

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

C.P. NO.S-879/2019

Petitioner : Muhammad Ibrahim
through Mr. Qamar Iqbal advocate.

Respondents : Majeedan Bibi,
through Mr. Kifayatullah Baacha, advocate for
respondent No.1.
Ms. Leela Kalpana, AAG.

Date of hearing : 20.02.2020.

Date of announcement: 10.03.2020.

J U D G M E N T

Through instant petition, petitioner has challenged judgment dated 28.05.2019, recorded in FRA No.39/2018 whereby findings of the rent controller were reversed and eviction application was dismissed.

2. Precisely, the facts of the case are that the petitioner, claiming himself to be owner of House No.164, Sheet No.1, Sector 11 ½ Lal Shahbaz Nagar, Orangi Town, Karachi, filed a Rent Case bearing No.50 of 2017 against the respondent No.1 on the grounds of default in payment of rent and personal bona fide need, to which respondent No.1 filed her objections/written statement, inter alia, denying therein the relationship of landlord and tenant between the parties. Thereafter, in order to prove their assertions, parties led their evidence and ultimately the learned Rent Controller, vide order dated 31.10.2018, allowed the ejection application directing the respondent No.1 to vacate the subject premises. Against such order, an appeal bearing FRA No.39 of 2018 was preferred by the respondent No.1 before the appellate

Court, which ended in her favour vide judgment dated 28.05.2019, which is impugned in the instant petition.

3. At the outset learned counsel for petitioner contends that adjudication made by the rent controller was in accordance with law, rent controller considered the documents pertaining to ownership in favour of the petitioner including utility bills after scanning whole evidence whereas appellate court failed to appreciate the evidence and reversed the findings arbitrarily.

4. In contra, learned counsel for respondent contended that respondent is sister in law of petitioner, demised premises was handed over to the respondent on humanitarian ground with promise that on stability of financial condition, respondent will pay the rent. It is further contended that on subject matter plot, construction was erected by the petitioner however when the house was under construction respondent shifted in that house and since then living there, however he has failed to place on record any rent receipt.

5. At the outset, I would take no exception to the legal position that ownership *alone* has got nothing to do with regard to relationship of landlord and tenant. One legally can't invoke the jurisdiction of Rent Controller merely by referring his / her title document but would be required to *first* establish such relation else the Rent Controller shall have no jurisdiction to proceed further. The view is based upon guidance, provided by case of Afzal Ahmed Qureshi v. Mursaleen 2001 SCMR 1434 wherein it is held as:

"4. ... In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that "the issue whether relationship of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands

forthwith". PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact that 'ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties'".

The above position, however, would never absolve the Rent Controller to first examine this aspect. Since, *legally* the Appellate Court in rent hierarchy is that of *final authority* therefore, the appellate Court was / is also required to examine whole case including that of *relationship*. Now, it would be conducive to refer paragraph No.12 of impugned judgment which is that :-

"In view of dictum laid down in the above referred case, it is crystal clear that the ownership for any legal interest does not *ipso facto* create the relationship of landlord and tenant between the parties. The appellant/opponent has plausibly explained the status of her occupation over the premises in question out of the ambit of tenancy relationship and in this connection also produced iqarnama dated 3011.1991 (Ex.O/2) copy of application for Gas connection (Ex.O/3) electricity bill (Marked as X) and suit as bill (marked as X/1). There is nothing on record to suggest that appellant/opponent was inducted in the demised premises as tenant. The findings of learned rent controller regarding the existence of relationship of landlord and tenant between the parties, suffer from mis-appreciation of evidence and mis-application of law."

As well it would be conducive to refer relevant paragraphs of the judgment of the Rent Controller under:-

"From the cross on opponent it appear opponent being ignorant of the lease document of property in the name of applicant. Although, opponent negated suggestion of calling his own sale agreement as forged document, he also denied being as tenant. Opponent raised ground for nullifying relationship of tenancy on the ground that there was no tenancy agreement in writing. He claimed ownership on the basis of sale agreement at exhibit O/2 of the year 1991 but if it was so why he failed to get property entered in his name by way of sale deed from the concerned department (KMC). It is alleged by opponent that he purchased property in the year 1991 and opponent alleges property let out in the year 1999 and he got it leased one year before in the year 1998. Lease deed being an official document is not easy to be withheld at its legal entity. Applicant has produced sale agreement and photocopy

of CNIC of one Noor Muhammad son of Hussain Khan from whom he purchased property. He has produced receipt of sale consideration. Opponent has simply produced copy of sale agreement and has produced photocopies of electric bill and application form for insulation of SUI GAS connection which are not title documents and carry no weight in any way to the documentary proof of ownership as established by applicant. Under all these circumstances, I am very much inclined to make my strongest opinion about the ownership of premises in the name of applicant and his is proved to be owner and landlord of premises.

So far point of tenancy relationship and of opponent being as tenant is concerned it is to be taken up for deciding together. As applicant is declared as owner in the above discussion. As both parties are closely related to each other (opponent admitted in cross he was residing in the house of applicant before marriage. Applicant also told of arrangement of opponent's marriage. Applicant claimed he having allowed opponent to reside on premises on rent basis. Applicant has alleged for default in payment of rent at the hands of opponent from the year 2011 and thereafter in a meeting held it was agreed to pay monthly rent from march 2014 to 2017 and rent Rs.2200/- from the month of January 2017 and the arrears of the rent. Opponent's stand of the being not as tenant on the basis of non-availability of written tenancy agreement or any other proof of payment of rent carries no weight. As from the circumstances as discussed above stats of applicant being as owner and landlord is stronger than the denial of opponent. Facts and evidence proved opponent residing on premises with the undertaking and possession with him being tenant as defined in Sindh Rented Premises Ordinance 1974. And he is bound to pay rent as consideration from the possession or occupation of premises. He has failed to pay monthly rent and arrears of rent as claimed by applicant and has committed default. Therefore in view of the above facts and reasons, there exists very much the relationship of tenancy and opponent is hereby declared to be tenant. Hence, points are decided accordingly."

6. The findings of the learned appellate Court to extent of legally established principle about status of **ownership** in rent matter needs no interference nor I would avoid in saying that learned Rent Controller was not legally justified in giving much weight to **title / ownership**. This position, however, does not absolve the Rent Controller as well appellate Court from their obligation to properly appreciate the matter as a *whole*.

7. Without saying much, I would add that what has been ignored by the learned appellate Court is another aspect that the arguments, so raised by the counsel for respondent, also include the plea that she was allowed to shift in the premises in question on condition that on stability she would pay the rent. This *plea* makes me to directly refer the section 2(j) of Ordinance which reads as:-

“(j) "tenant" means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and include:

8. From bare reading of the above definition, it is quite clear that one who undertakes (promises) to pay the rent would also include in definition of '*tenant*'. Such inclusion is deliberate one which allows the parties to create such relationship for *future* time or happening of certain event.

9. Since, this aspect has entirely been ignored by both the lower forums therefore, I find it in all fairness to avoid much debate on this aspect as it might prejudice the case of either sides rather would prefer in remanding the matter back to trial Court. Accordingly impugned judgment is hereby set-aside and matter is remanded back to Rent Controller for deciding the matter afresh after providing an opportunity of hearing to the parties.

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