

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1036 of 2014

Present: Mr. Justice Nazar Akbar

Petitioner : Mr. Mohammad Dawood,
through Mr. Ch. Saeeduzzaman, Advocate.

Versus

Respondent No.1 : M/S Shaikh Abid & Co. Ltd.
Dr. Naheed Abid, Finance Director present
in person.

Respondent No.2 : The Vth Addl. District Judge Karachi-South.

Respondent No.3 : IX Senior Civil Judge & Rent Controller,
Karachi-South.

Date of hearing : **23.10.2018**

Date of decision : **13.11.2018**

J U D G M E N T

NAZAR AKBAR,J:- This constitution petition is directed against the concurrent findings. The IXth Senior Civil Judge & Rent Controller South Karachi in Rent Case No.1210/2003 allowed ejectment application filed by Respondent No.1 by order dated **23.09.2011** and the V-Additional District Judge South Karachi, affirmed the impugned order in FRA No.284/2011 by Judgment dated **24.05.2014** and the Petitioner was directed to vacate the premises within 60 days.

2. Brief facts of the case are that Respondent No.1 filed ejectment application No.1210/2003 before IXth Rent Controller South Karachi stating therein that the Petitioner was their tenant in respect of tenements No.1/26 and 1/33, first floor, in the building known as Abid Chambers Constructed on Plot No.S.R.6/9, Shahrah-e-Liaquat, New Challi, Karachi (demised premises) at the monthly rent of Rs.360/- each office. The Petitioner unauthorizedly without written consent/permission occupied the extra space lying in front of both

demised premises measuring more than 100 sq. ft. and using it by making two rooms, and not even paying rent for the said extra space and violated terms and conditions of para No.8 of the tenancy agreement. It was averred that Petitioner was paying rent with 10% increase per annum and paid rent at the rate of Rs.479/- per month for each premises till June, 2000 and since July 2000 he has not paid the rent with the increase of 10% as such, committed willful default. Therefore, Respondent No.1 filed ejectment application No.1210/2003 before the Court of IX-Rent Controller, South Karachi.

3. Petitioner/Opponent filed his written statement wherein he admitted the tenancy, however, he stated that the demised premises were acquired by him from previous tenant M/s Haroon Sooty & Brothers on payment of Rs.75,000/- for each premises as pugree and the previous landlord also changed the rent receipt. According to the Petitioner/opponent previous landlord used to increase the rent 10% after every three years which he paid till June, 1996, thereafter, Respondent No.1 took over the possession of entire building as new owner and from July, 1996, he increased the rent to Rs.360/- per month of each tenement and in order to avoid the litigation, the Petitioner agreed to pay the enhanced rent from July, 1996 onwards. It was further averred that that Respondent No.1 enhanced the rent @ 10% on yearly basis and when the Petitioner in the year 2000 was paying rent at the rate of **Rs.479/-** per month and refused to increase rent as agreed on yearly basis and sent the rent through money order. Respondent No.1 refused to receive the same, as such, the Petitioner started depositing rent in MRC No.1044/2003 and 1045/2003 for each office at the rate of Rs.479/- per month. The Petitioner/opponent denied the allegation regarding encroachment as alleged by Respondent No.1 in the ejectment application and stated that previous tenant M/s Haroon Sooty & Brothers put some sheets

on the open side of the corridor on both sides and such position was in the knowledge of Respondent No.1 in the year 1996.

4. After recording evidence and hearing learned counsel for the parties, learned Rent Controller allowed the Rent case filed by Respondent No.1 by order dated **23.09.2011** holding that the Petitioner has defaulted in payment of agreed rent and occupied/encroached the extra space lying in front of both the rented premises without permission and consent of Respondent No.1, therefore, the Petitioner/opponent was directed to vacate demises premises within 60 days from the date of order. The order of Rent Controller dated **23.09.2011** was challenged by the petitioner in F.R.A. No.284/2011 before the V-Additional District Judge Karachi-South which was dismissed by the impugned order dated **24.05.2014**. Said order is impugned herein this constitution petition.

5. I have heard learned counsel for the parties and perused 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 as well as that the Petitioner has not made any encroachment or occupied open space in front of demised premises. The counsel cannot read out any single piece of evidence other than the evidence examined and discussed by the two Courts below on these two points. However, he has made an attempt to argue that the default in payment of increased rent by 10% from July, 2000 was contrary to law, as the increased rent was required to be determined by the Court under **Section 8** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979). He further contended that there has been no written agreement about the increase with effect from July,

2000 and, therefore, the oral agreement which was mutually decided by the parties for the increase of rent was not binding on the Petitioner and thus there was no default. He has, however, missed the point that it was the conduct of the Petitioner himself for the last more than 5 years ever since Respondent No.1 has taken over the premises as landlord that he has been regularly increasing rent at the rate of 10% per annum and that is why as agreed 10% increase of rent from 1986 to 1999 the figure of rent has gone up to **Rs.479/-** per month from **Rs.360/-** per month. The calculation clearly indicates that there has been a consistent 10% increase in the rent and, therefore, in July 2000 the agreed rent was payable with increase of 10% and for payment of rent from **July 2000** there was no any need of negotiation nor it was case of fair rent, therefore, such contention is misconceived. He has not advanced any argument with reference to the illegal occupation of the extra space contrary to the agreement, rather the Petitioner has admitted that he has occupied the space for which he is ready to pay the rent.

7. In view of the above, since there is no misreading and non-reading of evidence, this Court with limited jurisdiction on the constitutional side cannot interfere with the concurrent findings. Consequently, this constitution petition is dismissed alongwith pending applications with directions to the Petitioner to vacate the premises within 30 days from today and if any execution is already pending for ejectment, the executing Court on completion of 30 days from today shall issue writ of possession without notice to the Petitioner with police aid and with permission to break open the locks.

JUDGE

Karachi
Dated:13.11.2018.

Ayaz Gul/P.A