

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.1768 of 2016

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

Before: Mr. Justice Nazar Akbar

Petitioner : Muhammad Muzammil,
Through Mr. Khaleeq Ahmed, advocate.

Versus

Respondent No.1 : Khawaja Mukhtiar Ali. (Nemo).

Respondent No.2 : VI-Addl. District & Sessions Judge, \
Karachi East.

Respondent No.3 : IX Rent Controller/ Senior Civil Judge,
Karachi East.

Date of hearing : **20.11.2018**

Reasons/Decision: **20.11.2018**

JUDGEMENT

NAZAR AKBAR, J. This constitution petition is directed against the concurrent findings of Rent Controller as well as First appellate Court. The IXth Rent Controller, East Karachi by judgment dated **01.08.2016** dismissed application under **Section 12(2) CPC** filed by the Petitioner in **Execution Application No.45/2009** arising out of the order of eviction of father of applicant in Rent Case No.128/2006 and the learned VI-Additional District and Sessions Judge, East Karachi in Civil Appeal No.83/2016 by judgment dated **24.10.2016** maintained the order of dismissal of application under **Section 12(2) CPC**.

2. Briefly stated the facts of the case are that Respondent No.1 filed rent case No.128/2006 under Section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) against father of the

Petitioner namely Muhammad Younis/tenant for his eviction from the House No.282/1, KESC Street, adjacent to Ebrahim Ali Bhoy High School, Garden West, Karachi (hereinafter the “demised premises”). The said ejectment application was allowed by order dated **24.7.2009**, whereby father of the Petitioner, Muhammad Younis/tenant was directed to vacate the demised premises within 30 days. The Petitioner’s father filed **FRA No.179/2009** which was dismissed. Then he challenged concurrent findings before this Court in **C.P No.38/2010** through **Mr. Khaleeq Ahmed Advocate**. Even the said petition was dismissed on merit in presence of **Mr. Khaleeq Ahmed, advocate** by order dated **09.12.2015**. The Petitioner’s father after 9 years long proceedings was again given **30 days’** time to vacate the demised premises.

3. Petitioner being son of J.D in Rent case was bound by the judgment in CP No.38/2010 dated **09.12.2015** and therefore he was required to vacate the demised premises on or before **08.12.2015**. However, after three year **Mr. Khaleeq Ahmed, advocate** has now filed the instant petition this time on behalf of son of his earlier client against another set of concurrent findings, challenging dismissal of frivolous application under **Section 12(2) CPC** in the Execution proceedings in the same rent **case No.128/2006**. The petitioner (son of original tenant) before the Execution Court has stated that the execution **application No.45/2009** has now has become infructuous because the demised premises has been transferred in the name of the Petitioner/Intervener by some alleged attorney of someone other than the landlord/ Decree Holder and now his possession of the demised premises is that of a bonafide purchaser. It is averred that Respondent No.1/decree-holder has concealed this fact and did not inform the Court that he had sold the demised premises to one Abdul Latif Qureshi and thereafter the Petitioner purchased the demised

premised from the attorney of said Abdul Latif Qureshi after verifying the documents.

4. Landlord/Respondent No.1/decree holder in his reply denied the contents of the said applications and contended that the petitioner is son of his tenant namely Muhammad Younis/Judgment Debtor who contested rent case upto High Court of Sindh, Karachi and Hon'ble High Court of Sindh on **9.12.2015** has given him 30 days' time to vacate the demised premises. He further contended that the J.D and the Petitioner/ Intervener were trying to prolong their stay in the demised premises.

5. The learned Rent Controller after hearing learned counsel for the Petitioner and Respondent No.1, dismissed application under **Section 12(2) CPC** filed by the Petitioner/Intervener alongwith other applications by Order dated **01.8.2016**. The Petitioner against the said order filed FRA No.83/2016 before the VI Additional District Judge, East Karachi which was also dismissed by judgment dated **24.10.2016**. Both the orders are impugned herein this Petition.

