

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.1366 of 2018

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

Before: Mr. Justice Nazar Akbar

Petitioner : Fatima Bano (Since deceased), through her legal heir Ahmed S/O Abdul Karim, through Mr. Muhammad Akbar Awan, advocate.

Versus

Respondent No.1 : XIIth Addl. District Judge, Karachi South.

Respondent No.2 : First Rent Controller, Karachi South.

Respondent No.3 : Irfan Ahmed, through Mr. Fasih-uz-Zaman Abbasi, advocate.

Date of hearing : **03.12.2018**

Date of Decision : **03.12.2018**

JUDGEMENT

NAZAR AKBAR, J. This constitution petition is directed against the concurrent findings of Rent Controller as well as First appellate Court. The First Rent Controller, South Karachi by order dated **06.12.2017** allowed **Rent Case No.671/2013** filed Respondent No.3, and the learned XIIth Additional District Judge, South Karachi by judgment dated **30.4.2018** maintained the said judgment of Rent Controller.

2. The facts leading to this petition are that Respondent No.3 has filed **Rent case No.671 of 2013** seeking ejectment of the Petitioner who was tenant in respect of Flat No.9, situated at Reizk Afza Manzil, Plot No.345, A.M, Akbar Road, Saddar, Karachi (hereinafter the demised premises). According to Respondent No.3, he purchased the demised premises from previous owner on **22.12.2009** and sale deed

was executed on **13.06.2012** where after the previous owner authorized him to collect rent from the tenant. After a meeting with the tenants, the Petitioner started paying rent to Respondent No.3. Thereafter Respondent No.3 increased rent from **Rs.300/-** to **Rs.1000/-** per month from **January, 2013** and such demand was made through letter dated **20.2.2013** but the same was not responded by the tenant. It was averred that the tenant has failed to pay rent from **January, 2013** and committed willful default and tenant has also failed to pay the utility charges to the KW&SB, therefore, he sent a letter dated **04.3.2013** to the tenant but the same was not responded by the tenant. Therefore, Respondent No.3 filed ejectment application before the Rent Controller, South Karachi on the ground of default in payment of rent.

3. The tenant/opponent on service of notice of rent case filed her written statement wherein she denied relationship of landlord and tenant between the parties. He contended that Respondent No.3 is not the owner of demised premises and no notice as required under **Section 18** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) was served upon him. He further contended that Respondent No.3 was collecting rent from the tenants by playing fraud and misrepresentation with the tenants and when such fraud was exposed, she started depositing rent through MRC. He denied receipt of any letter dated **20.2.2013**. In the meantime, the Petitioner filed application under **Order VI Rule 17 CPC** which was allowed by order dated **07.12.2016** by the Rent Controller. The amended written statement was filed by the Petitioner wherein it was averred that Respondent No.3 was owner by virtue of sale deed dated **13.6.2012** and during pendency of the rent case, Respondent No.3 has sold out the demised premises and executed General Power of Attorney in

favour of one Yameen Mohammad Waseem Khan who executed registered Sub-Attorney dated **07.08.2015** in favour of one Abdul Hafiz who later on sold out the same to him through sub-lease in **August, 2015** in favour of one Ahmed S/o Abdul Karim.

4. Learned Rent Controller after recording evidence and hearing learned counsel for the parties, allowed the Rent case filed by Respondent No.3 by order dated **06.12.2017**. The Rent Controller held that the default in payment of rent is proved. The following is the reasons for said order of eviction:-

On the one hand, applicant has produced oral and documentary evidence to show that payment of rent was not paid to him for the disputed period from January, 2013 thereafter it was the opponent who had to discharge burden by producing rent receipt to show that he has been paying rent in respect of disputed period. Thereafter, undisputedly the rent was deposited by tenant in respect of the demised premises for certain period however subsequently stopped payment of monthly rent.

It is settled principle of law that where landlord had taken plea of default in payment of rent, then burden of proving payment of rent would be discharged by tenant by producing written acknowledgement, postal money order receipt or receipt of Rent Controller. Reliance is place upon case law reported as 1996 MLD 1895. Even otherwise once default has been committed it could not be wiped out by subsequent payment and the penalty which had been incurred by reason of such default could not be warded off by subsequent payment. Reliance is place upon 2000 SCMR page 1924.

In view of above discussion it appears that opponent has committed willful default in payment of monthly rent in respect of disputed period as highlighted above. Therefore, this point is resolved in favour of the applicant (Respondent No.3) as default stands established.

The above findings were against Respondent No.1 actual tenant. She did not prefer any appeal against the aforesaid order. However, the petitioner challenged the said order in **F.R.A. No.43/2018** before the

XII-Additional District Judge, South Karachi which was dismissed by the impugned judgment dated **30.04.2018**. Both the orders are impugned herein this constitution petition.

5. I have heard learned counsel for the parties and perused the record. I have also gone through the impugned orders, there is hardly any illegality or infirmity which can be entertained by this Court in the constitutional jurisdiction against the factual controversy settled by the two Courts below.

6. The Petitioner was not tenant but he was occupying the premises through the tenant who was admittedly his mother and before appellate Court he has contended that he is owner of the property in question. As far as the method and manner of claiming ownership is concerned, no evidence was led by him before the Rent Controller nor even otherwise Rent Controller was supposed to look into the claim of a stranger to the property in possession of the tenant to abandon its jurisdiction. Be that as it may, the appellate Court has elaborately discussed the criminal cases pending against the Petitioner wherein the detail of method of creating fake documents of ownership has been discussed. The appellate Court dismissed the appeal with the following observations:-

It is well settled law that question of title can never be decided by the Rent Controller. The question of disputed title or ownership in respect of demised flat is to be determined by a competent Civil Court and such controversies do not fall within the jurisdictional domain of the learned Rent Controller.

The Petitioner has challenged both the findings through this constitution petition and after going through the record and both the judgments of the courts below the Petitioner's counsel was unable to satisfy that how the factual as well as legal controversy settled by the

two courts below was suffering from illegality or infirmity so it can be entertained by this Court in constitutional jurisdiction. There is no reference to any misreading and non-reading of evidence by the Courts below.

7. In view of the above legal as well as factual position, instant constitution petition was dismissed alongwith pending applications by a short order dated **03.12.2018** and the Petitioner was directed to vacate the demised premises within **30 days** otherwise the Executing Court will issue writ of possession without notice to the Petitioner with police aid and permission to break open the locks. These are the reasons for said short order.

JUDGE

Karachi
Dated: .12.2018

Ayaz Gul/P.A