

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 902 of 2021

Date	Order with signature of Judge
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For orders on CMA No.5910/2021 (Stay) :

For hearing of main case :

08.12.2021 :

Mr. Tarique Mehmood, advocate for the petitioner.

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NADEEM AKHTAR, J. – Rent Case No.40/2015 filed by respondent No.1 seeking eviction of the petitioner on the grounds of personal need and default in payment of monthly rent and utility charges was allowed by the Rent Controller vide judgment dated 22.08.2020 ; and, First Rent Appeal No.50/2020 filed by the petitioner against the order of his eviction was dismissed by the appellate Court vide order dated 04.10.2021. 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.1 by claiming that by virtue of a sale deed executed and registered in his favour on 20.12.2011, he was the owner of the demised premises viz. commercial property bearing No.126/II (old No.5-G, 93/9 & 10), measuring 120 sq. yds. out of 240 sq. yds., Saeedabad, Baldia Town, Karachi ; the petitioner, who was his tenant in respect of the demised premises at a monthly rent of Rs.5,000.00 and monthly electricity charges of Rs.1,500.00, had committed default in payment of the said agreed monthly rent and electricity charges with effect from December 2011 ; and, the demised premises were required by respondent No.1 for his personal use.

3. In his written statement, the relationship of landlord and tenant between the parties was denied by the petitioner by claiming that the demised premises had been purchased by him from the previous owner ; and, a Suit bearing No.1081/2015 for specific performance in respect of the agreement for sale of the demised premises had been filed by him against respondent No.1 and the previous owner. In view of the above assertion, it was claimed by the petitioner that he was not liable to pay the monthly rent and/or electricity charges to respondent No.1.

4. In view of the divergent pleadings of the parties, three main points for determination were framed by the learned Rent Controller including that of the relationship of landlord and tenant between the parties. The other two points were framed with regard to the default allegedly committed by the petitioner in the payment of the monthly rent and electricity charges and the alleged personal need of respondent No.1. Thereafter, both the parties led their respective evidence and were cross-examined by each other. Through the impugned judgment dated 22.08.2020, it was held by the learned Rent Controller that the relationship of landlord and tenant between the parties existed, whereafter the issues regarding the personal need and default in the payment of rent were decided in favour of respondent No.1. Consequently, the rent case was allowed and the petitioner was directed to vacate the demised premises within ninety (90) 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.

5. It is contended, *inter alia*, on behalf of the petitioner that the petitioner had purchased the demised premises from its previous owner and due to this reason he was not liable to pay the rent and/or electricity charges to respondent No.1 ; and, the Suit filed by him against the previous owner and respondent No.1 for specific performance is *subjudice* before the Civil Court. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the premises in accordance with law only if he succeeds in his Suit ; till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover the rent ; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a sale agreement, the landlord would continue to enjoy the status of being the owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy. The above view is fortified by Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller / Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another,

PLD 2009 SC 546, and *Abdul Rasheed V/S Mqbool Ahmed and others*,
2011 SCMR 320.

6. In the present case, it is an admitted position that the Suit filed by the petitioner is still pending and no decree has been passed therein in his favour up till now. As noted above, the petitioner had claimed before the learned Rent Controller that he was not liable to pay any rent to respondent No.1 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.1, and the evidence produced in this context by respondent No.1 could not be dislodged by the petitioner. 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.

7. The record shows that the personal need claimed by respondent No.1 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. In such circumstances, this issue was rightly decided by the learned Courts below in favour of respondent No.1.

8. In view of the above discussion, the concurrent findings of the learned Courts below do not require any interference by this Court. Accordingly, the appeal and listed application are dismissed in limine with costs of Rs.25,000.00.

J U D G E