

No.1320/2011 is arising out of dismissal of FRA No.255/2011 by judgment dated 27.10.2011 passed by Vth Addl. Sessions Judge East Karachi affirming the eviction order of the petitioner dated 30.4.2010 in Rent Case No. 470/2004 passed by IIIrd Rent Controller East Karachi. The applicant in the instant revision has filed a statement that he has also filed a petition on the same subject matter which may be heard alongwith the instant revision. Such request was accepted by this court.

2. Briefly stated the facts leading to the Revision Application and the Constitution Petition are that the applicant claimed that he is lawful owner in possession of quarter No.31/1, Area 5-D, Landhi No.6 Karachi East, measuring 80 sq.yds, (the suit property) by way of mutation by inheritance. The case of the applicant/petitioner is that respondent No.2, who had business terms with him since long, wanted to purchase the suit property. In August 2002 at his request the applicant executed a sale agreement with the respondent No.1 for a total sale consideration of Rs.22,00,000/-. Respondent No.1 paid Rs.9,00,000/- as an advance through cheques and cash, while the remaining Rs.13,00,000/- were to be paid by her at the time of execution of sale deed within six months from the date of execution of sale agreement. However, due to loss in the business, Respondent No.2 did not fulfill the terms and conditions of the sale agreement and requested for more time and ultimately when they could not arrange the balance sale consideration amounting to Rs.13,00,000/- even in the extended time, the sale agreement was revoked verbally by the applicant and Rs.9,00,000/- were returned to Respondent No.2, husband of Respondent No.1, against the duly executed receipt. However owing to the old business relation and family terms with the

Respondents the applicant did not collect his photocopy of NIC and photographs given to Respondent No.2, for the purpose of execution of sale deed of the suit property. Respondent No.2 with malafide intention fraudulently used the aforesaid photocopies for preparing forged documents of the suit property in favour of Respondent No.1. On **24.10.2004** the applicant was surprised when he received photocopy of transfer letter dated **18.3.2002** issued in favour of Respondent No.1 by respondent No.4. The suit property is already leased in the name of Mst. Hoor Bai since **15.11.1971** executed by Respondent No.4. It was also averred that the applicant has apprehension that Respondents No.1 & 2 will sell the suit property to some other persons as they have already threatened the applicant. The applicant gave notice to Respondents No.2 & 4 which was not replied. Ultimately he filed suit for declaration, cancellation and permanent injunction against the Respondents.

3. On the other hand Respondents No.1 & 2 in their joint written statement denied the version of applicant and contended that the applicant is not lawful owner of the suit property and his possession over the suit property is in the capacity of a tenant of Respondent No.1. Respondent No.2 is whole sale supplier of various food items including Meda, Sugar Oil, Ghee etc.etc. and had been running his shop at Landhi No.6 and the applicant is running bakery in the suit property and he has been getting Meda, Sugar Oil, Ghee etc.etc. from Respondent No.2 on credit basis. They had good relations and by **01.7.2002** an amount of Rs.4,15,500/- was due and payable by the applicant in respect of different items obtained by the applicant on credit from the shop of Respondent No.2 since 1992. When Respondent No.2 asked the applicant to clear the dues/arrears he

requested Respondent No.2 to purchase the suit property and adjust the dues / arrears against the applicant. At the request of applicant Respondent No.2 entered into an agreement of sale with the applicant on **15.8.2002** in respect of suit property comprising a room, small bathroom, courtyard, and a shop with one Bathee alongwith three machines on the ground floor and a room on the roof for the total sale consideration of **Rs.16,15,500/-**. The arrears against applicant since 1992 upto July 2002 were Rs.4,15,500/-. Respondent No.1 retained Rs.50,000/- as security deposit as mentioned in tenancy agreement and paid Rs.1,00,000/- in cash on 15.8.2002 as an advance. The applicant opened an account in MCB, Korangi No.6, thereafter the Respondent No.1 paid a sum of Rs.7,00,000/- vide cheque No.7784896 dated 15.10.2002 and Rs.1,00,000/- vide cheque No.7784897 to the applicant. In the meantime the applicant also obtained different items from the shop of Respondent No.2 for his bakery worth to Rs.50,000/- which he requested to adjust in the sale consideration as such Respondents No.1 & 2 paid an amount of Rs.16,15,500/-. The applicant has concocted the story in order to usurp the property of Respondents. The respondents further averred that the applicant inspite of admission of the sale agreement dated **15.8.2002** has wrongly stated in the plaint that the sale consideration was Rs.22,00,000/-. In fact, the total sale consideration was Rs.16,15,500/-. The applicant has failed to produce the copy of sale agreement dated **15.8.2002**, alongwith plaint. However, the copy of the same has been filed with the written statement by the respondents. It was submitted that the sale agreement dated 15.8.2002 was never revoked. The applicant after receiving total sale consideration informed Respondent No.2 that he has good relations with the KDA officials and undertook the

