

JUDGMENT-SHEET
**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Constitutional Petition No.S-1883 of 2016

(Manzoor v. District & Sessions Judge Tando Muhammad Khan & another)

Date of hearing: 05.04.2019.
Date of order: 05.04.2019.
Applicant: Manzoor through Mr. Mehmood Qadir Khokhar, advocate.
Respondent No.1: Formal party.
Respondent No.2: Pir Maqsood Jan through Mr. Muhammad Fayyaz Arain, advocate.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J: - This petition aims to question the order dated 30.10.2014 passed by learned District Judge, Tando Muhammad Khan as well as order dated 18.02.2014 passed by learned Rent Controller/Senior Civil Judge, Tando Muhammad Khan. Both the impugned orders were passed in favour of the respondent No. 2. The Rent Controller directed the petitioner Manzoor to handover the vacant physical possession of the rented premises [i.e. Plot No.139 admeasuring 684 sq. feet situated in Pir Mohalla Tando Muhammad Khan] to the respondent No. 2 on the grounds of default in payment of rent. Though the petitioner challenged the order of learned Rent Controller before District Judge, Tando Muhammad Khan in Rent Appeal but the same was dismissed being time barred.

2. The facts of the case are that respondent No. 2 has filed Rent Case before the learned Rent Controller / Senior Civil Judge, Tando Muhammad Khan seeking eviction of the petitioner from the Plot No.139 admeasuring 684 sq. feet situated in Pir Mohalla Tando Muhammad Khan which hereinafter shall be called as 'rented premises', on the ground of default in payment of rent. According to the respondent No.2, he rented out the premises to the petitioner under tenancy agreement being landlord in the year 1997 but since the petitioner committed default in payment of rent amount, hence, the

respondent No.2 filed a Rent Application bearing No.4 of 2007, however, the same was compromised that the petitioner shall pay the arrears of rent amount to Rs.14000/- in 19 equal installments of Rs.750/- per month from August, 2007 upto March 2009 in addition with the monthly rent of the premises at the rate of Rs.250/- per month. It was also agreed that in case of default, the petitioner shall vacate the premises and hand over the vacant possession to the respondent No.2 / landlord. However, the petitioner failed to act in terms of compromise and committed default in payment of rent amount. Consequently, the respondent No.2 filed above referred rent matter for vacant possession of the rented premises and deposit of arrears of rent worth Rs.29825/- and Rs.325/- monthly rent for each month till realization of vacant physical possession of the premises.

3. After hearing the parties at length, I have scanned the entire material in the light of valued submissions made before me.

4. Record reflects that the petitioner disputed the application under section 15 of Sindh Rented Premises Ordinance, 1979 filed by the respondent No.2 and denied the breach of compromise arrived earlier in Rent Application No.4 of 2007, however, there was no rebuttal during the proceedings when application under section 16 (i) of Sindh Rented Premises Ordinance, 1979 was allowed. The petitioner challenged the order passed on the application under section 15 of Sindh Rented Premises Ordinance, 1979 whereby he was directed to hand over the vacant possession to the respondent No.2 and pay certain arrears of rent due against him but his Rent Appeal was dismissed being barred by limitation.

5. The petitioner filed instant petition on 17.11.2016 with prayer to direct the learned Rent Controller / Senior Civil Judge, Tando Muhammad to stop proceedings in Rent Application No.01/2012 filed by the respondent No.2 so also restrain to issue writ of possession till the disposal of instant petition. He also prayed for restraining order to respondent No.2 from interfering in the peaceful possession till disposal of this petition. On 21.11.2016 when this petition came up for hearing before this Court while issuing notice a restraining order to issue writ of possession till next date was passed. Thereafter, the matter was being adjourned on one pretext or the other.

6. Admittedly prior to present proceedings, the respondent No.2 filed a rent application bearing No.04/2007 for eviction of the petitioner from rented premises, however, the same was compromised. Allegedly the

petitioner once again committed default in payment of rent, hence, the present proceedings came into picture. Not only the petitioner failed to deposit the arrears of rent but despite his defense was struck off he was given an opportunity to cross examine the respondent No.2 but failed to rebut the claim of respondent No.2. Petitioner remained fail to fulfill his obligation as agreed in compromise arrived at between the parties before instant proceedings in the earlier rent application. Eventually, the application under section 15 of Sindh Rented Premises Ordinance, 1979 filed by the respondent No. 2 was allowed vide order dated 18.02.2014 and the petitioner was directed to hand over the peaceful vacant possession of the premises in question to the respondent No. 2 within a period of 30 days. The gist of arguments that the petitioner did not commit default, is not established in the matter, although, the defense of petitioner was struck off and he was provided an opportunity to plead his case and cross examine the respondent No.2, however, despite that he failed to substantiate his claim. The period of default is specified in the rent application and in presence of compromise agreeing to pay the defaulted amount within certain period cannot be denied being as matter of record while the breach of such compromise is exposed by the respondent No.2 through filing his affidavit. The default is established and not only the specific plea of default is taken in the pleadings but also the respondent No. 2 has filed the affidavit.

7. It is noteworthy that the petitioner remained strayed from the proceedings without any cogent reason. However, the learned Rent Controller allowed an application of the respondent No.2 and an opportunity for cross examination was given to the petitioner but again he wandered off, as such, there was no other alternate for the learned Rent Controller and has rightly passed an adverse order against him. However, the appeal filed by petitioner was time barred and accordingly dismissed by the Appellate Court. The petitioner has challenged these findings, and his case rests on the point that he has not committed default in payment of rent. In this respect, my observation is that the landlord has preferential right to get vacant possession of the rented premise even without any default is committed in payment of rent amount by the tenant

8. The upshot of the above discussion is that the findings of the learned Rent Controller as well as learned District Judge do not require any interference by this Court under constitutional jurisdiction. Resultantly, the instant petition is dismissed. These are the reasons for my short order dated

05.04.2019.

JUDGE

Abdullah Channa/PS
Hyderabad.
Dated 11.04.2019