

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.597/2018

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

Before: Mr. Justice Nazar Akbar

Petitioner: Muhammad Shoaib through
Mr. Vakil Ahmed Qureshi, Advocate

Respondent No.1: VIth Rent Controller Karachi, South.

Respondent No.2: XIth Addl. District Judge, Karachi,
South.

Respondent No.3: Naseem Ahmed. (Nemo).

Date of hearing: 19.10.2018

Date of Judgment 19.10.2018

JUDGEMENT

NAZAR AKBAR, J. The petitioner through this constitutional petition has challenged the order dated **01.4.2017** passed by VIth Rent Controller South Karachi in Rent Case No.355/2012 and affirmed in judgment dated **09.8.2017** by XIth Additional District Judge in FRA No.193/2017 whereby the petitioner was directed to vacate the office No.103, First Floor Azad Centre NP 13/98, Bhangari Street, Juna Market Karachi.

2. Briefly stated the facts of the case are that Respondent No.3 on **19.06.2007** after acquiring ownership of Flat No.103 First Floor, Haji Rasheed Square, (Old Azad Mansion) Plot No.P-13/98, Bhagnari Street, Napier Quarters, Karachi (the tenement) issued notice U/s.18 of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) to the petitioner but it was not served as the tenement was locked. The petitioner had neither paid the rent to the previous owner nor to

Respondent No.3. Therefore, Respondent No.3 filed RC No.948/2008 against the petitioner on the ground of default and prayed to direct the petitioner or any other person having possession on behalf of petitioner to hand over the vacant peaceful possession of tenement in question to Respondent No.3. The rent case was allowed, however, during pendency of the execution application, an application u/s.12(2) CPC was filed and rent case was contested by the Petitioner.

3. After remand of the case when the application under Section 12(2) CPC was allowed, the Petitioner/tenant denied the relationship of land and tenant on the basis of an agreement of sale which was said to have entered into by him with the landlord from whom Respondent No.1 has acquired the tenement through a gift deed. It is also admitted by the Petitioner that he has not tendered rent even to the previous landlord after entering into an agreement of sale with him nor he has tendered rent to Respondent No.3 on receiving notice under Section 18 of SRPO, 1979 and even after receiving notice of rent case No.355/2012. It is settled principle of law that mere agreement of sale does not confer any title of the property on the proposed buyer and till the title is transferred in accordance with law, the tenants are under obligation to pay the rent.

4. The more important part of the story of the case is that the Petitioner has already lost suit for specific performance as well as an appeal followed by the judgment of this Court dismissing civil Revision No.45/2017 available at page-131 of this file. Today as stated by the learned counsel for the Petitioner at the bar no case of specific performance is pending between the Petitioner and previous owner.

5. In view of above the facts, the findings of two Courts below are not impeachable. There is no misreading and non-reading of the evidence by the two Courts below, therefore, the concurrent findings of the Rent Controller and the Appellate Court do not call for any interference, consequently this constitution petition was dismissed by short order dated **19.10.2018** and above are the reasons for the same.

JUDGE

Karachi

Dated: .10.2018

Ayaz Gul/P.A