responsibility of issuance of lease deed as well as mutation/transfer of suit property in the name of Respondent No.1. The applicant got the mutation / transfer letters dated 9.9.2002 (Ex-D/13) in respect of the suit property after completing all the formalities in the name of respondent No.1. The applicant himself handed over all the original documents of suit property to Respondent No.1. KDA-Respondent No.4 then executed indenture of lease dated 24.9.2002 in favour of Respondent No.1. The applicant was already running bakery in the suit premises and Respondent No.1 at the instance of the applicant executed a tenancy agreement on **19.8.2002** commencing from **1.9.2002** with the brother of applicant namely Khalil Ahmed son of Abdul Hameed. On the expiry of 1st tenancy agreement another tenancy agreement was executed on **01.10.2003** with the applicant. In the second tenancy agreement monthly rent was enhanced from Rs.10,000/- to Rs.11000/- per month. The applicant had paid monthly rent in respect of suit property upto July 2004. It was further averred that the applicant defaulted in payment of rent and Respondent No.1 informed him that they require the suit property for the personal bonafide use of her son. Therefore Respondent No.1 filed ejectment application bearing R.C. No.470/2004 before the learned Rent Controller No.1 East Karachi

4. Despite service official Respondents No.3 & 4 failed to file their written statements, therefore, they were declared ex-parte by order dated **08.07.2005**. Learned trial court on **30.8.2005** framed the following issues:

- i. Whether the suit is not maintainable?
- ii. Whether the property in question was transfer in the name of Plaintiff by way of inheritance by the Defendant No.4, on 2.6.2003, if yes, what effect?

- iii. Whether the parties i.e. Defendant No.1 and Plaintiff entered into sale agreement executed on 15.8.2002 in respect of quarter No.31/1/, Area 5-D, Landhi No.6, Karachi in total sale consideration of Rs.22 lacs and the Defendant No.1 had paid 9-lacs to the Plaintiff?
- iv. Whether the Plaintiff revoked the sale agreement dated 15.8.2002 and return the amount of Rs.9,00,000/- to the Defendant No.1?
- v. Whether the Defendant No.1 managed forged transfer order dated 18.3.2002 in the name of Plaintiff transfer order dated 09.09.2002 in her own name and lease deed dated 24.9.2002 in her name from the Defendant No.4 fraudulently and are false fabricated documents?
- vi. Whether the plaintiff is in possession of the suit property, in capacity of the tenant of the plaintiff No.1 from first September, 2002?
- vii. Whether the Plaintiff is entitled for the relief as claimed?
- viii. What should the Decree be?

Plaintiff filed affidavit-in-evidence as Ex.P/1 and produced the following documents.

- i. **Ex.P/2** copy of letter issued by CDGK dated **2.6.2003**
- ii. **Ex.P/3** copy of receipt of payment of Rs.91,6000/- by Defendant No.1 dated **24.6.2003**
- iii. **Ex.P/4** copy of KDA letter to the Plaintiff dated **18.3.2002**
- iv. **Ex.P/5** copy of letter from KDA to Defendant No.1 dated **09.09.2002**
- v. **Ex.P/6** copy of indenture of lease deed dated **28.8.2002** by CDGK to Defendant No.1
- vi. **Ex.P/7** copy of allotment order bearing No.975-73 dated 4.11.1971 in the name of Mst. Hoor Bai
- vii. **Ex.P/8** Transfer of quarters with lease of plots in the name of Mst. Hoor Bai.
- viii. **Ex.P/9** copy of deed of gift by Mst. Hoor Bai to Mst. Hamida Begum dated **31.7.1972**
- ix. **Ex.P/10** copy of conveyance deed dated **24.3.1976** in the name of Abdul Hameed executed by Mst. Hamida Begum.

