

IN THE HIGH COURT OF SINDH, KARACHI

**Constitution Petition No.S-400/2014**

**Before: Mr. Justice Nazar Akbar**

Petitioner No.1 : Muhammad Parvez,  
 Petitioner No.2 : Muhammad Arifeen, through  
Mr. Syed Ali Ahmed Tariq, advocate.

**Versus**

Respondent No.1 : Vth Addl. District Judge, Karachi South.  
 Respondent No.2 : II Senior Civil Judge Karachi South.  
 Respondent No.3 : Haji Ammenuddin. (Nemo).

Date of hearing : **15.11.2018**

Date of Decision : **15.11.2018**

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

**NAZAR AKBAR, J.** This constitution petition is directed against the concurrent findings of Rent Controller as well as First appellate Court. The IInd Rent Controller, South Karachi by order dated **10.04.2013** allowed **Rent Case No.971/2005** filed by Respondent No.3 and the Petitioners were directed to vacate the demised premises within 60 days, and the learned Vth Additional District Judge, South Karachi by judgment dated **22.2.2014** maintained the said findings of the Rent Controller.

2. Precisely, the facts of the case are that Respondent No.3 in 2005 filed rent case against the petitioner for his eviction from the Ground Floor, Moinuddin Manzil on Plot No.HV.1/34, Kabrul Road, near Allana Masjid, Ramswami, Karachi, (the tenement) on the ground of personal need for self and his wife. Initially Muhammad Yaseen was tenant and after his death his sons/the Petitioners

become tenants in respect of the tenement. According to respondent No.3, petitioner No.1 lastly paid rent amounting to Rs.675/- towards rent for the month of April to June, 2005 @ Rs.225/- per month and receipt No.656 dated **24.12.2004** was also issued in his name. Respondent No.3 further averred that he has been residing on the 3<sup>rd</sup> floor in the same building and he is 75 years of age, suffering from severe Ostro Arthritis, as such facing great difficulties to go up and come down stairs, whereas his wife Mst. Shamina is also aged about 70 years, whose lower portion of body is affected by paralyze attack and she is also unable to come down and go upstairs to the 3<sup>rd</sup> floor. Therefore, respondent No.3 requires the said premises for personal bonafide use. Respondent No.3 requested the petitioners repeatedly to vacate the tenement orally as well as through legal notice dated **04.7.2005**, but of no avail, therefore, he was constrained to file eviction application. The Petitioners were duly served with eviction proceedings and they filed written statement in which they have denied the averments of Respondent No.3. However, he admitted tenancy and rate of rent.

3. Earlier this Rent Case No.971/2005 was dismissed by order dated **31.1.2009**, such order was assailed by Respondent No.3 in FRA No.81/2009 and the learned VII-Addl. District Judge, Karachi South while allowing the said appeal, ordered eviction of the petitioners. Then the petitioners preferred **C.P No.S-1111/2010**, wherein the High Court vide judgment dated **28.12.2011** remanded the matter to the learned trial Court with direction to frame *issue* “*whether the applicant/ landlord is owner of the premises in question or not*” and thereafter decide the Rent Application in accordance with law. Then again both the parties led their evidence and after hearing the parties, the trial Court allowed the eviction application

by order dated **23.02.2013**. The petitioners filed **F.R.A. No.125/2013** before the learned V-Additional District Judge, South Karachi which was dismissed by Judgment dated **22.02.2014**. Therefore, the petitioners have challenged the concurrent findings of Rent Controller and First Appellate Court through this Constitution Petition.

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

5. Learned counsel for the Petitioner in the second round of litigation has obtained exparte interim order on **12.6.2014** and contended that Respondent No.3 has died, therefore, this petition may be allowed, as the question of personal bonafide has expired with the death of Respondent No.3. Respondent No.3 was represented by one **Mr. Munsif Jan**, Advocate who stopped appearing in this case from **21.8.2017** as he has been appointed Special Prosecutor NAB but he has not bothered to inform his client and file an application for discharge of his vakalatnama. The Petitioners have not filed death of Respondent No.3 and even otherwise the perusal of rent case shows that the personal bonafide need was not only for Respondent No.3 but also for his wife. Be that as it may, it is settled law that the cases are not abated and the judgments and decrees of the courts are binding on the legal heirs of the litigants.

6. Learned counsel for the Petitioners was required to satisfy the court about maintainability of this constitution petition solely on the ground that courts below have failed to appreciate evidence from the record. He could not refer to a single line of evidence contrary to the claim of Respondent No.3 about the personal bonafide need of

Respondent No.3 and his wife. The findings on this point were initially recorded by the first appellate Court in FRA No.61/2009 by order dated **09.7.2010**. However, in the earlier constitution petition filed against the Petitioner by order dated **28.12.2011** got the case remanded to the Rent Controller with directions to frame issue "*whether the applicant/landlord is owner of the premises or not*" and thereafter decide the rent application in accordance with law, meaning thereby the question of personal bonafide need has not been set aside by the High Court even in the earlier round of litigation and the earlier findings was only subject to the decision on the question of the ownership of Respondent No.3. On remand before the Rent Controller, Respondent No.3 has produced title documents which cannot be impeached or disputed by the Petitioner and, therefore, again on **10.4.2013** the ejectment was ordered on the ground of personal bonafide need of Respondent No.3 and his wife. The record shows that Respondent No.3 has produced registered conveyance deed and extract of the property and the only mistake which caused Respondent No.3 almost 10 years was a mistake of his lawyer that he did not mention a word "**owner**" in the rent application, therefore, from 2009 to 2018 over 70 years landlord remained hanged on the third floor and the Petitioner/tenant enjoyed possession of ground floor despite repeated ejectment orders.

7. In the case of Allies Book Corporation (**2006 SCMR 152**), the Hon'ble Supreme Court has reiterated the principle about exercise of constitutional jurisdiction by High Courts in the cases where the two lower forums provided under special law have decided a finding of fact concurrently and the order of appellate forum is final. Relevant dictum from page No.158 para-12 is reproduced below:-

*In large number of cases wherein this Court categorically **held that where the finding suffered from illegality, infirmity, misreading and non-reading of evidence on record, misconstruing the evidence or based on extraneous material then the High Court would be justified in setting aside such concurrent findings of the forums below and to substitute the same by its own findings.***

8. In line with the above dictum of the Hon'ble Supreme Court, when the learned counsel for the Petitioner was repeatedly asked by the Court to please identify any illegality, misreading and non-reading of evidence on record or even misconstruing the evidence by the Courts below.

9. In view of the above, this constitution petition was dismissed by short order dated **15.11.2018**. If the petitioners have not already vacated the tenement, the executing Court should issue writ of possession after giving only one notice of only vacation of the tenement within **15 days** from receiving this order and issue writ of possession alongwith police aid and permission to break open the locks forthwith on completion of 15 days and handover the possession of the tenement whoever may be the landlord. Copy of this order be sent to the Executing Court/Rent Controller forthwith.

10. Above are the reasons for said short order.

JUDGE

Karachi  
Dated: 24.01.2019

Ayaz Gul