

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.S-328 of 2013**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner No.1 : Khalil-ur-Rehman S/O Late Abdul Rashid,  
Petitioner No.2 : Habib Rehmna S/O Late Abdul Rashid,  
Through Mr. Khaleeq Ahmed, Advocate.

**Versus**

Respondent No.1 : District & Sessions Judge, Central, Karachi.

Respondent No.2 : Muhammad Usman Rehmani. (Nemo).

Date of hearing : **21.02.2019**

Date of Decision : **04.03.2019**

**JUDGMENT**

**NAZAR AKBAR, J.** The petitioners through this constitution petition have challenged the concurrent findings of two Courts below. The 5<sup>th</sup> Rent Controller, Central Karachi by Judgment dated **25.5.2012** allowed **Rent case No.101/2010** filed by Respondent No.2/landlord and the petitioners were directed to vacate the demised premises within 60 days and the District Judge, Central Karachi by Judgment dated **18.01.2013** in **FRA No.160/2012** maintained the said judgment of Rent Controller.

2. Briefly stated the facts of the case are that Respondent No.2 filed Rent Case stating therein that he is owner of property i.e R-566, Block No.2, measuring 120 sq. yards with construction thereon, single story building situated at KDA Scheme No.16, Federal "B" Area, Karachi, (the demised premises), acquired by his wife through a

registered conveyance deed bearing No.134 dated **06.01.1998** which was duly mutated by order No.534 dated **06.01.1998**. It was averred that wife of respondent No.2 has expired on **13.06.1993**, therefore, he become co-sharer/only surviving legal heir and obtained heirship certificate from the office of Assistant Commissioner (Revenue) Karachi Central. Respondent No.1 also obtained Succession Certificate from District and Sessions Court, Karachi Central in SMA No.299/1994. It was further averred that respondent No.2 served legal notice under **Section 18** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) dated **30.07.1996** upon the petitioners, which was also replied by them. It was also averred that the rent was deposited by the petitioners in MRC No.365/1988 in the name of wife of respondent No.2. **Section 18** notice was sent by one of the new owners by way of inheritance. Beside the petitioners were persistent defaulter in payment of rent case in the said MRC and committed default in payment of rent. It was further averred by respondent No.2 that he is a retired teacher and was residing in a rented house and facing hardships due to which he required the demised premises for his personal use. Respondent on **26.12.2008** has also sent another notice to the petitioners informing the petitioners that frivolous suit filed by Aziz Qadri in respect of the demised premises was dismissed and appeal was also dismissed but the petitioners have failed to reply the same and refused to tender rent. It was averred that the petitioners have promised to vacate the premises but they failed to vacate the same, therefore, respondent No.2 filed rent case against them.

3. The Petitioners/opponents on service of notice of rent case filed their joint written statement wherein they stated that respondent

No.2 is not owner of the demised premises. They contended that no notice dated **26.12.2008** was served upon them. They further contended that first owner Mst. Hadri Begum had refused to receive rent for the month of February, 1988. They further contended that on **06.04.1988** Mst. Farida Begum sent legal notice through her counsel informing the petitioners about purchasing of the demised premises, therefore, in order to avoid further complications, father of the petitioners filed MRC No.365/1988 in which rent was being paid regularly in the joint names of Hydri Begum and Farida Begum wife of respondent No.2. They contended that respondent No.2 filed application for withdrawal of rent in **MRC No.365/1988** which was allowed. They claimed that since there are other co-owners of the demised premises, therefore, without their permission respondent No.2 was not entitled to file ejectment application.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by Respondent No.2 and directed the Petitioners to vacate the demised premises within 60 days. The Petitioners filed **FRA No.160/2012** against the said judgment before the appellate Court which was dismissed by judgment dated **18.01.2013**. Both the judgments are impugned herein this constitution petition.

