

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.S-1390 of 2017

Petitioner : Through Mr. Karim Bux Rind,
Advocate

Respondents : Through Syed Jan
Muhammad Bukhari, Advocate

State : Through Mr. Wali Muhammad
Jamari, Asst: Advocate
General.

Date of Hearing : 11.11.2019

Date of Judgment : 18.11.2019

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through the captioned Constitutional Petition, the petitioner has called in question the order dated 03.09.2014 passed by learned 2nd Additional District Judge, Shaheed Benazirabad in First Rent Appeal No.Nil of 2014 (*Re: Noor Nabi v. Abdul Ghafoor*), whereby, learned appellate Court dismissed the aforesaid First Rent Appeal being bared by time, thus maintained the order dated 10.10.2013 passed by learned Rent Controller / II-Senior Civil Judge, Nawabshah in Rent Application No.03 of 2012 (*Re: Abdul Ghafoor v. Noor Nabi*) by which the petitioner was directed to vacate Shop bearing No.1A-20, situated in Shahi Bazar, Sakrand Town, Taluka Sakrand District Shaheed Benazirabad (**Subject Shop**) and pay rent to the Respondents amounting to Rs.3000/- till vacation of the subject Shop.

2. At the very outset, I asked learned Counsel to satisfy this Court with regard to laches on the premise that the impugned order was passed by learned Appellate Court in the month of September 2014 and he has approached this Court in the month of August 2017.

3. Mr. Karim Bux Rind, learned Counsel representing the petitioner has mainly contended that the impugned orders dated 03.09.2014 and 10.10.2013 passed by the Courts below are against the law, facts and equity and are not sustainable under the law; that F.C. Suit No.39 of 2012 (*Re: Noor Nabi Jatoi v. Abdul Ghaffar Khanzada & others*) was filed by the petitioner / opponent for declaration of his ownership and possession of the subject property from the respondent / applicant, which was dismissed. The petitioner / opponent filed Civil Appeal, which too was dismissed

and finally the petitioner filed Civil Revision Application before this Court, which is pending adjudication, as such, learned Rent Controller was required to keep the matter sine-die but unfortunately the same was not done and later on the execution application filed by the respondent was allowed vide order dated 07.11.2019.

4. Being aggrieved by and dissatisfied with the aforesaid order, the petitioner has filed the instant constitutional petition on the ground that learned Rent Controller had no jurisdiction to entertain the Rent Application of the respondent in view of the pendency of the matter between the parties before this Court in a revisional forum for possession of the subject premises; that impugned orders passed by learned Courts below are contrary to law and facts, resultantly grave miscarriage of justice has been done to the petitioner's side; that the subject shop is in possession of the petitioner and his family since last 50 / 60 years and ownership certificate issued by the Mukhtiarkar Sakrand in favour of the grandfather of the petitioner is in field and there is denial of tenancy by the petitioner but both the Courts below have committed gross illegality and decided the matter against the petitioner, as such, both the impugned orders are liable to be set-aside; that D.Ws in their affidavits have fully supported the version of the petitioners in support of ownership but both the Courts below did not consider the aforesaid factum and passed the impugned orders in favour of respondent No.1; that the petitioner has been condemned unheard as provided under Article 10-A of the Constitution; therefore, both impugned orders are liable to be set-aside; that decisions of both the Courts below are without substance and their findings on the disputed matters are incredible, thus liable to be reversed; that it is a matter of record that learned appellate Court has not discussed the fact that all the matters should be decided on merits and not on technicalities; that there is/was denial with regard to relationship of tenant and landlord between the parties but learned Courts below have failed to consider this aspect of the case and relied upon the version of Respondents; that learned Courts below have failed to consider the fact that the petitioner is owner of the subject shop since its purchase; that both the Courts below did not consider the documentary evidence of the petitioner's property and passed impugned judgment and order in haphazard manner; that there is misreading and non-reading of evidence by both the Courts below

on the issue involved in the matter; that learned Courts below have not considered the evidence as a whole and taken the piece of evidence to decide the matter against the petitioner which is unwarranted under the law; that learned Rent Controller ought to have dismissed the rent application on merit; that no proper findings on the issues were given; that learned appellate Court was bound to look into the order of learned rent controller in its true perspective but such fact was ignored by the appellate Court; that the petitioner has been deprived from his fundamental rights and equal opportunity; that petitioner had used oral as well as documentary evidence which shattered the case of respondents but such fact is not considered by learned Courts below and passed the impugned orders. He lastly prayed for setting aside both the decisions of learned Courts below.

5. I again enquired from learned Counsel as to whether he has any title documents in his favour to claim ownership of the subject premises. He relied upon the Ownership Certificate (page 111). Prima facie this assertion cannot be taken into consideration in constitution petition as the issue of _ cannot be decided in writ petition.

