

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-1310 of 2017

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

Before: Mr. Justice Nazar Akbar

Petitioner : M/s. Temp Corner Shop No.18, through
Mr. Muhammad Raghob Baqi, Advocate.

Versus

Respondent No.1 : Mst. Seema Begum
Respondent No.2 : Syed Razi Ahmed
Respondent No.3 : Mst. Nasreen Shagufta
Respondent No.4 : Mst. Nazneen Begum
Respondent No.5 : Mst. Shama Begum
Respondent No.6 : Mst. Raana Begum
Respondent No.7 : Mst. Rehana Begum
Respondent No.8 : Mst. Rukhsana Begum
Respondent No.9 : Mst. Erum Begum
Respondent No.10: Mst. Farina Begum
Respondent No.11: Mst. Ambreen Begum
Respondent No.12: Syed Jawed Ahmed
Respondent No.13: Syed Salman Ahmed
Respondent No.14: Syed Imran Ahmed
Through Mr. Masroor Ahmed Alvi, Advocate.

Respondent No.15: The Presiding Officer, Court of V Senior Civil
Judge/Rent Controller, Karachi South.

Respondent No.16: The Presiding Officer, Court of VIII Additional
District and Sessions Judge, Karachi South.

Date of hearing : **22.11.2018**

Reasons/Decision: **28.12.2018**

JUDGEMENT

NAZAR AKBAR, J. The petitioner through this constitutional
petition has challenged the concurrent findings of two Courts below.
The Vth Rent Controller, South Karachi by Judgment dated
12.3.2013 allowed **Rent case No.412/2008** filed by Respondents/
landlords and the VIIIth Additional District Judge, South Karachi by

Judgment dated **29.4.2017** in **FRA No.94/2013** maintained the said judgment of Rent Controller and the Petitioner was directed to hand over the vacant and peaceful possession of the demised shop to Respondents/landlords within 60 days from the date of appellate order.

2. Briefly stated the facts of the case are that Respondents No.1 to 14 have filed Rent Case under **Section 15** of the Sindh Rented Shop Ordinance, 1979 (SRPO, 1979) stating therein that they are owners and landlords of the entire immovable property i.e Kothari Mansion (Mama Mansion), on Plot bearing Survey No.4, Sheet No.SB-5, Saddar Bazaar, Karachi having acquired it by a registered sale deed dated **11.3.2006**. The Petitioner was a tenant in Shop No.18 on Ground of the said building (the demised shop) and, therefore, a notice under **Section 18** of SRPO, 1979 dated **05.4.2006** was sent to him. Simultaneously a letter of attornment dated **11.03.2006** through registered post A.D by previous landlord was also served on the Petitioner. The Petitioner acknowledged both the letters and yet he willfully defaulted in payment of monthly rent from **01.04.2006** upto the date of filing application for his eviction of the demised shop by the Respondents. It was also averred in the rent case that the Petitioner/ tenant had also caused damage to the demised shop which has impaired the material value and utility of the demised shop. It was also averred that the demised shop is required by Respondent No.8 for her personal use and occupation.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he denied the ownership of Respondents No.1 to 14, and stated that they have purchased the said building from the Jahangir Trust without fulfilling the

