

IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No.S-1082 of 2014**

**Present: Mr. Justice Nazar Akbar**

Petitioner : Amir and Company through  
Mr. Yousuf Iqbal, Advocate.

**Versus**

Respondent No. 1 : Muhammad Khalid Hussain Sheikh  
Respondent No.2 : Zulfiqar Ali Sheikh,  
Respondent No.3 : Ghulam Ali  
Respondent No.4 : Haleema Begum  
Respondent No.5 : Sikander Ali  
Respondent No.6 : Talat Ali  
Respondent No.7 : Ambreen  
Respondent No.8 : Neelum  
Respondent No.9 : Basit Ali  
Respondent No.10: Javed Ali.  
None present for Respondents.

Respondent No11 : Rent Controller & Senior Civil Judge No.6,  
South, Karachi.

Respondent No.12: A.D.J No.5<sup>th</sup>, South, Karachi.

Date of hearing : **22.01.2019**

Date of decision : **22.01.2019**

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

**NAZAR AKBAR, J:-** This constitution petition is directed against the concurrent findings. The Vth Rent Controller, South Karachi by order dated **30.11.2011** allowed ejectment application bearing Rent Case No.467/2008 filed by Respondents No.1 to 10, whereby the Petitioner was directed to vacate the demised premises within 60 days and the V-Additional District Judge, South Karachi by Judgment dated **03.07.2014** affirmed the impugned order in FRA No.19/2012.

2. Brief facts of the case are that Respondents No.1 to 10 filed Rent Case against the Petitioner stating therein that they are owners/

landlords of the building known as Hussain Manzil, constructed on Survey No.243, Sheet A.M. (Artillary Maidan), Shakra-e-Iraq, Karachi (the demised premises), having acquired through registered sale deed dated **14.02.2002**, executed by the Nazir of this Court in their favour. According to them, they informed the Petitioner through a legal notice dated **24.07.2002** about their ownership and also called upon him to furnish tenancy agreement as to ascertain their status and if he is found to be tenant, to pay rent to them within 30 days as provided under **Section 18** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979). The said letter was replied by the Petitioner through his counsel on **16.8.2002** claiming therein that demised premises was acquired by his deceased father on goodwill basis in the year 1956 on payment of huge pugri amount paid to previous owners Fazal Ahmed and Fatima Begum and he also paid rent to previous owners regularly upto June, 1975, thereafter, a dispute arose between the owners, as such, he after adopting due course, started depositing rent in Court regularly and has deposited advance rent for a period upto **31.10.2002** on **04.6.2002**. Respondents No.1 to 10 further averred in ejectment application that despite legal notice dated **24.7.2002**, the Petitioner failed to pay or tender rent to them at the rate of Rs.175/- per month, therefore, he committed willful default in payment of rent. It was further averred that the Petitioner without their consent and permission has made several additions and alterations in the demised premises. Respondents No.1 to 10 claimed that the demised premises is also required for the son of Respondent No.1 namely Farhan Ali for his personal use, as he wants to start his own business therein. Therefore, Respondents No.1 to 10 filed ejectment application before the Rent Controller on the ground of default and personal need.

3. The Petitioner/Opponent on service of notice of rent case filed written statement wherein he contended that the ownership right of Respondents has been challenged in Suit No.149/2004 and J.M No.47/2004 by one Ehsan Elahi before this Court. He admitted himself to be tenant in respect of demised premises. He further contended that as soon as it comes in his knowledge through notice, he started depositing rent in favour of Respondents, therefore, no default has been committed by him. He denied the alleged additions/alterations in the demised premises and he also denied the version of Respondents that they required the demised premises for personal bonafide need in good faith.

4. Learned Rent Controller after recording evidence and hearing learned counsel for the parties, allowed the Rent case filed by Respondents No.1 to 10 by order dated **30.11.2011**. The petitioner challenged the said order in F.R.A. No.19/2012 before the V-Additional District Judge, South Karachi which was dismissed by the judgment dated **03.07.2014**. Both the orders are impugned herein this constitution petition.

5. I have heard learned counsel for the Petitioner and perused 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 demised premises by Respondent No.1/landlord. The counsel cannot read out any single piece of evidence other than the evidence examined and discussed by the two Courts below on the

points of default in payment of rent and personal bonafide need. However, he repeatedly insisted that the Petitioner has not committed any default in payment of rent. The contention of learned counsel representing the tenant is devoid of any legal basis. As per his own admission in cross-examination, the Petitioner has started depositing rent in **MRC No.1384/2002** on **27.11.2002** for the first time. He also admitted that he has not produced any proof that he sent money order to the landlord before depositing the rent in MRC. He also admitted that he has not directly offered to the landlord after receiving notice under **Section 18** SRPO, 1979 dated **04.07.2002**. Once notice under **Section 18** of SRPO, 1979 is received by the Petitioner 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. By now it is settle 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 tenement 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 extra-

ordinary circumstances in which there is something like jurisdictional defect in the proceedings.

7. In view of the above, since there is no misreading and non-reading of evidence, this Court with limited jurisdiction on the constitutional side cannot interfere with the concurrent findings. Consequently, this constitution petition is dismissed alongwith pending applications with directions to the Petitioner to vacate the premises within **15 days** from today and if any execution is already pending for ejection, the executing Court on completion of **15 days** from today shall issue writ of possession without notice to the Petitioner with police aid and with permission to break open the locks. Copy of this judgment be sent to the Rent Controller for compliance with direction to submit compliance report after expiry of 15 days to this Court through MIT-II for perusal in Chamber.

JUDGE

Karachi  
Dated: 22.01.2019.

Ayaz Gul/