- x. **Ex.P/11** copy of legal notice dated **26.10.2004** issued to Asstt. Director Land Management by Bashir Ahmed (Plaintiff)
- xi. **Ex.P/12** copy of legal notice from the Plaintiff to The Sub Registrar, T Division-XIII, Karachi dated **30.10.2004**
- xii. **Ex.P/13** copy of sale deed dated **02.6.2003** executed between Tayyab Mirza and Bashir Ahmed.
- xiii. **Ex.P/14** copy of sale deed dated **05.3.2005** executed between M. Tayyab Mirza and Bashir Ahmed.
- xiv. **Ex.P/15** copy of station diary dated **05.7.2005** pertaining to Korangi P.S

Defendant No.2 Jaffar Ali filed affidavit-in-evidence as Ex.D and produced the following documents.

- i. **Ex.D/1** copy of sale agreement between Plaintiff and Defendant No.1 dated **18.08.2002**
- ii. **Ex.D/2** copy of receipt of payment by Plaintiff to Defendant No.1 dated **17.8.2002**
- iii. **Ex.D/3** & **Ex.D/4** copy of cheque No.7784894 dated 2.9.2002 and its counter foil.
- iv. **Ex.D/5** & **Ex.D/6** copy of cheque No.7784895 dated 5.9.2002 and its counter foil.
- v. **Ex.D/7** & **Ex.D/8** copy of cheque No.7784896 dated 5.10.2002 and its counter foil.
- vi. **Ex.D/9** copy of counter foil of cheque No.7784897 dated 2.9.2002 and its receiving.
- vii. **Ex.D/10** & **Ex.D/11** copy of two bank statements.
- viii. **Ex.D/12** photo copy of publication in daily Eagle Karachi dated **17.8.2002**
- ix. **Ex.D/13** photo copy of transfer/mutation/regularization letter dated **09.09.2002**
- x. **Ex.D/14** photo copy of indenture of lease between KDA and Defendant No.1 dated **24.09.2002**.
- xi. **Ex.D/15** photo copy of application to the Land Department by Defendant No.1 received on **10.2.2005**.
- xii. **Ex.D/16** & **Ex.D/17** photo copies of two tenancy agreements between brother of applicant and Defendant No.1.

- xiii. **Ex.D/18** Photo copy of allotment order bearing book No.975 and S.No.73 dated **4.11.1971**
- xiv. **Ex.D/19** Photo copy of publication in daily Huriat Karachi dated **21.3.1976**
- xv. **Ex.D/20** Photo copy of publication in daily Eagle Karachi dated **19.11.2001**
- xvi. **Ex.D/21 & Ex.D/22** two photographs of suit property

The Respondents in support of their case also filed affidavits in evidence of witnesses namely Asghar Ali and Muhammad Hanif as Ex.D/23 and D/65. The respondents also called an officer of KDA namely Shahabur Rehman as witness at Ex.P/24 who produced relevant record of suit property at Ex.D/25 to Ex.D/64.

5. The trial Court by a comprehensive judgment dated **30.05.2008** answered all the issues against the applicant and dismissed Suit No. 1365/2004. Appeal No. 66/1988 preferred by the applicant also met the same fate on **16.09.2009**. In the meanwhile Rent Case No.470/2004 filed by the respondent No.1 was also allowed by order dated **30.4.2010** and the applicant was directed to vacate the suit premises within 30 days. The applicant, therefore, also filed FRA No.255/2011 which was dismissed on **27.10.2011**. Therefore, the applicant has filed revision against the concurrent findings of dismissal of his Suit No.1365/2004 and his Appeal No.66/2008 and Constitution Petition No.1320/2011 is also against the concurrent findings of Rent Controller and the Rent Appellate Court.

