

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.S-1183 of 2011

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner : Shaikh Muhammad Ishaq (deceased)
through legal heir Shaikh Muhammad Asif.
Through Mr. Sikandar Khan, Advocate.

Versus

Respondent No.1 : Mst. Hoor Afzal W/O Haji Zahoor
Through Mr. Muhammad Amin, Advocate.

Respondent No.2 : VIth ADJ, South Karachi District South.

Respondent No.3 : VIth Senior Civil Judge, District South
Karachi.

Date of hearing : **12.11.2018**

Date of Decision : **04.12.2018**

JUDGEMENT

NAZAR AKBAR, J. The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The VIth Rent Controller, South Karachi by Judgment dated **24.5.2011** allowed Rent case No.367/2007 filed by Respondent No.1/landlady and the VIth Additional District Judge, South Karachi by Judgment dated **12.9.2011** passed in FRA No.177/2011 maintained the said judgment of Rent Controller and the Petitioner was directed to hand over the vacant and peaceful possession of the tenement to Respondent No.1/landlady within sixty days from the date of appellate order.

2. Briefly stated the facts of the case are that Respondent No.1 filed ejection application under Section 15(2)(ii) of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) against the Petitioner before

Rent Controller stating therein that she is the lawful owner/landlady in respect of building known as Sher Bano Building, Plot No.R.S. 3/40 School Road, Ramswami, Karachi which was purchased by her from its previous owners by virtue of a registered sale deed dated **16.5.2006**. The previous owner provided a list of tenants of the demised premises according to which the Petitioner was tenant of Flat No.13 (the tenement) @ Rs.90/- per month excluding electricity and other charges. After the purchase of the said building, Respondent No.1 through her husband in the month of June, 2006 verbally intimated all the tenants about her ownership and also served a notice of the same upon the Petitioner wherein she also demanded monthly rent at Rs.1000/- per month but the Petitioner has failed to tender the same from the month of **June, 2006** and even not replied the said notice hence the Petitioner has committed willful default in payment of monthly rent from **June, 2006**. Therefore, Respondents No.1 filed the rent case.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he stated that the agreed rent of the tenement was Rs.65/- per month and he had paid the rent upto **September, 2006** to the previous owner. He further contended that he acquired the tenement by Pagri amount of Rs.100,000/- and husband of Respondent No.1 neither met with him nor demanded the rent. It was further averred that in the month of November, 2006, Respondent No.1 claimed herself to be the owner but she failed to produce any document, however, in the month of **January, 2007** the previous owner informed him about the change of ownership to which he sent the rent through money order which was not accepted by Respondent No.1, therefore, he deposited the same in Court in **MRC No.256/2007** and not committed default.

4. After recording evidence and hearing learned counsel for the parties, the Rent Controller allowed Rent Application filed by Respondents No.1 and directed the Petitioner to hand over the peaceful possession of the tenement to Respondent No.1 within 45 days. The Petitioner filed FRA No.177/2011 against said judgment before the appellate Court which was dismissed by judgment dated **12.09.2011**. Both the judgments have been impugned herein this constitution petition.

5. I have heard learned counsel for the parties and gone through the record.

6. Learned counsel for the Petitioner was required to satisfy the Court about the misreading and non-reading of evidence by the two Courts below in coming to the conclusion that the Petitioner has not committed default in payment of rent. The counsel cannot read out any single piece of evidence other than the evidence examined and discussed by the two Courts below on the point of default in payment of rent. However, he repeatedly insisted that the Petitioner has not committed any default in payment of rent. The other contention of learned counsel that he has been depositing rent in the name of previous landlord, therefore, he has not committed any default is not borne out from record. The evidence shows that the Petitioner without sending money order of rent started depositing rent in MRC after clear default of several months. He deposited rent of October, 2006 in February, 2007. Therefore, both the Courts rightly hold him guilty of default. This Court is not an appellate Court and the findings of the two Courts on the basis of evidence discussed by both the Courts are not supposed to be changed by this Court in constitutional jurisdiction. The constitutional Courts are not supposed to reappraise the evidence to come to a different conclusion

then the two Courts below. In these circumstances, the findings of two Courts below on the question of default are unimpeachable. By now it is settle law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the concurrent findings of facts by the courts below. The scope of rent proceeding is limited to the three factual controversies. That is, (1) default in payment of rent; (2) personal bonafide need of landlord; and (3) any unauthorized addition and alteration in the tenement by the tenant. These issues are issues of fact and once decided after recording evidence can be subjected to scrutiny only by the appellate forum provided under the rent Laws. The Sindh Rented Premises Ordinance, 1979 is special law and it provides only ONE remedy of appeal under **Section 21** of the Ordinance, 1979 against the eviction. And in rent cases concurrent findings of the two courts are sacrosanct except in extra-ordinary circumstances in which there is something like jurisdictional defect in the proceedings.

7. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, therefore, this constitution petition is dismissed alongwith pending applications. The Petitioner is directed to vacate the tenement within **30 days** and if the Petitioner fails to vacate the tenement within 30 days, the Executing Court will issue writ of possession with police aid with permission to break open the locks without issuing notice to the Petitioner.

JUDGE

Karachi
Dated:04.12.2018

Ayaz Gul/P.A