

**IN THE HIGH COURT OF SINDH, AT
KARACHI.**

Constitutional Petition No. S-61/2018

Petitioner : Syed Nazar Ali, through Mr. Muhammad Aqil, Advocate.

Respondent No.1 : Qutu-ud-Din, through Mr. Shaukat Ali Shaikh, Advocate.

Date of hearing : 16.08.2018

JUDGMENT

YOUSUF ALI SAYEED, J. The instant Petition pertains to properties bearing Shop Nos. 13, 14 and 15, Siraj Shopping Centre, Plot No.19, Quaidabad, Bin Qasim Town, Karachi (the “**Subject Premises**”), and calls into question the propriety of the Order made on 30.11.2017 by the learned 1st Additional District Judge, Malir in FRA No.17/2017 (the “**Impugned Order**”), emanating from Rent Case Number 11/2016 disposed of by the learned 3rd Senior Civil Judge/Rent Controller Malir, Karachi, vide Order dated 24.07.2017.

2. Briefly, the salient facts as to the course of litigation inter se the parties in relation to the Subject Premises, culminating in the Impugned Order, are as follows:
 - (a) The Rent Case was instituted under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 (the “**SRPO**”) by the Respondent No.1 in his professed capacity as landlord of the Subject Premises, seeking the eviction of the Petitioner on the ground of default in rent.

- (b) The Rent Case had apparently been preceded by earlier rounds of litigation, including for fixation of fair rent in the form of Rent Case No.13 of 2011, which had been decided in favour of the Respondent by the learned 2nd Rent Controller, Malir, Karachi vide Order dated 31.07.2012, and remained unchallenged. It was the plea of the Respondent No.1 that the said Order made in the earlier case had also been violated.
- (c) On 17.04.2017, the learned Rent Controller made an Order on the Application of the Respondent No.1 under Section 16(1) of the SRPO (the “**Tentative Rent Order**”, directing the Petitioner to deposit arrears of rent for the past three years as well as payment on account of utilities on or before 05.05.2017, and also to deposit future monthly rent from April 2017 at the specified rate and with increase of 10% per annum as per the aforementioned Order of 31.07.2012.
- (d) The Respondent No.1 then subsequently filed an Application under Section 16(2) of the SRPO on the ground of non-compliance of the Tentative Rent Order, on which the learned Rent Controller proceeded to make the aforementioned Order dated 24.07.2017, whereby the defence of the Petitioner was struck off and he was directed to peaceably hand over vacant possession of the Subject Premises to the Respondent No.1 within a period of 90 days.
- (e) The Petitioner assailed the Order dated 24.07.2017 vide the aforementioned FRA, which culminated in dismissal in terms of the Impugned Order, hence this Petition.

3. Learned counsel for the Petitioner submitted that the Petitioner had booked the Subject Premises on ownership basis through one Mama Mukhtar, and possession had been handed over to the Petitioner on that basis but the requisite sale agreement and sub-leases were not executed and the claim of the Petitioner in that regard was the subject of a pending Suit bearing No. 739/2016 before the 1st Senior Civil Judge, Malir, Karachi, where the Petitioner had inter alia prayed for a declaration as to ownership. On this basis, he sought to deny that there existed any relationship of landlord and tenant inter se the Petitioner and the Respondent No.1, and contended that there had not been any proper determination of this aspect by the learned Rent Controller, and under such circumstances the Tentative Rent Order and subsequent Order of 24.07.2017, as predicated thereon, were unjustified, which had been overlooked by the learned ADJ. On the point for necessity for such a determination he placed reliance on judgments of the Honourable Supreme Court in the cases reported as A. M. Qureshi v. Government of Sindh 1991 SCMR 1103, Abdul Hameed Naz v. Razia Begum Awan 1991 SCMR 1376, Miskina Jan v. Rehmat Din 1992 SCMR 1149, Umar Hayat Khan v. Inayatullah Butt 1994 SCMR 572 and Mian Ikram-ul-Haque v. Dr. Shahid Hasnain 2016 SCMR 2186, and submitted that in light thereof the Impugned Order ought thus to be set aside as prayed and the underlying Rent Case be dismissed, or alternatively the matter ought to be remanded for determination of the point as to whether a landlord-tenant relationship existed between the parties. Indeed, this was the very point apparently advanced in the present Petition on 08.01.2018, being the first date that the matter came up in Court and an interim Order was obtained on that very basis.

