel for the Respondent No.1 has placed on record statement dated 14.11.2018 to the effect that the trial Court by order dated **08.7.2017** has corrected the typing error with respect to tenement in the judgment on application filed by respondent No.1(a) to (e) and changed the word "First Floor" to "Second Floor in the judgment dated 22.12.2016.

9. I have heard the arguments and perused the record.

10. The contention of the learned counsel for the petitioner regarding non-existence of relationship and also that the ejectment order was in respect of the First Floor and Second Floor of immovable property bearing House No.2/768, Liaquatabad, Karachi are belied from the record since admittedly the typing error has been corrected by the Courts below and the use of word First Floor has been substituted with Second floor. The petitioner has contested the

rent case by filing written statement in which relationship of landlord and tenant has been denied on the ground that he has been put in possession through some Muhammad Hanif. However, he could not produce any document to show that said Muhammad Hanif is owner of the tenement. Muhammad Hanif has filed suit for specific performance which is still pending meaning thereby as per record respondent is still owner and until he loses his title the petitioner was bound to tender rent to respondent No.1. It is settled law that when tenant denies relationship and failed to discharge burden of relationship then default is a natural consequence, same is the position of petitioner's case in hand. The findings of the Rent Controller and Appellate court are therefore in consonance with the evidence on record and law. No case is made out to entertain this constitution petition, therefore, this petition is dismissed with direction to the petitioner to vacate the premises within 30 days' time. On completion of 30 days from the date of this order, if petitioner fails to vacate the premises the executing Court shall issue writ of possession with police aid and with permission to break open the lock without notice to the petitioner.

J U D G E

Karachi
Dated:14.12.2018

SM