6. I have heard learned counsel for the parties and perused the record. The counsel for the applicant has failed to point out mis-reading and non-reading of evidence from the record of both the civil courts and the rent proceedings. The trial Courts have discussed

material evidence. It is strange that the applicant has stated in the memo of revision that the agreement of sale and receipts of payment of sale consideration were not carrying signatures of the applicant, however, the signatures of the applicant are fully visible on these documents (Ex. D/1 and D/2). The burden of proof as discussed by the learned trial Court was on the applicant which was not discharged. The applicant has admitted the payment of sale consideration through cheques and cash. The respondents have produced not only photocopies of cheques but even the statement of accounts showing transfer of money in the accounts of the applicant. The applicant claimed that he has returned the advance amounting to Rs.900,000/= but he failed to produce receipt of returning the advance. He attempted to rely on manipulated receipt and, that too, was photocopy.

7. The respondent examined herself and also examined a witness from the office of CDGK who fully supported her claim. CDGK was also Defendant No. 4 in the suit from day one. The evidence shows that every step of the transaction in the office of KDA has been in accordance with law, the applicant has appeared before the relevant officer of KDA to execute/transfer documents. The official record of KDA shows not only signatures but also thumb impressions of the applicant. The applicant has failed to question the authenticity or any illegality in the process of transfer and execution of lease of suit property in favour of the respondent. The applicant alleged fraud and misrepresentation but he did not furnish details of such fraud in his evidence.

8. The Counsel for the respondent has contended that the concurrent finding of the facts are based on proper appreciation of

evidence. The applicant has filed the frivolous suit to pre-empt his ejectment since he has defaulted in payment of rent of the suit premises since July 2004 and the respondent has demanded possession of suit property for bona-fide use of her son. Respondent No. 1 averred that initially she has entered into an agreement of rent dated **19.08.2002** with the brother of the applicant Khalil Ahmed in good faith at the instance of applicant after having paid the entire sale consideration to the applicant. The applicant and his brothers were already running the bakery business in the suit property. After eleven month from September 2003 onward, the applicant himself entered into tenancy agreement instead of his brother on enhanced rent at the rate of Rs.11000/- per month. Respondent No.1 has also filed a Rent Case No. 470/2004 and the rent application was allowed. The applicant preferred First Rent Appeal No. 255/2010 which was also dismissed. However, to prolong his possession of the suit premises he has filed Const. Petition No. 1320/2011, against the concurrent findings. The said C. P. is also fixed alongwith this revision application.

9. Perusal of the record of R.A. No.173/2010 shows that Civil Appeal No. 66/2008 was dismissed by order dated **16.09.2009** by Ist Additional District and Sessions Judge, East, Karachi. The applicant has received certified copy of the impugned judgment on **12.10.2009**. The revision ought to have been filed within 90 days. However, he filed the present Revision Application on **09.08.2010** after eight months from the date of receiving the certified copies of the impugned order. The revision lies only against the decision/order of subordinate Courts and not against the decree of the subordinate Court and therefore the revision should have been filed on or before

12.01.2010. The revision was hopelessly time-barred and therefore besides the above merit, it deserves to be dismissed as barred by limitation.

10. On perusal of record of Constitution Petition, we find that the applicant in Rent Case No. 470/2004 was ordered to be evicted from the suit property by a well-reasoned order dated **30.04.2010**. The First Rent Appeal No. 255/2011 filed by the applicant was also dismissed on merit by order dated **27.10.2011**. The applicant then preferred Const. Petition No. 1320/2011 against the concurrent findings of his eviction from the suit property. On **30.05.2014** he filed an evasive statement in writing in Civil Revision No.173/2010 that he has filed Const. Petition No. 1320/2011 for the same subject matter and got the said C.P. tagged with this Civil Revision to be heard together in the interest of justice, therefore, the Const. Petition was also fixed for hearing with the Revision and this common order covers disposal of Const. Petition alongwith Civil Revision.