4. Conversely, learned counsel for the Respondent No.1 submitted that a determination as to the existence of a landlord and tenant relationship had been made in as much as such relationship stood established in terms of the earlier proceedings that had ensued between the parties in relation to the Subject Premises, and the learned Rent Controller and the learned ADJ had rightly determined that in the face of such a determination, the existence of the relationship could not be brought into question. It was pointed out in this regard that this was in fact the third round of litigation between the parties in relation to the Subject Premises, as prior to Rent Case No.13 of 2011, the parties had also been embroiled in earlier proceedings in the form of Rent Case 11 of 2004 instituted by the Respondent No.1 before the learned 1st Rent Controller, Malir, Karachi, and it was submitted that the relationship between the parties stood admitted and established during the course of that matter and proceedings ensuing therefrom, being FRA No. 10/2006 before the learned District & Sessions Judge, Malir as well as Constitutional Petition No. S-79/2006 that had then been filed before this Court, culminating in Civil Appeal No. 1960 of 2007 before the Honourable Supreme Court. Attention was drawn to copies of the pleadings and relevant Orders in those proceedings, as had been filed with the written reply of the Respondent No.1 to the main Petition. He submitted that the preceding facts had not been properly disclosed in the Petition and contended that the Petitioner had approached this Court with unclean hands.

5. Having examined the Impugned Order and considered the submissions made by learned counsel in light of the record, it is apparent that the principal ground raised in the Memo of Petition and the main thrust of the Petitioner's case during the course of arguments gravitates around the denial on the part of the Petitioner as to the relationship of landlord and tenant between him and the Respondent No.1, and the contention that the fora below had failed to appreciate that, in the face of such a denial, a specific issue was required to be framed in that regard after which evidence was required to be produced by the Respondent No.1 to conclusively establish the relationship.

6. Such a contention appears patently misconceived in view of the fact that the learned Rent Controller had specifically considered the aspect of such denial in light of the proceedings that had ensued previously and determined that as the relationship of landlord and tenant had already been decided in the affirmative in the previous rounds of litigation therefore the plea could not be agitated again. When the Order made on 31.07.2012 in Rent Case No.13 of 2011 is examined, it is apparent that an issue as to the existence of the requisite relationship of landlord and tenant was indeed framed, considered and decided in the affirmative. Furthermore, turning to the Memo of Petition in Constitutional Petition No. S-79/2006 filed earlier by the present Petitioner in the proceedings ensuing from Rent Case 11 of 2004, it merits consideration that it had been specifically pleaded in terms of Paragraph 1 thereof as follows:

“That the Respondent No.1 is a Landlord and the Petitioner is a tenant in Shop No.15, situated in Siraj Shopping Centre, Quaidabad Chowk, Bin Qasim Town, Karachi, which was let out to the Petitioner alongwith Shops No: 13 and 14 in the year 1991 at the rate of Rs.150/- per month for each shop, as the Petitioner paid huge amount towards Pagri/possession money”

7. In the given circumstances, it is apparent that the judgments cited on behalf of the Petitioner are distinguishable in view of the fact that the relationship between the parties already stood well established in terms of the determination on the very point in the proceedings that had previously ensued, and an issue estoppel had therefore arisen in the matter in favour of the Respondent No.1 as against the Petitioner. As such, there is no illegality or irregularity in the approach of the fora below that warrants correction in exercise of the writ jurisdiction of this Court.

8. In view of the foregoing, this Petition is dismissed with no order as to costs.

JUDGE

Karachi.
Dated: