

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

CP No. S- 862 of 2019

Petitioner: Imamuddin through Mr. Faisal Nadeem
Abro, Advocate.

Respondents1&2: Mr. Wali Muhammad Jamari, Asstt: A.G.

Respondents 3: Abdul Jabbar Qureshi through
Mr. Roshan Ali Azeem Mallah, Advocate

Date of hearing: 08.11.2019
& decision: 18.11.2019

ORDER

ADNAN-UL-KARIM MEMON, J:- Through captioned petition, the petitioner has impugned the order dated 18.02.2019 passed by learned IV-Senior Civil Judge / Rent Controller, Hyderabad in Rent Application No.13 of 2017 whereby he allowed the rent case filed by Respondent No.3. Petitioner being aggrieved has challenged the said Order in First Rent Appeal No.15 of 2019 which too was dismissed vide judgment dated 16.10.2019 passed by learned VI-Additional District Judge / Model Civil Appellate Court No.2 Hyderabad, maintaining the directions issued to the petitioner to vacate the shop constructed on property bearing No.2093/17, Ward-G, Mukhi Bagh Tando Yousif road Hyderabad (**subject Shop**) and handover its vacant physical possession to Respondent No.3 within a period of sixty (60) days from the date of passing of the original order. However, with regard to recovery of arrears of rent, Respondent No.3 was directed to avail proper remedy as provided under the law. Petitioner being aggrieved by and dissatisfied with the original and appellate orders has filed the instant petition.

2. Brief facts of the case are that Respondent No.3 is claiming to be the owner of subject shop. The Petitioner is shown to have been inducted as tenant in the subject premises vide rent agreement dated 11.9.1998 at the rate of Rs.700 per month. As per averments of the petition, the petitioner purchased the subject shop in the year 1999 by way of sale agreement dated 10.12.1999 and relied upon Suit No.355 of 2014 filed for specific performance of contract. The plaint

of the said suit was rejected under order VII Rule 11 CPC and subsequent proceedings are stated to be pending. However, he categorically denied the relationship of landlord and tenant between the parties with further assertion that when the petitioner is not the tenant then he is not liable for any payment to any person. Respondent No.3 being aggrieved by the action of petitioner instituted Rent Case No. No.13 of 2017, in which counter affidavit was filed on behalf of the petitioner. Due to divergent stance of the parties, learned Rent Controller framed the following points for determination:-

- i) Whether relationship of landlord and tenant exists in between the applicant and opponents?
- ii) Whether the opponent has committed default in payment of rent?
- iii) Whether case shop (rented premises) is required to the applicant for his personal bonafide used?
- iv) What should the order be?

3. Learned Rent Controller after recording evidence and hearing the parties allowed Rent Case No.13 of 2017 vide order dated 8.02.2019 with directions to the Petitioner to handover vacant and peaceful possession of the subject premises to Respondent No.3 within a period of sixty (60) days. Petitioner being aggrieved and dissatisfied with the impugned order dated 8.02.2019 preferred First Rent Appeal No.15 of 2019 before VI-Additional District Judge/ Model Civil Appellate Court Hyderabad, who vide judgment dated 16.10.2019, while dismissing the Appeal maintained the order of learned Rent Controller. Petitioner, therefore, has approached this Court by filing the instant petition.

4. Mr. Faisal Nadeem Abro, learned counsel for the petitioner has mainly argued that the petitioner has been condemned unheard as no proper opportunity of hearing was given to the petitioner to lead evidence and cross examine the respondent No.3 as provided under Article 10-A of the Constitution; therefore, both the impugned orders are liable to be set aside; that the 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 Respondent No.3; that learned Courts below have failed to consider the fact that the petitioner is owner of the shop since 1999 through valid documentation; that both the Courts below did not consider the documentary evidence in favour of the petitioner and decided the case in haphazard manner; 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 private respondent No.3, but such fact has not been considered by learned Courts below and passed the impugned orders in his favour. He lastly prayed for setting aside the decisions of both the Courts below.

5. Mr. Roshan Ali Azeem Mallah learned Counsel representing the Respondent No.3 has raised the question of maintainability of the instant petition and supported the impugned orders passed by both the courts below. He lastly prayed for dismissal of the captioned petition.

