

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-47 of 2013

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

Before: Mr. Justice Nazar Akbar

Petitioner : Farogh Asphahani
Through Mr. Khilji Bilal Aziz, Advocate.

Versus

Respondent No.1 : Abdul Salam Azad
Through Mr. Tariq Mehmood, advocate.

Respondent No.2 : Additional District Judge-IV, Karachi East.

Respondent No.3 : Rent Controller-VI, Karachi East.

Date of hearing : **14.05.2019**

Date of Decision : **14.05.2019**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The VI-Rent Controller, East Karachi by Order dated **30.11.2010** allowed Rent case No.480/2006 filed by Respondent No.1/landlord and the IV-Additional District Judge, East Karachi by order dated **14.11.2012** in FRA No.04/2011 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 House constructed on the plot of land in survey No.130, Deh Drigh, Tappo Malir, Taluka Karachi (the demised premises) by way of registered conveyance deed dated 23.09.2005.

The Petitioner was tenant of one Abdul Rauf, father of Riazuddin in the said premises, who had let out the demised premises to the Petitioner. The said Abdul Rauf later on died on 10.02.2005 leaving behind his son Muhammad Riazuddin, who being the sole owner of the demised premises, agreed to sell the demised premises to Respondent No.1. The change of ownership was orally and appropriately conveyed to the Petitioner particularly that from the date of change of ownership, the Petitioner would render monthly rent to Respondent No.1 but the Petitioner failed to pay monthly rent to Respondent No.1. It was further averred that the demised premises was also required by Respondent No.1 for his personal bonafide use, therefore, Respondent No.1 filed ejectment application against the Petitioner on the ground of default as well as personal bonafide need.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he denied all the allegations and contended that Abdul Rauf, who was the absolute owner of the demised premises, died issueless and Muhammad Riazuddin is not his legal heir/ son, but in fact he is younger brother of Respondent No.1 and Respondent No.1 is not owner/landlord, therefore, he has no locus-standi to file the ejectment application.

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 physical possession of the demised premises to the Respondent No.1 within 30 days. The Petitioner filed FRA No.04/2011 against said judgment before the appellate Court which was dismissed by order dated **14.11.2011**. Both the orders 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 is not the owner/landlord of the demised premises, therefore, the relationship between the parties as landlord and tenant does not exist. 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 previous landlord such plea has no meaning. The learned trial Court has very elaborately discussed the issue of default in payment of rent by the Petitioner/opponent while deciding point No.2 i.e. *“Whether opponent has committed willful default in payment of rent to the applicant”* and referred to various case-laws of superior Courts. The unimpeachable finding of default is reproduced below:-

-----***Perusal of record reveals that the opponent has deposited rent with the court since 19.07.2005 for the period of six months but there is nothing on record as to whom he paid rent since March, 2005 which is initial default. Further perusal of record reveals that the last payment received in this court from the opponent was Rs.6,000/- on 05.11.2009 whereafter nothing has been deposited towards rent of the premises. This proves clear default on the part of the***

opponent who does not appear to be interested in payment of rent and wants to reside in the property unlawfully. *Even if title of the property would have been disputed, the opponent was duty bound to make payment of rent. Under such circumstances, this point is answered in affirmative.*

The above observations clearly show that the Petitioner has committed clear-cut default in payment of rent. The record shows that Petitioner has filed FRA against his eviction order dated **30.11.2010** and did not pursue his appeal. It was dismissed after almost two years by impugned order dated **14.11.2012** and he has raised only one issue that FRA was dismissed on merit without hearing him. However, I have given him option to argue his appeal on merit but he avoided and sought time to contact his client to find out how much time will he take in vacating the demised premises. Today he says that he was unable to contact his client. The record shows that the petitioner has challenged the concurrent findings on **12.01.2013** and obtained ex parte orders of suspension of the two orders of the lower Courts on **15.01.2013**. Therefore, after more than **six years** he cannot be given more than **30 days'** time to vacate the demised premises without further notice. 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).

7. In view of the above facts, this constitution petition is dismissed. The Petitioner is directed to vacate the tenement within **30 days** from the date of passing of this order. If the Petitioner fails to vacate the tenement within **30 days**, the Executing Court on expiry of **30 days** shall issue writ of possession with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi, Dated: 14.05.2019

Ayaz Gul