11. In view of the facts already narrated in earlier part of the judgment, I do not need to reproduce the facts from the rent case/appeal for the disposal of Const. Petition, since the pleadings are common and even in Civil Suit the learned trial Court has also framed Issue No. 6 that whether the petitioner is in possession of suit property in the capacity of tenant. However, the trial Court restrained from passing any order on Issue No. 6, precisely on the ground that the Court of Rent Controller by order dated **04.07.2004** has already ordered eviction of the applicant from the suit property by holding that the relationship of landlord and tenant exists between the parties. Consequently, the undecided Issue No. 6 in suit also stands adjudged against the applicant/petitioner by a competent forum.

Then it was affirmed by the appellate forum in FRA No.255/2010 when the FRA was dismissed.

12. On merit, the petitioner has raised the controversy of ownership of suit property by filing a suit No.1365/2004 before the trial court and almost every averment from the plaint was reproduced by him in the written statement to the Rent Case No.470/2004. He has failed to establish his title/ownership in the suit property and respondent has proved that he is the landlord, and owner of suit property, therefore, to hold that the default in payment of rent stands established, further evidence was not required. In fact the counsel for the petitioner has not advanced any arguments in support of constitutional petition. He has precisely relied on his arguments in Civil Revision No.173 of 2010. 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 court 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 Rental Premises Ordinance, 1979 is special law and it provides remedy of only ONE appeal under **Section 21** of the Ordinance, 1979 against the eviction. The remedy provided under **Section 100 CPC** (Second appeal) and/or under **Section 115 CPC** (Revision) cannot be invoked by the party aggrieved of an order of the appellate forum under the rent laws. 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. Therefore, to maintain the sanctity of law of appeal and authority of an appellate Courts, the extra ordinary constitutional jurisdiction of High Court cannot be invoked as a substitute of Revision or Second Appeal by a party aggrieved by the final appellate order nor High Court can interfere in such findings of facts. In the case in hand, the applicant/petitioner has four adverse concurrent orders against him from four different courts. First such order was dismissal of his suit on 30.5.2008 by the court of **IInd Sr.** Civil Judge (East) Karachi; second is the order of eviction of applicant by order dated 30.4.2010 in rent case No.470/2004 by **IIIrd Sr.** Civil Judge (East) Karachi; third order is the dismissal of Civil Appeal No.66 of 2008 on 16.9.2009 by the court of **Ist Addl.** District & Sessions Judge, (East) Karachi; and the fourth one is dismissal of FRA No.225/2010 by order dated 27.10.2011 by the court of **Vth Addl.** District & Sessions Judge (East) Karachi.

13. The applicant after having received the entire sale consideration and having fully conveyed the title of suit property to the respondents has utilized four different courts for 12 years from 2004 to 2016 to prolong his illegal and unlawful possession of the suit property against the lawful owner. This sheer abuse of the process of court cannot be ignored. The suit filed by the applicant/petitioner was frivolous and vexatious. Therefore, both the revision and the constitutional petition are dismissed with cost of Rs.50,000/- to be deposited by the applicant/petitioner with the Nazir of District and Sessions Judge East Karachi in favour of Ameen Lakhani Memorial Clinic for lawyers at Karachi Bar Association. In case of failure of the applicant to deposit the cost of Rs.50,000/-, the executing court already seized of execution No.52/2010 shall

recover the same an execution of money decree and attach movable and immovable properties of the applicant to the extent of Rs.50,000/-. This exercise should also be completed within 30 days. The execution application bearing No.52/2010 was filed before the IIIrd Rent Controller, East, Karachi which was allowed by order dated **11.3.2013**. However, the execution of writ of possession was stayed in Constitutional Petition No.1320/2011 by order dated **18.3.2013**. Therefore, the applicant is directed to vacate the premises within 30 days from the date of signing of this order and in case he failed to vacate the same the executing court shall issue writ of possession with permission to break up locks, if any, as well as police aid without further notice.

14. The above Revision and Constitution Petition were dismissed by short order dated **15.9.2016**, the above are the reasons for the same.

Dated: 29.9.2016

JUDGE