requirement of law. He admitted the tenancy in respect of the demised shop and contended that he had not committed any default in payment of rent since rent upto **December, 2006** was directly paid to the previous owner M/S Jahangir Kothari Trust, Karachi and on their refusal to accept the rent from **January, 2007** onward, the rent was sent to the previous landlord through money order and on refusal to accept the money order, the rent was deposited by him in **MRC No.1640/2006** from **January 2007** to **December, 2007**. He further contended that the rent from the month of **January, 2008** was also offered to Respondent No.2 when the notice under **Section 18** was served upon him and on refusal to accept the rent for the month of **January, 2008**, the same was deposited in **MRC No.05/2008** from **January, 2008** to **December, 2008**. He denied all the allegations regarding material damage and utility value so also personal need and contended that the Respondents only desire is to fetch more rent.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by the Respondents and directed the Petitioner to hand over the peaceful possession of the demised shop to the Respondents within 60 days. The Petitioner filed **FRA No.94/2013** against the said judgment before the appellate Court which was dismissed by judgment dated **29.04.2017**. 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 and on the point of personal bonafide need of the demised shop by Respondent No.8/landlady. Learned counsel for the Petitioner has contended that there has been misreading of evidence since Respondent/landlord in his evidence has not filed proof of sending notice under **Section 18** of SRPO, 1979 by a registered post and that there has been no default since admittedly the rent has been deposited in Miscellaneous Rent Case in favour of the previous landlord. He has also vehemently contended that the sale of the property by the Trust in favour of the Respondents was unlawful and the question of unlawful sale is already subjudice before this Court, therefore, Respondents' title, being disputed, the Respondents cannot claim ownership. The contention of learned counsel representing the tenant is devoid of any legal basis. It is settled principle of law that a tenant is not entitled to question the ownership/title of the landlord. His concern is to protect his own interest in the premises as tenant by tendering rent to new landlord and avoid default. Once the letter of attornment has been received by the Petitioner specifying that to whom the demised shop has been transferred by the previous owner and on receiving the notice under **Section 18** of SRPO, 1979 from the new owner reaffirming the transfer of title then the Petitioner is left with no option except to tender rent within thirty days to the new owner in accordance with the rent laws. The Petitioner/tenant by raising question to title of new owner cannot withhold the rent and his failure to tender rent in accordance with SRPO, 1979 would entail consequences of default.

7. Now coming to the facts of this case on the question of default, both the Courts below have examined the implication of **Section 18** of SRPO, 1979 and its consequences whereby the Petitioner in spite of the notice has not tendered rent to the Respondents. It is clear from the record that a notice dated **05.4.2006** under **Section 18** of SRPO, 1979 was sent by the landlord/Respondent No.1 for payment of rent and the Petitioner in his cross-examination has admitted that it was even replied by him. Therefore, irrespective of the fact that change of ownership of the demised shop was lawful or not the Petitioner was required to tender the rent to the Respondent within 30 days from the date of receipt of notice under **Section 18** of SRPO, 1979. The record further revealed that pending the claim or question-mark on the title of the new owner/Respondent No.1 the Petitioner started depositing rent in favour of Respondent No.1 in **MRC No.05/2008** from **28.11.2008** and he has deposited the rent from **January, 2008** onward. The very fact that the Petitioner has himself deposited rent for the month of **January, 2008** in the month of **November, 2008** is a case of clear-cut default since the Petitioner has not been able to establish that he has not received the notice under **Section 18** of SRPO, 1979 in April, 2006. The contention of the learned counsel that the Petitioner came to know about change in ownership just before he sent a money order to the Respondents and, therefore, tender of rent in MRC was within 30 days from the date of knowledge is not only misconceived but also contrary to the facts. The burden was on the Petitioner to prove that money order and tender of rent in MRC in favour of Respondents was within 30 days from the date of knowledge of change of ownership and since he has not been able to establish date of receipt of notice under **Section 18** of SRPO, 1979

was in 2007 just before filing MRC in 2007. The other contention of learned counsel that the Petitioner has been depositing rent in the name of previous landlord and such deposit has not been found lawful by the Rent Controller and the first appellate Court is also misconceived. The Petitioner has admitted that letter of attornment from previous landlord showing the transfer of premises to Respondents No.1 to 14 was enough to declare/hold that such deposit of rent was not proper tender of rent. The superior Courts have time and again held that after knowledge of change of ownership, the tender of rent in the name of previous landlord is not a valid tender of rent and the tenant has to face the consequences. In these circumstances, the findings of two Courts below on the question of default are perfectly in line with facts and law. By now it is settled 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 demised shop 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 extraordinary circumstances in which there is something like jurisdictional defect in the proceedings.

8. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, consequently this constitution petition was dismissed by short order dated **22.11.2018** and the Petitioner was directed to vacate the demised shop within **six months**. If the Petitioner fails to vacate the demised shop within six months, the Executing Court on **21.5.2019** will issue writ of possession with police aid with permission to break open the locks **without** notice to the Petitioner. These are the reasons for said short order.

JUDGE

Karachi
Dated: 28.12.2018

Ayaz Gul/P.A