

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-678 of 2017

Present: Mr. Justice Nazar Akbar

Petitioner : Mohammad Moin Uddin Khan through
Mr. Muhammad Ali Waris Lari, Advocate.

Versus

Respondent No.1 : Mst. Allah Dee
through Ms. Tayyaba Sadia, Advocate.

Respondent No.2 : VIth Addl. District Judge, Karachi Central.

Respondent No.3 : III-Senior Civil Judge/Rent Controller,
Karachi Central.

Date of hearing : **06.11.2018**

Date of decision : **15.11.2018**

J U D G M E N T

NAZAR AKBAR, J:- This constitution petition is directed against the concurrent findings. The IIIrd Rent Controller Central Karachi by order dated **26.09.2016** allowed ejectment application bearing Rent Case No.300/2013 filed by Respondent No1 and the VI-Additional District Judge Central Karachi by Judgment dated **25.02.2017** affirmed the impugned order in FRA No.103/2016 whereby the Petitioner was directed to vacate the demised premises within 60 days.

2. Brief facts of the case are that Respondent No.1 is absolute owner of House No.A-304, Block J, North Nazimabad, Karachi including Shop No.6 ground floor portion (demised premises) wherein the Petitioner is the tenant on monthly rent of Rs.10,200/- by virtue of tenancy agreement dated **27.12.2011** payable on or before 5th day of each calendar month excluding all utilities. The last tenancy

agreement was made on **01.01.2012** for 11 months and the Petitioner had paid rent to Respondent No.1 upto **11.04.2013** at the rate of Rs.10,200/- per month but thereafter he failed to pay rent. It was also averred in the rent application that Respondent No.1 also needed the rented premises for her personal bonafide need for starting business with her husband and a son, who has attained age of 18 years. Respondent No.1 desired to establish departmental store in demised premises. Therefore, she requested all the tenants to vacate the premises in their respective occupation but out of 7 tenants only 2 tenants vacated the premises and five tenants, including the Petitioner, initially agreed and sought time but after lapse of time they refused to vacate the same. Therefore, Respondent No.1 filed ejectment application No.300/2013 before the Rent Controller, Central Karachi on the ground of default and personal need.

3. The Petitioner/Opponent on service of notice of rent case filed his written statement. He admitted the tenancy and rate of rent at Rs.10,200/- per month. He contended that Respondent No.1 had received rent upto the month of April, 2013 and the rent for the month of May, 2013 at the agreed rate of rent was offered but the same was not accepted by Respondent No.1. Therefore, after refusal of Respondent No.1, the rent was sent through money order bearing No.5893 and 5894 for the month of May, 2013 to July, 2013 amounting to Rs.30,600/-. The said money order was also returned undelivered. Therefore, the Petitioner has deposited upto date rent in MRC No.316/2013 in the office of learned III-Rent Controller, Central Karachi. It is also averred that Respondent No.1 had asked the Petitioner for execution of fresh tenancy agreement at the rate of Rs.20,400/- per month and payment of an amount of Rs.50,000/- as

additional security deposit. It was also averred that the said demand of Respondent No.1 was not reasonable, therefore, the same was not accepted by the Petitioner. It was further averred that the requirement of demised premises by Respondent No.1 was not genuine and bonafide and the same has been created after refusal of the Petitioner to pay highly exorbitant increase in the rent and since he was paying rent regularly to Respondent No.1, therefore, question of violation of tenancy agreement does not arise.

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 **26.09.2016**. The petitioner challenged the said order in F.R.A. No.103/2016 before the VI-Additional District Judge, Central Karachi which was dismissed by the impugned order dated **24.05.2014** and the Petitioner was directed to handover the demised premises to Respondent No.1/landlady within 60 days. Both the orders are impugned herein this constitution petition.

5. On **06.11.2018**, after complete hearing of arguments of learned counsel for the parties, learned counsel for the Petitioner was given opportunity to file written arguments which he has filed on **08.11.2018**. Learned counsel for Respondent No.1 has filed some case laws. I have gone through the pleadings of 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 in payment of rent and on the point of personal bonafide need of demised premises by Respondent No.1/landlady.

The counsel cannot read out any single piece of evidence other than the evidence examined and discussed by the two Courts below on the points of default in payment of rent and personal bonafide need. However, he repeatedly insisted that the Petitioner has not committed any default in payment of rent. The record shows that rent for the month of **May, 2013** was payable on or before **30th July, 2013** if not on or before **11th May** as agreed but according to his own showing the same was deposited on **23.08.2013** in MRC No.316 of 2013 which was filed by him on **07.8.2013**. By now it is settle law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the concurrent findings of facts by the courts below. The scope of rent proceeding is limited to the three factual controversies. That is, (1) default in payment of rent; (2) personal bonafide need of landlord; and (3) any unauthorized addition and alteration in the tenement by the tenant. These issues are issues of fact and once decided after recording evidence can be subjected to scrutiny only by the appellate forum provided under the rent Laws. The Sindh Rented Premises Ordinance, 1979 is special law and it provides only ONE remedy of appeal under **Section 21** of the Ordinance, 1979 against the eviction. And in rent cases concurrent findings of the two courts are sacrosanct except in extra-ordinary circumstances in which there is something like jurisdictional defect in the proceedings.

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 ejection, 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: 15.11.2018.

Ayaz Gul/P.A