5. I have heard learned counsel for the parties and perused the record.

6. On the question of default, both the Courts below have examined the implication of **Section 18** of SRPO, 1979 and its consequences whereby the Petitioners inspite of the notice has not tendered rent to Respondent No.2. It is clear from the record that a

notice dated **30.07.1996** under **Section 18** of SRPO, 1979 was sent by the landlord/Respondent No.2 on demise of his wife who was owner for payment of rent to the Petitioners. In para-1 of their written statement the ownership was admitted that it was even replied by them. Therefore, irrespective of the fact that change of ownership of the demised premises was lawful or not the Petitioner was required to tender the rent to Respondent No.2 within 30 days from the date of receipt of notice under **Section 18** of SRPO, 1979. The record further revealed that pending the claim or question-mark on the title of the new owner/Respondent No.2 the Petitioner continued depositing rent in **MRC No.365/1998** in the name of deceased owner even after having received death certificate. This fact is admitted by the petitioners and record also confirms it. Both the Courts below have based their findings of default on this factual record. It is also borne from the record that even after receiving notice of Rent Case, the petitioner did not tender rent to respondent No.2 within thirty (30) days. In these circumstances, the findings of two Courts below on the question of default are perfectly in line with facts and law.

7. By now it is settled 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. 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. Learned counsel for the Petitioners was required to satisfy the Court

about the misreading and non-reading of evidence by the two Courts below in coming to the conclusion on the point of default in payment of rent, but he is unable to show any misreading or non-reading of evidence in the judgments passed by the two Courts below. However, he contended that Respondent No.2 is not the real owner of the demised premises, therefore, he was not entitled to file ejectment application before the trial Court. He, however, cannot dispute that respondent No.2 husband of owner in whose name even rent was deposited by the petitioners and, therefore, a vague allegation that the landlord is not owner is of no consequence. Even otherwise, when eviction has been ordered on the question of default, such plea is worthy of consideration. It is also settled principle of law that a tenant is not entitled to question the ownership/title of the landlord. His concern is to protect his own interest in the premises as tenant by tendering rent to new landlord and avoid default. Once the notice under **Section 18** of SRPO, 1979 has been received by the Petitioners specifying that to whom the demised premises has been transferred, then the Petitioner was 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 of title of new owner by inheritance cannot refuse or withhold the rent and his failure to tender rent in accordance with SRPO, 1979 would entail consequences of default. Before concluding I feel it necessary to mention here that the Hon'ble Supreme Court has repeatedly disapproved the practice of filing constitution petition by **tenant** to delay their eviction. In this context one may refer to the following observation of Supreme Court in the judgment reported as Muhammad Hussain Munir and others v. Sikandar and others (**PLD 1974 SC 139**):-

*"It is wholly wrong to consider that the above constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction **merely because in its opinion the decision is wrong.** In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which plainly is not the intention of the constitution-makers."*

The Hon'ble Supreme Court in 1981 following the above referred case-law while affirming dismissal of a constitution petition in a rent case arising from the conflicting findings of Rent Controller and the Additional District Judge in the case of Muhammad Sharif v. Muhammad Afzal Sohail (**PLD 1981 SC 246**) has observed as follows:-

***"We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop.** We have been noticing, of late, that notwithstanding the fact that the Legislature, in its wisdom has abolished the second appeal in cases under the West Pakistan Urban Rent Restriction Ordinance and has made the orders of the District Judge as final, yet the parties, probably after obtaining legal advice, have taken to filing writ petitions in the High Court against the final order passed by the appellate Court, merely to take another chance or to delay their eviction, hoping that the matter shall take considerable time to be disposed of or that in any case the **High Court while dismissing their writ petition may be persuaded to allow further time for vacating the premises-in-question.** (Emphasize provided).*

In the case in hand the petitioners have challenged the concurrent findings on **16.03.2013** and obtained ex parte orders of suspension of the two orders of trial Courts. Therefore, after almost **six** years he cannot be given more than two weeks' time to vacate the demised premises without further notice.

8. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, consequently this

constitution petition is dismissed alongwith pending application(s).  
The Petitioner is directed to vacate the demised premises within **15 days**. If he fails to vacate the demised premises within **15 days**, the Executing Court will issue writ of possession with police aid and permission to break open the locks without even notice to the Petitioners.

JUDGE

Karachi  
Dated:04.03.2019

Ayaz Gul