

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S-2483/2017

Petitioner : Muhammad Arif,
through Mr. Abdul Sattar Mughal, advocate

Versus

Respondent No.1 : Muhammad Aslam Paracha
through Mr. Zafar Iqbal Dutt, advocate.

Respondent No.2 : VIIIth Addl. District Judge, (South) Karachi.

Respondent No.3 : IVth Rent Controller, (South) Karachi.

Date of hearing : **25.02.2019**

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 concurrent findings, whereby IVth Rent Controller Karachi (South) Karachi in Rent Case **No.440/2013** has been pleased to order eviction of the petitioner from Shop No.21-B, Ground Floor situated on Plot No.A.M.9, III-B-12, Muhammad Bin Qasim Road, Karachi (hereinafter referred the “said tenement”) by judgment dated **17.02.2016** and the learned VIIIth Additional District Judge South, Karachi by judgment dated **30.08.2017** in **F.R.A. No.70/2016** has been pleased to endorse the findings of the Rent Controller while dismissing the appeal filed by the petitioner.

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 the petitioner has failed to pay monthly rent since January, 2013 and also that the tenement is

required by the respondent/landlord for personal use in good faith for the purpose of establishing the business of his son namely Muhammad Naseem. It is further averred that the petitioner has altered the demised premises without written permission of the respondent.

3. The petitioner admitted to be tenant of the respondent but asserted that he paid goodwill amount of Rs.35,000/- when he acquired the tenement at nominal rent of Rs.50/= per month in the year 1975 from Muhammad Ibrahim Paracha (late) and after his death, his sons Muhammad Naeem Paracha and Muhammad Shakeel Paracha were receiving rent from the petitioner without any title document with regard to ownership, co-ownership, certificate of legal heirs, letter of administration and without serving any notice under Section 18 of SRPO, 1979 hence no relationship of landlord and tenant exist between the parties. It is further averred that the petitioner is legal, lawful occupier and in possession of the said tenement and at present the said tenement having valuation to the tune of Rs.80,00,000/- in the market. It is further averred that Respondent No.1 got vacated one shop No.16-A in the said building for which he is demanding good/will pugri of Rs.70,00,000/- (Seventy lac) hence rent application on any ground was neither maintainable nor can be entertained under rent law. It is also contended by the petitioner that the Hon'ble Apex Court opined that goodwill/pugri amount as advance rent would be refundable at the time of vacating the demised premises. It is further contended that lease of Paracha Building has been expired after 99 years and thereafter not renewed, therefore, the ownership of the entire

building vest in the State and not in respondent, hence relationship of landlord and tenant does not exist. It is also contended that though the respondent is neither owner nor landlord of the said building, yet the rent was enhanced from time to time up to Rs.2500/- per month and now petitioner is demanding Rs.3000/- per month which was not accepted by the petitioner. It is further averred that Nadeem Paracha has received lump sum rent of Rs.30,000/- from the petitioner for January, 2013 to December, 2013 but no receipt was issued. It is further contended that under compelling circumstances, the petitioner remitted the rent for the month of January, 2014 and onwards through money order, which was returned, therefore, malafide of the respondent is crystal clear that one shop got vacated from one Hafiz Sweet Merchant and no business has been established by the respondent hence personal need is not bonafide and fair.

4. Learned Rent Controller by order dated 17.02.2016 allowed eviction of the petitioner and directed the petitioner to vacate the tenement within 60 days. The petitioner preferred First Rent Appeal and the same was also dismissed on 30.08.2017 by the appellate Court. The petitioner against the concurrent findings has filed the instant petition.

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

6. Learned counsel for the petitioner was unable to satisfy the Court that how the findings of default on the basis of the findings of two Courts below can be interfered by this Court in its

constitutional jurisdiction. From the record it is admitted position that the petitioner was tenant of respondent No.1 and he has been paying rent against proper receipt which was produced even in evidence and has not been disputed by the petitioner. The plea of the petitioner before the Rent Controller and the appellate Court that he has paid rent from January, 2013 onward and no receipt was issued was a bald statement which needed to be established with independent evidence since payment of rent for the said period has been denied by the landlord. Mere statement of the petitioner that rent receipts were not issued by the respondent cannot be confidence inspiring because the respondents have issued receipts for rent when it was paid. The witnesses produced by the Petitioner have not corroborated with evidence of the Petitioner. Besides, the failure to even pay the rent for the whole year from January, 2013, the petitioner himself has stated in his evidence that he had paid rent from January, 2014 to December, 2014 in the Court in MRC No.291/2015 in the year 2015. The Petitioner has never demanded any receipt of the so-called payment of rent for the period from January to December, 2013 and even in the MRC the first deposit by him is of **25.3.2015** which by itself was after a period of default for several months. In these circumstances, the default has been established as so held by the two Courts below. Similarly, the question of persona bonafide need on the basis of evidence was also rightly decided in favour of respondents.

7. 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 demised premises within **30 days** from today. If he fails to vacate the demised premises 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

SM
Ayaz Gul