6. I have heard learned counsel for the parties and perused the material available on record.

7. The findings of learned trial Court show the factual as well as legal position of the case; that private respondent produced original rent agreement at Ex.19/1; that despite providing opportunities opponent failed to cross-examine the applicant. In rebuttal, though the opponent in his written objection has denied that he has occupied the subject shop on rent but during cross-examination he admitted that he was tenant of the father of applicant, which is sufficient by itself to prove the existence of relationship of tenancy between the parties; that the opponent in his written objections so also affidavit in evidence has taken plea that he purchased the subject shop from the applicant through sale agreement dated

10.12.1999 and 12.12.1999, and in this regard he filed suit for specific performance, which litigation is still pending between the parties; that on such plea of the opponent, it is well settled principle of law that if a tenant claims possession of the rented premises on the strength of sale agreement, he has to vacate the premises and handover its possession to the landlord and thereafter could bring a suit on the strength of his agreement; that pendency of suit for specific performance does not bar the rent proceedings and if a tenant at subsequent stage succeeded in proving his case, the law would take its own course; that the applicant in his affidavit in evidence has stated that the subject shop was rented out in the year 1998 at the rate of Rs.700/- per month and rent was verbally extended annually till 2014 up to Rs.4000/- per month but since February, 2014 the opponent has not paid rent; that non-payment of rent is negative fact and if landlord appeared in Court and stated on Oath that he has not received rent for certain period it would be sufficient to discharge burden that lies upon him and onus would shift upon the tenant to prove that he has paid / tendered the rent for the period in question; that since applicant/landlord has stated in his affidavit in evidence that he has not received rent from February 2014, therefore, burden would shift upon the opponent/tenant to prove that he has paid rent for the above period; that the opponent in rebuttal has not produced any evidence to discharge his burden, as he has denied the relationship of tenancy, thus, it is fully established that the opponent has committed willful default in payment of rent since February, 2014; that the applicant in rent application so also in his affidavit in evidence has stated that the subject shop is required for personal *bona fide* use; that for seeking eviction of tenant from the rented premises, the only requirement of law is to prove *bona fide* need by the landlord which stands discharged the moment when he appears in witness box and make such statement on oath or in form of affidavit in evidence, if it remains un-shattered in cross-examination and un-rebutted in evidence adduced by other party; that where the statement on oath was consistent with his averments made in the ejection application then statement on oath will be considered sufficient for acceptance of ejection application; that since the applicant in his affidavit in evidence has stated that the subject shop requires for personal bonafide use, therefore, by virtue of above proposition, the subject premises is required to the applicant

for his personal use; that however with regard to recovery of arrears of rent the applicant may avail proper remedy.

8. Learned appellate Court observed that ample opportunities were provided to the appellant/opponent to cross-examine the respondent/applicant but he failed to do so. He filed suit for performance of agreement which was dismissed and that appeal is pending.

9. Perusal of record and findings given by learned Rent Controller as well as Appellate Court do not show any illegality or irregularity in the impugned judgments.

10. I am of the view that mere denial of relationship of landlord and tenant between the parties and mere pendency of Civil Suit for Specific Performance of Contract does not take away jurisdiction of Rent Controller to entertain a Rent Case. That a Sale Agreement does not create any interest or title in favour of the person in whose favour such agreement is executed. Therefore, the Petitioner on the basis of a Sale Agreement 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 suit. In such circumstances, the tenant must vacate the subject property and if he succeeds in obtaining decree in his favour then he can be given easy excess to the subject premises.

11. On the point of default in payment of rent, the petitioner admitted that he has not paid rent with effect from May, 2014 till date. Petitioner is claiming that he is *bona fide* purchaser 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 situation when the Petitioner is denying the relationship of landlord and tenant and is claiming purchase 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.

12. I am of the view that in rent matters Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the Appellate Court has flouted the statute or failed to follow the law relating thereto.

13. In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity is found in the orders passed by both the Courts below. Besides, I do not see any misreading or non-reading of evidence which could warrant interference of this Court

14. In the light of facts, circumstances and law mentioned above, the instant Constitutional Petition is dismissed along with pending application(s) and the orders passed by learned Rent Controller and learned Additional District Judge, Hyderabad are maintained. The Petitioner is directed to vacate the premises in question and handover its vacant and peaceful possession to Respondents No.3 within thirty (30) days from the date of this Order. In case of failure, the Petitioner shall be evicted from the subject premises without notice.

JUDGE