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

7. **Mr. Khaleeq Ahmed, advocate** for the petitioner has relied only on the disputed documents of transfer of title of demised premises in favour of the petitioners which on the face seems to have been obtained by fraud and misrepresentation. Irrespective of the facts that his client has fraudulently obtained title or not, the record shows that the petitioner himself was fully aware of the pendency of the rent case since he was living in demised premises with his father and admittedly the demised premises has never been handed over to him by the decree holder in the rent case. The respondent/landlord

has never informed the petitioner even about his intentions to sale the demised premises. Therefore, before entering into sale purchase of the demised premises with the attorney of stranger to the rent proceeding the petitioner should have insisted the so-called attorney of the owner through whom he has purchased the demised premises, to first approach the Rent Controller and withdraw Execution Application No.45/2009 against him. If the attorney was authorized to sale the demised premises, then he should also have been authorized to withdraw rent case. But for this reason whole transaction was only a sham transaction to defeat the three consecutive judicial orders of eviction of the petitioner from the demised premises. Be that as it may, it is settled law that an admitted tenant cannot defeat order of Rent Controller by claiming title adverse to the title of the landlord who has put him in possession of demised premises as tenant. In the case in hand it is not the case of relationship of landlord and tenant before the start of rent proceeding it is the case of execution of rent order dated **24.7.2009** which was affirmed third time by High Court on **9.12.2015** when after hearing **Mr. Khaleeq Ahmed, advocate** constitution petition No.38/2010 filed by father of the Petitioner was dismissed. The Courts below have very comprehensively discussed the facts and circumstances of the case to dismiss the application under **Section 12(2) CPC** and particularly by relying on the case of Muhammad Nisar ..Vs.. Izhar Ahmed Shaikh and others (**PLD 2014 SC 347**) and I also reproduce the following passage from the said case law:-

Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has already been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again.

8. In fact I am enlightened by the record of the instant petition that smart tenant knew that with the help of bunch of lawyers he can nullify the effect of even the judgment of this Court dated **09.12.2015**. He had earlier consumed **five** years in the High Court against the concurrent findings and thereafter **three** more years on frivolous application and who knows he has more ammunition in his arsenal to continue his attack on the right of his landlord to repossess the demised premises even after this order. To be honest when I dismissed earlier petition on **09.12.2015**, I was unable to apprehend that ordeal of the landlord would not end here and the tenant will even try to become owner and start fresh litigation under Section **12(2) CPC** only because I had not given strict directions to Executing Court to execute rent orders in particular mode and simply after hearing **Mr. Khaleeq Ahmed, advocate** I had dismissed the constitution petition with direction to the Petitioner's father as follows:-

“This petition is dismissed, the petitioner should vacate the premises within 30 days”.

Today I realize that in my order dated **09.12.2015** I should have given specific instruction to learned Executing Court that how to deal with the defaulter/Judgment Debtor in execution after the dismissal of the constitution petition. But for this reason the cunning tenant has been able to protract his illegal possession against three concurrent findings of his eviction from the demised premises for more than three years from 2015 in addition to 9 years old rent proceeding. The petitioner has **very badly abused** the process of Court for almost 12 years.

9. This petition was dismissed by a short order on **20.11.2018** for the reasons to be recorded later but unfortunately somehow or the

other this file remained out of my sight as I was busy in some other contested matter and could not write the formal detailed order for almost two months. Therefore, if the petitioner has not already vacated the demises premises, the Court of IXth Rent Controller, East Karachi is directed to issue writ of possession of the demised premises within 15 days from the date of receiving of this order with police aid and whoever is found in possession of the demised premises should be evicted forthwith and possession should be handed over to Respondent No.1. In case the demised premises is found lock, the bailiff /Nazir should break open the locks as well. Compliance report with photographs of the Nazir or Bailiff handing over possession to respondent No.1 should be sent to MIT-II for perusal by this Court in chamber.

10. Before parting with this judgment I must observe here that in line with the judgment of Hon'ble Supreme Court in the case of Mohammad Nazir (supra), any **injunction order** passed in any civil suit even by this Court in its original civil jurisdiction filed by petitioner against Respondent No.1 or any other proceeding except Supreme Court orders specifically suspending operation of the order in **Ex.No.45/2009** in respect of the demised premises, such order should not be an impediment in the Execution Application No.45/2009 in Rent Case No.128/2006 and direction contained in this order for the Rent Controller should be carried out in letter and spirit.

11. The above are the reasons for short order dated **20.11.2018**.

JUDGE

Karachi
Dated: .01.2019

Ayaz Gul
SM