

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S-1860/2018

Petitioner : Shoaib Naeem Khan @ Muhammad Shoaib,
through Mr. Muhammad Ali Waris Lari,
Advocate.

Versus

Respondent No.1 : Muhammad Saleem S/o Idrees. (Nemo).

Respondent No.2 : Muhammad Mudassir

Respondent No.3 : VIIIth Senior Civil Judge and Rent
Controller, South Karachi.

Respondent No.4 : IIIrd Addl: District Judge, South, Karachi.

Date of hearing : **26.02.2019**

Date of Decision : **26.03.2019**

J U D G M E N T

NAZAR AKBAR, J-. The petitioner through this constitution petition has challenged the concurrent findings. The VIIIth Senior Civil Judge and Rent Controller, South Karachi by order dated **09.12.2017** allowed Rent Case **No.1056/2016** filed by respondent No.1 and the III-Additional District Judge, South Karachi by common judgment dated **13.08.2018** passed in **F.R.A. No.24/2018** and **FRA No.01/2018** has maintained the said findings of the Rent Controller.

2. Precisely, the facts of the case are that Respondent No.1 filed rent application under Section 15 of the SRPO, 1979 for eviction of the petitioner alleging therein that he is landlord/owner of shop No.07, Plot No.RC-1022/01, Ward No.IV-A-300, **Arjun Building,**

Princess Street, Chandi Bibi Road, Bhora Pir, Karachi (the tenement), which was rented out by him to the Petitioner/opponent on monthly rent of Rs.32000/- per month. It was averred that the petitioner is his nephew to whom the tenement was rented out without a formal agreement and the Petitioner always proved himself to be difficult tenant and was not paying rent regularly and has stopped payment of rent from June, 2016. It was further averred that when respondent No.1 confronted the petitioner for arrears and required the tenement for personal bonafide use, the Petitioner kept him on false hopes. It was further averred that the petitioner has introduced a new owner of the tenement namely Mudassir and has started paying rent to him, thereafter respondent No.1 filed constitution petition before this Court which was dismissed with direction to seek proper remedy under the law. It was also averred that the tenement is in the name of respondent No.1 with original lease in his possession which is enough to establish his ownership and relation of landlord and tenant, therefore, respondent No.1 filed rent case against the petitioner on the ground of default in payment of rent.

3. After notice of rent case, the petitioner filed written statement and denied the allegations leveled in the rent case and contended that neither respondent No.1 is the owner of the tenement nor he is the tenant of respondent No.1. He further contended that in fact he is the tenant of Muhammad Mudassir, who is the actual owner of the tenement and he was paying rent to said Muhammad Mudassir, therefore, question of payment of rent to respondent No1 does not arise.

4. The trial Court after recording evidence and hearing learned counsel for the parties by order dated **09.12.2017** allowed rent case filed by respondent No.1 and directed the petitioner to vacate the peaceful and vacant possession and handover the same to respondent within 45 days. The petitioner preferred First Rent Appeal against the said order before the appellate Court which was also dismissed by the appellate Court by judgment dated **13.08.2018**. The petitioner has filed the instant petition against the concurrent findings of the two Courts below.

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

6. The petitioner has repeated his contentions raised before the trial Court in the grounds of this constitution petition and has not referred to any piece of evidence which could be treated as not considered by the two Courts below in coming to the conclusion that the petitioner was tenant of respondent No.1 and that he has defaulted in payment of rent. It may be mentioned here that through the impugned order two rent appeals bearing FRA No.24/2018 filed by the petitioner and the other FRA No.01/2018 was filed by one Mr. Mudassir, who has not challenged the order of dismissal of his FRA No.01/2018. It is pertinent to mention here that even otherwise respondent No.1 has filed rent case only against the petitioner and Mr. Mudassir was not party before the Rent Controller. The said Mr. Mudassir has not even tried to become party before the Rent Controller nor he was supposed to be aggrieved by the impugned order, since he was neither tenant nor occupant of the tenement.

However, he was introduced at the appellate stage to delay the disposal of rent appeal filed by the Petitioner. However, record shows and it has been held by the two Courts below that the title of the tenement in favour of respondent No.1 was verified by this Court when SMA was filed and that verification dated **27.7.2016** from the Sub-Registrar to the Nazir of this Court has also been placed on record, therefore, the petitioner has failed to prove that the respondent No.1 to whom he has been paying rent was not owner of the tenement. The petitioner admitted remittance of rent in earlier round between the parties and entering into compromise which was also admitted by the Petitioner himself in cross-examination, however, since he denied the relationship, therefore, admittedly no rent was paid by the Petitioner to respondent No.1/landlord, therefore, the trial Court has rightly observed that where relationship of landlord and tenant stands established which was denied by the tenant/ petitioner, then default ipso facto stands established and landlord/ respondent No.1 cannot be deprived of his property.

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.

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. The Petitioner is directed to vacate the tenement within **30 days** from today. If he fails to vacate the tenement within **30 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:26.03.2019

Ayaz Gul