

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S-1551 of 2016

Present: Mr. Justice Nazar Akbar

Petitioner : Muhammad Imran
Through Mr. Ali Zaheer, advocate.

Versus

Respondent No.1 : Muhammad Farooq
through Mr. Muhammad Arif, advocate.
Respondent No.2 : Muhammad Zubair. (Nemo).

Respondent No.3 : IVth Addl. District Judge, Karachi Central.

Respondent No.4 : IVth Rent Controller, Karachi Central.

Date of hearing : **20.11.2018**

Date of Judgment : **24.12.2018**

J U D G M E N T

NAZAR AKBAR, J.- The petitioner through this constitution petition has challenged the order dated **08.9.2016** passed by the IVth Additional District and Sessions Judge, Central Karachi in FRA No.32/2014 whereby the appellate Court has remanded the case in the following terms:-

*The parties and their learned counsels are **directed to appear before the learned Rent Controller on 28.09.2016** and no Court motion notices are required to be issued by the learned Rent Controller. Since the matter is old pertaining to the year, 2012, therefore, the learned Rent Controller shall not grant unnecessary adjournment and dispose of the matter within one month. parties are left to bear their own costs.*

2. This petition was filed on **22.9.2016** and there was no stay to the proceedings of the Rent Controller after the remand. The grievance of the Petitioner was that he is a tenant in Shop No.1 and joint tenant in shops No.3 and 5 situated in at plot No.2, Block 131, Area 11/F, New Karachi, North Karachi and Respondent No.1, who admittedly is the landlord of the shops, has filed rent case only

against joint tenant who happens to be a real brother of the Petitioner without impleading him. He contended that he was not impleaded, therefore, the order of the Rent Controller was liable to be set aside being an order obtained by Respondent No.1 by fraud and misrepresentation to the Court. Though such contention of the learned counsel for the Petitioner, who is real brother of the tenant, was not accepted by the courts below, however, his grievance was redressed as soon as ejectment ordered by the Rent Controller has been set aside by the appellate Court in First Rent Appeal filed by his real brother/joint tenant. Therefore, the so-called illegality in passing an order at the back of the Petitioner stand rectified.

3. In view of the above the Petitioner could not have any grievance against the remand order dated **08.9.2016** whereby the Rent Controller has directed him to appear before Rent Controller on **28.9.2016** and participate in the proceedings. Since grievance of the Petitioner against the ejectment without his knowledge has automatically been redressed in the setting aside of the ejectment order by the appellant Court, this petition should not have been filed. The malafide of the Petitioner may be appreciated from the record that one brother has contested the case and the other brother contended that he is not aware of the rent proceedings and since he has not been impleaded, therefore, no order can be passed by the Rent Controller. The Petitioner has approached this Court with unclean hands instead of appearing before the Rent Controller, therefore, this petition was not maintainable and the same stand dismissed.

JUDGE

Karachi
Dated: 24.12.2018