

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.96 of 2011

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : Shaikh Muhammad Asif,
Through Mr. Sikandar Khan, advocate.

Versus

Respondent : Mst. Hoor Afzal,
Through Mr. Muhammad Amin, advocate.

Date of hearing : **12.11.2018**

Date of Decision : **04.12.2018**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged the concurrent findings. The VIIIth Senior Civil Judge, South Karachi by order dated **05.03.2011** dismissed the suit No.NIL/2011 filed by the appellant. The VIth Additional District Judge, South Karachi by judgment dated **12.09.2011** passed in Civil Appeal No.89/2011 maintained the said findings of trial Court.

2. Briefly stated the facts of the case are that the appellant filed Civil suit No.NIL/2011 against the Respondent for recovery of Security/Pagri amounts of Rs.12,00,000/- and Permanent Injunction stating therein that the father of appellant namely Muhammad Ishaque had paid the security/pagri amounting to Rs.100,000/- in 1976 as provided under **Section 7** of West Pakistan Urban Rent Restriction Ordinance (VI of 1959) and the Respondent has filed rent case No.367/2007 against him. During pendency, the said rent case was dismissed for non-prosecution and father of appellant has

expired on 31.01.2008. Subsequently the said rent case was restored without impleading the legal heirs in the said rent proceedings and even without notice to them. Then the Respondent filed affidavit in evidence and during cross examination he admitted that the property had been acquired on security/good will/pagri basis and he is ready to pay pagri amount of Rs.350,000/- after deducting electric, water charges and arrears of rent at the rate of Rs.1,000/- per month and only Rs.120,000/- will be paid to the appellant. Since the said amount was not reasonable amount to obtain accommodation in the same area/locality to his large family members, therefore, appellant filed the said suit for recovery of the reasonable amount of security/pagri as per market value in the locality under **Section 9** of CPC.

3. The trial Court after hearing learned counsel for the appellant on the point of maintainability of suit, rejected the plaint of suit being not maintainable by order dated **05.3.2011**. Against said order, the appellant filed Civil Appeal No.89/2011 before VIth Additional District Judge, South Karachi which was also dismissed by judgment dated **12.09.2011**. The appellant filed instant Revision Application against both the orders.

4. I have heard learned counsel for the parties and perused the record.

5. The record shows that the appellant is tenant and ejectment order has already been passed by the two courts i.e Rent Controller as well as the appellate Court and he has also filed constitution petition against the said ejectment orders on **29.10.2011**. In the suit filed by the appellant/plaintiff he has claimed recovery of Pagri amount from the Respondent and he has himself admitted in the

plaint that the pagri, if at all, was paid to the previous owner. The suit was found not maintainable against the present Respondent, the new owner of the premises in question, who has served the appellant with a notice under **Section 18** of SRPO, 1979 before filing the rent case. The appellant's First Appeal was also dismissed on the very ground that not a single penny of pagri was given by the appellant to the Respondent and even the allegation regarding pagri to the previous owner was under doubt. Be that as it may, the recovery of the amount of pagri should have been filed against the person to whom it was paid. He was not even impleaded.

6. In view of the above facts, no case for interference in the orders of two courts below is made out since there was no illegality or irregularity in the orders of the Courts below nor the decisions are contrary to law, therefore, instant IInd appeal is dismissed alongwith pending applications.

JUDGE

Karachi
Dated:04.12.2018

Ayaz Gul/P.A