

IN THE HIGH COURT OF SINDH, KARACHI

Constt. Petition No. **S-780/2010**

Petitioner : Syed Siraj-ul-Hasan Zaidi,  
through Mr. M. Azhar Faridi,  
advocate.

Versus

Respondent No.1 : Syed Badar-ul-Hasan Zaidi,  
Now deceased through his LR's  
  
None present for the Respondent

Respondent No.2 : IV Addl. District Judge, Karachi  
(Central).

Date of hearing : 20.11.2018

Date of Judgment : 20.11.2018

**J U D G M E N T**

**Nazar Akbar, J.-** The petitioner through this constitution petition has challenged concurrent findings, whereby IIIrd Rent Controller Karachi (Central) Karachi in Rent Case No.184/2006 has been pleased to order eviction of the petitioner from Flat No.7, Atia Manzil, 145, Qasimabad, Liaquatabad, Karachi to the Respondent No.1 within 60 days (hereinafter referred the "said tenement") by judgment dated **22.10.2007** and the learned IVth Additional District Judge Central, Karachi by judgment dated **18.5.2010** in F.R.A. No.203/2013 has been pleased to endorse the findings of the Rent Controller while dismissing the appeal filed by the petitioner.

2. Precisely, the facts of the case are that Respondent No.1 filed rent case against the petitioner claiming therein that he is lawful

owner of a house constructed on Plot No.145, Atia Manzil, Qasimbad, Liaquatabad, Karachi admeasuring about 132 sq. yds consisting three (3) Bachelors Rooms and four (4) flats on ground plus three storeyed building according to the plan duly approved vide No.AC-BP-3313/61/19806 dated **19.11.1961**. The petitioner by virtue of tenancy agreement dated **10.10.1079** is tenant of the respondent in respect of Flat No.7/145 on monthly rent of Rs.2500/- payable in advance by 4<sup>th</sup> of each month against a valid rent receipt besides electricity and Sui Gas charges. The petitioner is brother of respondent and as such the monthly rent of the premises was not increased after every three years under **Section 9** of the Rent Restriction Ordinance, 1979. The petitioner willfully neglected to pay the rent since May, 2001 to February 2006 (58 months). It is further averred that petitioner willfully and deliberately could not pay the utility bills besides the monthly rents since January 2006 detailed as under:-

|      |  |                            |
|------|--|----------------------------|
| i.   | Rent due from May 2001 to February 2006<br>@ Rs.2500/- P.M (58 months) | Rs.1,45,000/-              |
| ii.  | Sui Gas Charges (old)  | Rs.0,12,200/-              |
| iii. | Electricity & Sui Gas current dues about                               | <u>Rs.0,13,500/-</u>       |
|      |  | <b>Total Rs.1,70,700/-</b> |

3. It is further averred that respondent verbally informed the petitioner in the month of December, 2005 to vacate the tenement upto 31.01.2006 but the petitioner turned dishonest and filed a frivolous suit No.55/2006 in the Court of VIII Civil Judge, Central, Karachi, claiming that he is the owner of building in question and he may not be ejected forcibly from the tenement. It is further submitted that the respondent filed his written statement in said

suit and denied the allegations leveled against him and filed a statement that he will not eject the appellant without due course of law and as such the said suit was disposed of on **16.03.2006**.

4. The petitioner after service of rent case filed written statement wherein he denied the allegations of default and personal need and further submitted that the respondent is not owner / landlord of house constructed on plot No.145, Atia Manzil, Liaquatabad, Karachi, as no title document exists in his favour and there is no relationship of landlord and tenant between the parties. He claimed the petitioner never put his signature on the alleged rent agreement and that his signature has been forged by the respondent. The petitioner is regular in payment of electricity and gas charges and never committed any default in payment of such utility charges and that the respondent has no concern with the utility bills and that the appellant never remained the tenant of the respondent and has not paid any rent to him therefore, no question of arrears of rent upon the petitioner arises.

5. The Rent Controller after recording evidence and hearing allowed rent case No.184/2006 and directed the petitioner to vacate the tenement. Petitioner filed First Rent Appeal No.203/2007 against his eviction, which was also dismissed. After dismissal of First Rent Appeal, the petitioner has preferred the instant petition.

6. I have heard learned counsel for the petitioner and perused the record.

7. 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 record shows that there was admission of the petitioner himself that he has attempted to get written tenancy agreement with the Respondent cancelled by the Court of law for which **Suit No.368/2009** was filed by him and in the cross-examination he admitted that tenancy agreement has not been cancelled by any Court of law. It has also come on the record from the mouth of the petitioner/opponent himself that there are several other tenants in the building including himself and that he tried to become party in execution proceedings between respondent and another tenant Fateh Muhammad on the ground that he is the owner of the entire building but he has failed. Respondent No.1 is lease holder of the entire building in which appellant is one of the tenant and therefore, his admission that he has not paid rent on the ground that he is owner by itself is enough for both the Courts to decide the question of default against the appellant. Therefore, both the Courts have rightly hold him guilty of default.

8. In view of the above facts, this constitution petition was dismissed alongwith pending applications by short order dated

**20.11.2018.** The Petitioner is directed to vacate the tenement within **30 days** from the date of assigning these reasons to the short order. 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. Copy of this order may be sent to the Court of IIIrd Rent Controller, Central, Karachi.

JUDGE

Karachi  
Dated:22.01.2019

*SM*