

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.72 of 2009

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

Before: Mr. Justice Nazar Akbar

Petitioner : Muhammad Iqbal alias Bani
through Mr. Muhammad Sadiq Hidayatullah,
Advocate.

Respondent No.1 : Abdul Wahid Waqf. (Nemo)

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

Respondent No.3 : IIIrd Senior Civil Judge and Rent Controller,
Karachi South.

Date of hearing : 06.11.2018

Date of Judgment : 15.11.2018

JUDGEMENT

NAZAR AKBAR, J. This constitution petition is directed against the concurrent findings of the Rent Controller and rent appellate Court. The IIIrd Rent Controller South Karachi in Rent Case No.83/1999 by order dated **06.05.2000** allowed an application under Section 16(2) of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) filed by Respondent No1, whereby the Petitioner was directed to vacate and handover the demises premises within 60 days to Respondent No.1. The said order was affirmed in FRA No.1021/2001 by the III-Additional District Judge South Karachi by Judgment dated **29.11.2008**.

2. Brief facts of the case are that Respondent No.1 filed ejectment application No.83/1999 before III-Rent Controller, South Karachi stating therein that he was Mutawali of Waqf Property known as

Wahid Manzil and Abdul Wahid Abdul Qadir Building constructed on Plot No.SB-2/2018 and SB-2/20, Mir Karam Ali Talpur Road, Saddar Bazar Quarters, Karachi. The flat No.12 in the said building was rented out to Allah Deen at a monthly rent of Rs.93/-. One Saeed Mahmood was the rent collector who was maintaining the said Waqf property since 1986 to February, 1998. The rent receipts were being issued to the Petitioner who was allegedly in possession of the premises unlawfully. It was averred that the Petitioner was not the legal heir of late Allah Deen Chnda who was the original tenant and had died. It was further averred that the Petitioner has constructed a room in front of both the flats i.e Flat No.11 and 12 and rented out one room to one Rustam and has been collecting rent at the rate of Rs.1700/- per month and he has not taken any permission from Respondent No.1. Respondent No.1 claimed that the Petitioner has not paid any payment of monthly rent since July, 1998 to him and as such he has committed willful default in payment of rent. The Petitioner has also committed default in 1995, 1996 and 1997 when he has not paid the monthly rent in time but paid to an illegal care-taker of the building. Therefore, Respondent No.1 filed ejectment application before the Rent Controller.

3. The Petitioner/Opponent filed his written statement wherein he stated that Respondent No.1 was not Mutawali of the demised premises and he has not produced any authority to show that he was appointed as Mutawali. The demises premises i.e Flat No.11 has been rented out to late Muhammad Asghar before partition and at the time of filing rent case, his family was residing in the said flat. The rent was being collected by former care-taker namely Saeed Mahmood from the legal heirs. He denied that any room has been constructed

as stated in the ejectment application and that the rent has not been paid since July, 1988.

4. Respondent No.1 filed an application under **Section 16(1)** of the SRPO, 1979 wherein he claimed rent at Rs.93/- per month from June, 1998 to January, 1999. The Petitioner filed objection to the said application stating therein that no rent is due and the rent is being deposited in **MRC No.1491/1998** and entire rent has been paid by the widow of the deceased. The Rent Controller passed tentative order dated **15.3.2000** directing the Petitioner *“to deposit arrears of rent from June to December 1998 within 15 days before this Court and future monthly rent before 10th of each and every succeeding calendar month”* with clear observation that **“the applicant is not allowed to withdraw arrears of rent from the Court till final order”**. The Petitioner did not comply the said order, therefore, Respondent No.1 moved an application under **Section 16(2)** of SRPO, 1979 which application was also allowed by order dated **06.05.2000** and the Petitioner’s defence was struck off with direction to vacate the demised premises within 60 days. The Petitioner filed First Rent **Appeal No.1021/2001** and since there was no defence, the appellate Court by order dated **29.11.2008** has also dismissed the appeal. The Petitioner has challenged both the orders through the instant petition.

5. On **06.11.2018** after hearing arguments of learned counsel for the Petitioner, he was directed to file written arguments which he filed on **09.11.2018**. I have gone through the written arguments submitted by learned counsel for the Petitioner as well as the record. Learned counsel for the Petitioner has not been able to advance a single proposition of law to point out any legal infirmity in the order

passed by two Courts below. The only ground which he has advanced before the Courts below was that said order came to their knowledge on **28.3.2000** and his mother had deposited the arrears of rent in MRC on **05.04.2000**. The judgment of the Rent Controller was based on the report from the Nazir of the Rent Controller which clearly showed that the Petitioner has not deposited arrears of rent in rent case. As per tentative rent order, the arrears of rent from **June, 1998** to **December, 1998** were required to be deposited within 15 days from **15.3.2000** in the Court of Rent Controller seized of Rent Cast No.83/1999 and not in the MRC No.1491/1998. The report of the Nazir of Rent Controller has further indicated that even future rent has not been deposited in the said rent case. In view of that clear default, the learned Rent Controller had no option except to strike off defence of the Petitioner. The appellate Court also had to affirm the order, since the compliance of tentative rent order was the statutory obligation on the Petitioner. The statutory default committed by the tenant, in fact, takes away of the discretion available to judicial officer/Court and the use of the word “shall” in **Section 16(2)** of the SRPO, 1979 makes it mandatory for Court to pass an ejectment order once the Court comes to the conclusion that the tenant has failed to comply with tentative rent order. Even otherwise, constitution petition does not lie against the concurrent findings of facts by the two Courts below in rent cases in particular when order of ejectment is on the ground of statutory default under **Section 16(2)** SRPO, 1979. The ground of misreading and non-reading of the evidence by the Courts below to maintain a case under constitutional jurisdiction of this Court does not arise against orders of eviction under Section 16(2) SRPO, 1979.

6. 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 of the two Courts below. 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:15.11.2018

Ayaz Gul/P.A