6. Conversely, Syed Jan Muhammad Bukhari learned Counsel representing the respondents has supported the impugned orders passed by both the Courts below and argued that the captioned petition is liable to be dismissed; that there are concurrent findings of facts recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that Appeal of the petitioner was time barred as well as this petition is surfing from serious laches; that both the aforesaid Judgments are passed within the parameters of law; that instant petition is frivolous, misleading and this Court has limited jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties. He lastly prayed for dismissal of the instant petition.

7. I have heard learned counsel for the parties and with their assistance gone through the material placed by them.

8. In order to evaluate the contentions of both the parties learned trial Court framed the issues and gave its findings in favour of the Respondents.

9. To appreciate the controversy in proper prospective, I deem it appropriate to have a glance on the evidence brought on record by the parties.

10. The affidavit in evidence / deposition of the parties in rent case clearly depicts the factual position of the case.

11. Learned trial Court after recording evidence and hearing the parties gave decision against the petitioner on the aforesaid issues. Learned Appellate Court concurred with the decision of learned trial Court on the same premise with certain addition on the point of law. The impugned decisions explicitly show that the matter between the parties has been decided on merits based on the evidence produced before them.

12. I have scanned the evidence available on record and found the admission of the petitioner in rent case that nothing is in his name, which resolves the entire controversy with regard to ownership of the subject shop, as purportedly claimed by him which needs evidence.

13. Reverting to the claim of learned counsel for the petitioner that he has been condemned unheard by both the Courts below on the issue of ownership. Perusal of record *prima facie* suggests that the purported document of ownership was issued in favour of one Mahrullah Son of Nabi Bux Jatoi by the Mukhtiarkar concerned and on that basis he claims ownership and denies the Rent Agreement between his uncle Allah Dad Jatoi and respondent Abdul Ghaffar Khanzada (page 109). This assertion is untenable.

14. I am of the view that mere denial of relationship of landlord and tenant between the parties and pendency of Civil Suit No.39 of 2012 for Declaration and Permanent Injunction, which was later on dismissed and appeal of the same was too dismissed and now revision application is reported to be pending, do not take away the jurisdiction of Rent Controller to entertain a rent case. Therefore, the Petitioner on the basis of an ownership certificate purportedly issued by concerned official of Settlement Department in favour of Mehrullah, grandfather of the petitioner, cannot restrain the owner of the subject premises from claiming his legal right or deprive him from benefit accruing or arising out of the said property. Hence, no proceedings before the Rent Controller can be stopped to wait for the final outcome of the said Revision Application. In such

circumstances, the tenant must vacate the subject property and if he succeeds in obtaining Decree in the suit then he can be given easy excess to the subject premises. On the point of default in payment of rent, the petitioner claims that he has not paid the rent till date. Petitioner is claiming that he is *bona fide* owner of the premises in question with further assertion that when the petitioner is not the tenant then he is not liable for any payment to any person. In such a situation when the Petitioner is denying the relationship of landlord and tenant and is claiming ownership of the subject premises, it means that he has not paid the rent, therefore learned trial Court has rightly observed that the petitioner has committed willful default in payment of rent. Therefore, I do not agree with the assertion of learned counsel that he was unheard on the issues. Concurrent findings arrived at by the Courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out, which so far is lacking in this case.

15. I am of the view that learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. Learned appellate Court has considered the legal aspect of the case and thereafter passed an explanatory Judgment. Besides above, I do not concur with this assertion of learned counsel for the petitioner with his explanation of laches and am of the considered view that the instant Petition clearly falls within the doctrine of laches as the Petitioner filed the instant Petition in the month of August 2017 whereas the alleged cause of action accrued to him in the month of September 2014, i.e. approximately 3 years prior to filing of instant Petition.

16. I have also noted that in the present case, there is no material placed before me by which I can conclude that Impugned Orders have been erroneously passed by both the Courts below, therefore no ground existed for re-evaluation of evidences, thus, I maintain the order dated 03.09.2014 passed by learned II-Additional District Judge, Shaheed Benazirabad in First Rent Appeal No. Nil of 2014 and order dated 10.10.2013 passed by learned II-Rent Controller/Senior Civil Judge, Nawabshah in Rent Application No.03 of 2012. I am fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of *Dilshad Khan Lodhi vs. Allied Bank of Pakistan and others* (2008 SCMR 12 1530) and *General Manager National Radio Telecommunication Corporation*

Haripur, District Abotabad vs. Muhammad Aslam and others (1992 SCMR 2169).

17. In light of the above facts and circumstances of the case, I am of the view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings recorded by two competent forums and I do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application(s).

JUDGE

****Fahad Memon****