

IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No.S-2158 of 2018**

**Present: Mr. Justice Nazar Akbar**

Petitioner : Rashid Ali,  
Through Mr. Nadir Khan Burdi,  
advocate.

Respondent No.1 : Muhammad Javed  
Respondent No.2 : Muhammad Yamin  
Respondent No.3 : Muhammad Anis  
Respondent No.4 : Muhammad Abid

through Ms.Tabassum Aijaz, advocate.

Respondent No.5 : District and Sessions Judge, Karachi-Central  
(Nemo)

Respondent No.6 : VIIth Rent Controller, Central Karachi.  
(Nemo)

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Date of hearing : **15.11.2018**

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 **14.11.2017** in Rent Case **No.668/2017** affirmed by District & Sessions Judge (Central) Karachi by order dated **08.09.2018** in F.R.A. **No.309/2017** whereby the Petitioner was directed to vacate and handover the peaceful physical possession of demised shop situated on the ground floor of property bearing No.512 Block-10, Liaquatabad, Karachi.

2. Brief facts of the case are that mother of the Respondents namely late Mst. Zubaida Begum wd/o of late Muhammad Ikramuddin expired on 28.2.2007 who was sole and absolute owner

of the property bearing No.512 Block-10, Liaquatabad, Karachi. On her demise the said property was inherited and partitioned by the legal heirs through two relinquishment deeds registered No.3630-25-2015 and No.3634-25-2015. The deceased mother of respondents in the year 1995 had rented out the said shop constructed on ground floor to the petitioner on the monthly rent @ Rs.7500/- alongwith electric, gas, water, telephones charges on goodwill basis through oral tenancy. The petitioner regularly paid the rent to the respondent and electricity charges and other utilities but committed default with effect from April, 2016. The petitioner although has separate electric meter No.SAT68376 installed at the said shop was not paying the electricity bills rather have made artificial installation due to which k-electric took action for power theft against the petitioner in the month of October 2016 and also sent bill alongwith the penalty amounting to Rs.340,065/- but the opponent refused to pay the said penalty amount. The K-electric warned about the disconnection and have changed the meter of the shop in the month of November, 2016. Consequently the respondent was arrested by k-electric in order to settlement of arrears of electricity dues payable by the petitioner. It is further averred that the petitioner is not interested to pay the electricity bills in future, however, the petitioner has failed to fulfill his commitment and if the same condition subsist it would resulted in disconnection of electricity that would cause damage to the material value of the said property. The respondent asked the petitioner to vacate the premises and handover the vacant possession to the respondent/landlord and to pay monthly electricity consumption charges / bill since April, 2016 but the petitioner made false promises in presence of the witnesses and a week ago refused to make any payment of dues. The petitioner is legally bound to pay the

monthly electricity consumption amount/bill and he has committed willful default as such the petitioner is not entitled to retain the possession of the shop. Therefore, the respondent filed eviction proceeding bearing Rent Case No.668/2016.

3. The Petitioner was duly served with eviction proceedings and he filed written statement and admitted that tenancy commence through mother of respondents at the monthly rent of Rs.2000/- per month but contended it included electric, Gas and water charges and he has paid upto November, 2016. However, in December 2016 when applicant No.1 refused to receive the rent, petitioner had tender the rent of December 2016 through money order which was returned back hence petitioner has started to deposit the monthly rent in MRC bearing No.37/2017. So far installation of electric meter of demised shop is concern petitioner is responsible to pay the bill directly to the concerned department hence no arrears / dues of electricity upon the premises under occupation of petitioner.

4. Learned Rent Controller after hearing learned counsel for the parties has allowed the rent case filed by respondent by order dated **14.11.2017**. The order of Rent Controller dated **14.11.2017** was challenged by petitioner in F.R.A. **No.309/2017** before District Judge Karachi, Central, which was also dismissed by the impugned order dated **08.09.2018**. The petitioner has challenged the concurrent findings through this Constitution Petition.

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

6. The petitioner was required to show from the evidence that how the concurrent findings of facts on the question of default were contrary to the evidence. The ground taken by the petitioner before the trial court was that the payment of Gas, Electricity was included

in the rent @ of Rs.2000/- per month but in the evidence he conceded that he has been paying electricity charges directly to K-electric through separate meter installed for supply of electricity to the shop in question. It has also come on the record that he has failed to produce electricity bill of the meter installed for supply of electricity in the tenement. Beside the default in payment of electricity the petitioner clearly committed default even in MRC. The Rent Controller has rightly observed that without refusal of rent by the landlord the tenant is not supposed to tender rent through MRC if he deposits rent without prove of refusal to receive it by landlord it will be treated as default. The record shows that payment of rent through money order has also been not established by the petitioner before the Rent Controller and therefore, the tender of rent through MRC was not proper tender of rent. There is no justification for challenging the concurrent findings through constitutional jurisdiction. As discussed above both the Courts have come to the right conclusion on the basis of evidence and therefore, no case is made out to invoke constitutional jurisdiction of this Court.

7. In view of the above, this constitution petition is dismissed. However, petitioner is given 30 days' time to vacate the premises, since time given by the Rent Controller and the appellate Court for vacating the premises has already been expired. 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**