

# IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. S-796/2017

Petitioner : M/s. National Eng. (Pvt) Ltd, through  
Mr. Wajid Hussain, Advocate.

Respondents : X Rent Controller, Karachi & Others,  
Nemo.

Date of hearing  
& short Order : 25.04.2017

## ORDER

**YOUSUF ALI SAYEED, J:-** In terms of this Petition under Article 199 of the Constitution, the Petitioner has assailed the concurrent Order made on 22.12.2013 (the “**Rent Order**”) by the learned X<sup>th</sup> Rent Controller, Karachi, South in Rent Case No. 1306 of 2006, and the Judgment dated 21.03.2017 (the “**Appellate Judgment**”) passed by the learned VIII<sup>th</sup> Addl. District Judge, Karachi South, in F.R.A. No. 51 of 2017, emanating therefrom.

2. The grounds raised by the Petition, as set out in the Memo of Petition, are that the Rent Order is a nullity in law as it was passed without opportunity being given to the Petitioner to filing an affidavit in evidence, and hence the eviction thereby ordered was void as no opportunity of being heard had been provided. Furthermore, it was also contended that nothing has been brought on record to prove that the demised premises were required by the Respondent for its personal bona fide need, and that a Rent Agreement whereby the Respondent had itself acquired premises on rent from a third party had not been filed with the Rent Case and could not thus have subsequently been exhibited in evidence.

3. From a plain reading of the Rent Order and the Appellate Judgment it is manifest that the case of personal need was proven during the course of evidence by the testimony of the Respondent's witness and the documents exhibited in evidence for that purpose. The growth/expansion of the Respondent's operations has been recorded in some detail in the Rent Order and the personal requirement of Respondent in respect to the premises in question stood established in the opinion of the learned Rent Controller on that basis, which was upheld in the Appellate Judgment. This assessment is not amenable to reappraisal in these proceedings. Even otherwise, the mere fact that a particular document may not have been filed at the outset as an annexure to the Rent Case does not of itself preclude such document subsequently being exhibited at the evidentiary stage, as asserted by Petitioner.
  
4. As regards the plea that the learned Rent Controller did not provide opportunity to the Petitioner for filing affidavit in evidence, it is apparent from the record that the counsel who had been engaged by the Petitioner at the stage of the Rent Case failed to cross examine the Respondent's attorney despite a number of opportunities being afforded, and the side of the Petitioner to cross examine the Respondent's attorney was thus closed by the learned Rent Controller on 31.10.2015. Thereafter, on 19.11.2015 the counsel for the Petitioner filed an Application for recalling the Order dated 31.10.2015, which was allowed on 05.05.2016 on account of the no objection extended by the Respondent's counsel. On 05.05.2016 the cross examination of the Respondent's attorney was conducted and the matter was adjourned

for filing of affidavit in evidence on behalf of the Petitioner. However, the Petitioner repeatedly failed to file the affidavit in evidence, with the result that the learned Rent Controller closed the Petitioner's side vide Order dated 22.10.2016. As such, it is apparent that ample opportunity was extended to the Petitioner, and the Petitioner's own fault for not availing such opportunity cannot serve to create a ground for assailing the concurrent findings of the Courts below.

5. The Petitioner's explanation in this regard is that the counsel said to have been engaged in the Rent Case after the stage of cross examination failed to appear before the learned Rent Controller and also failed to file the Vakalatnama. It has also been submitted that upon engaging the counsel the Chief Executive Officer of the Petitioner left Pakistan for England for business purposes, and on this basis, it is contended that the Petitioner should not be penalized for negligence of counsel. This bare plea as to negligence on the part of counsel is hardly salutary, and is also totally unsubstantiated as no affidavit of the counsel has been filed, nor has it even been mentioned that a complaint was made to the bar council. Even otherwise, I am firmly of the opinion that such a plea cannot be entertained at this belated stage, as to do so would only undermine the effective administration of justice.
6. Having considered the submissions made, I am of the view that the Petition is misconceived and no ground whatsoever stands made out for interference by this Court in the exercise of the Constitutional jurisdiction.

7. These are the reasons for the short Order dictated in open Court on 25.04.2017.

JUDGE

Talib