

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 689 of 2020

Date	Order with signature of Judge
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Mr.Qaiser Amin advocate for the petitioner.

None present for the respondent No.3.

Qazi Muhammad Bashir Assistant A.G. Sindh.

Date of hearing : 31.08.2021

ORDER

NADEEM AKHTAR, J. – Rent Case No.500/2018 filed by respondent No.3 seeking eviction of the petitioner on the grounds of personal need and default in payment of monthly rent was allowed by the Rent Controller ; and, First Rent Appeal No.10/2020 filed by the petitioner against the order of his eviction was dismissed by the appellate court. This constitutional petition has been filed by the petitioner against the concurrent findings of the learned courts below.

2. Relevant facts of the case are that the aforesaid rent case was filed by respondent No.3 by claiming that he was the owner of the demised premises viz. Shop Nos.2 and 3, situated at the ground floor of House No.A-81, Bilawal Town, Malir Halt, Karachi ; the petitioner was the tenant in respect of the demised premises at a monthly rent of Rs.5,000.00 ; the petitioner had committed default in payment of the agreed monthly rent with effect from July 2018 ; and, the demised premises were required by respondent No.3, who was a plumber by profession, for his personal use to start his own business.

3. Instead of filing his written statement in accordance with law, the petitioner submitted a letter in the said rent case addressed to the Rent Controller, claiming therein that the demised premises were not owned by respondent No.3. It was also stated by him in his said letter that respondent No.3 had previously filed Rent Case No.215/2012 against him which was dismissed, and the appeal filed by respondent No.3 was also dismissed. By treating the said letter of the petitioner as his written statement, the Rent Controller proceeded to frame the points for determination regarding the relationship of landlord and tenant between the parties, and also with regard to the personal need and default alleged by respondent No.3. Thereafter, both the parties led their respective evidence and were cross-examined by each other.

Through the impugned order dated 18.12.2019, it was held by the Rent Controller that the relationship of landlord and tenant between the parties existed, whereafter the issues regarding the personal need and default in payment of rent were decided in favour of respondent No.3. Consequently, the rent case was allowed and the petitioner was directed to vacate the demised premises within sixty (60) days. The findings of the Rent Controller were maintained by the appellate court by dismissing the appeal filed by the petitioner against the order of his eviction.

4. As all the attempts to serve respondent No.3 in the present petition had failed, notice was published in newspaper on 05.08.2021. Despite such publication, the said respondent has chosen to remain absent.

5. It was contended by the learned counsel for the petitioner that as the rent case previously filed by respondent No.3 was dismissed, the subsequent rent case was not maintainable ; respondent No.3 was not the owner of the demised premises, nor did he produce any document of title before the Rent Controller ; there was no relationship of landlord and tenant between the parties ; and, the petitioner was/is in possession of the demised premises in his own right as the owner thereof. It was urged by him that this is a case of misreading and non-reading of evidence as both the learned courts below failed to appreciate the above important aspects of the case.

6. I have heard learned counsel for the petitioner and have also examined the record, particularly the impugned orders of the learned courts below. The previous Rent Case No.215/2012 was filed in the year 2012 and was dismissed in the year 2014 vide order dated 13.03.2014. This fact was not concealed by respondent No.3 in his subsequent rent case as the same was specifically mentioned in paragraph 11 thereof. In his subsequent Rent Case No.500/2018, it was alleged by him that the petitioner had committed default in payment of monthly rent with effect from July 2018. This clearly shows that the said subsequent rent case was filed by him in view of the fresh cause of action accrued to him after dismissal of his previous rent case. Therefore, there was no bar in filing the said subsequent rent case, which was competent and maintainable in law as well as on facts.

7. Regarding the relationship of landlord and tenant between the parties, which was denied by the petitioner, suffice it to say the petitioner had specifically and categorically admitted before two competent forums that he was

the tenant of respondent No.3. Such admission was made by him in the respondent No.3's previous Rent Case No.215/2012 wherein he admitted in his written statement, counter affidavit and affidavit-in-evidence that he was the tenant of respondent No.3 and was paying rent to him. He also made an admission to this effect in Suit No.1024/2012 filed by him against respondent No.3, by stating in his plaint that there was a tenancy agreement between the parties, and by alleging that the said respondent wanted to dispossess him from the demised premises. The certified copies of the above mentioned previous pleadings and evidence of the petitioner were produced by respondent No.3 in his evidence in his subsequent Rent Case No.500/2018, the contents whereof were admitted by the petitioner in his cross-examination. The above admissions were particularly noticed by both the learned Courts below while deciding the question of relationship of landlord and tenant between the parties against the petitioner.

8. Regarding the title of respondent No.3 in relation to the demised premises, it was held by the learned Courts below that the same stood established as he had produced a copy of the sale deed in his favour which was not disputed by the petitioner. It may be noted that despite claiming ownership of the demised premises, the petitioner did not produce any document of title before the learned Rent Controller, and only a copy of a Release Deed dated 18.06.1991 was shown to the learned appellate Court by the petitioner's counsel at the time of arguments. The learned appellate Court rejected the claim of the petitioner regarding his alleged ownership on the ground that the said purported deed was unregistered and was not in favour of the petitioner. Moreover, it is an admitted position that the petitioner had not filed any Suit before the competent civil Court seeking a declaration that he was the owner of the demised premises. Thus, the petitioner had not only failed in disputing the title of respondent No.3 in relation to the demised premises, but had also failed in establishing his own title. It is well-settled that a tenant has no locus standi to question or challenge the title of the owner of the premises of which he is a tenant.

9. As noted above, the petitioner had claimed before the learned Rent Controller that he was not liable to pay any rent to respondent No.3 as he was in possession of the demised premises in his own right as the owner thereof. Thus, it was an admitted position before the learned Rent Controller that the petitioner had failed to pay the rent to respondent No.3, and the evidence produced in this context by respondent No.3 could not be dislodged by the

petitioner. It is surprising to note that respondent No.3 was not cross-examined at all by the petitioner on the issue of default. As the issue with regard to the relationship of landlord and tenant between the parties was decided against the petitioner, the issue regarding the default committed by him in payment of the monthly rent was rightly decided against him.

10. The record shows that the personal need claimed by respondent No.3 was categorically pleaded by him in his eviction application and then it was strongly reiterated by him in his evidence ; and, such clear and consistent stance taken by him throughout the proceedings could not be shaken by the petitioner. On the issue of personal need also the petitioner did not put any question to respondent No.3. In such circumstances, this issue was rightly decided by the learned Courts below in favour of respondent No.3.

11. Before parting with this order, it may be observed that it is a matter of record that the petitioner did not file his written statement in the rent case filed by respondent No.3 before the learned Rent Controller, and instead he submitted a letter addressed to the learned Rent Controller. The petitioner was required to file his written statement in accordance with law by submitting his para-wise to the eviction application and by denying the averments made therein. In the absence of his written statement in accordance with law, the learned Rent Controller ought to have ignored / discarded his aforesaid letter and proceeded against him ex-parte under Section 19(2) of The Sindh Rented Premises Ordinance, 1979. In view of this legal position, the purported defense set up by the petitioner in his said letter and his examination-in-chief had / has no legal basis. As far as his cross-examination to respondent No.3 is concerned, he was unable to dislodge the statements and claim made by the said respondent.

12. In view of the above discussion, the concurrent findings of the learned Courts below do not require any interference by this Court. Accordingly, the petition and listed applications are dismissed with no order as to costs.

J U D G E