

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-864 of 2017

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner : Muhammad Ilyas through
Mr. Muhammad Ilyas Khan Tanoli, Advocate.

Versus

Respondent No.1 : Muhammad Hanif
Through Mr. Adil Khan Zai, Advocate.

Respondent No.2 : Vth Addl. District Judge, Karachi Central.

Respondent No.3 : IInd Sr. Civil Judge & Rent Controller,
Karachi Central.

Date of hearing : **16.04.2019**

Date of Decision : **22.04.2019**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The IInd Rent Controller, Central Karachi by Judgment dated **15.03.2016** allowed Rent case No.626/2013 filed by Respondent No.1/landlord and the Vth Additional District Judge, Central Karachi by Judgment dated **25.03.2017** in FRA No.45/2016 maintained the said judgment of Rent Controller.

2. To be very precise the facts of the case are that Respondents No.1 had filed Rent Case under Section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) stating therein that he is lawful owner of Shop No.03, situated at Plot No.14/1, C. Area, Main Liaquatabad, Karachi (the tenement). The Petitioner is tenant in

respect of the tenement. The relationship of landlord and tenant is not disputed. Respondent No.1 filed the ejectment application against the Petitioner on the ground of default in payment of rent from April, 2013 onwards and he has also failed to pay the electricity charges, as well as personal bonafide need.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he denied that no notice under Section 18 of the SRPO, 1979 was served upon him. He, however, contended that he was regularly paying monthly rent but when Respondent No.1 refused to receive the rent, the Petitioner sent the same through money order and on refusal, the rent was deposited in MRC No.318/2013 in the name of Respondent No.1.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by the Respondent No.1 and directed the Petitioner to hand over the peaceful possession of the demised shop to the Respondents within 60 days. The Petitioner filed FRA No.45/2016 against said judgment before the appellate Court which was dismissed by judgment dated **25.03.2017**. Both the judgments have been impugned herein this constitution petition.

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

6. Learned counsel for the Petitioner was required to satisfy the Court about the misreading and non-reading of evidence by the two Courts below in coming to the conclusion that the Petitioner has not committed default in payment of rent. Learned counsel for the Petitioner has contended that there has been misreading of evidence

since the Petitioner has not received the notice under **Section 18** of the SRPO, 1979 and that there has been no default since admittedly the rent has been deposited in Miscellaneous Rent Case No.318/2013 on **07.08.2013** in the name of Respondent No.1 in capacity of landlord. It is 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. The Petitioner/tenant by raising question to title of new owner cannot withhold the rent and his failure to tender rent in accordance with SRPO, 1979 would entail consequences of default. By depositing rent in Court in the name of Respondent No.1 such plea has no meaning. The learned appellate Court has also very elaborately discussed the issue of default in payment of rent by the Petitioner/opponent and referred to various case-laws of superior Courts. The unimpeachable finding of default is reproduced below:-

*Now it is settled principle of law that if landlord stated that he had not received the rent of the premises in question then burden shifted upon tenant to prove the payment of rent. In this case **the attorney of appellant has deposed that it is fact that he has not produced any proof before the court which shows that the rent amount was deposited in the court in the month of April-2013. He has admitted that Exh.O/6 shows money order send in July-2013. The attorney of appellant has also admitted that he has not produce any proof before this court which shows that the rent amount for the month of April, May and June-2013 were paid to the respondent. He further admitted that he has not produce any witness which shows that the respondent refused to receive the rent for the month of July-2013. Admittedly, the respondent has admitted that appellant tendered rent through money order upto July-2013 but it does not mean that he received the said rent. Non-production of prove regarding rent from April-2013 till June,2013 create default in payment of rent of shop in question. In these circumstances it was incumbent for tenant/appellant to produce the***

proof for receiving of rent of shop in question for the month of April, May and June-2013 but he failed to do so.

The above observations clearly show that the Petitioner has committed clear-cut default in payment of rent for the months of April, May and June-2013. 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 petitioner has challenged the concurrent findings on **24.04.2017** and obtained exparte orders of suspension of the two orders of the lower Courts on **05.05.2017**. Therefore, after almost **two** years he cannot be given more than two weeks' time to vacate the tenement without further notice.

7. In view of the above facts, this constitution petition is dismissed. The Petitioner is directed to vacate the tenement within **15 days** from the date of passing of this order. If the Petitioner fails to vacate the tenement within **15 days**, the Executing Court on expiry of **15 days** will issue writ of possession with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi
Dated:22.04.2019

Ayaz Gul