

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. S-90 of 2006

Before: Mr. Justice Muhammad Shafi Siddiqui

Malik Maqsoodul Hassan	-----	Petitioner
	Versus	
Muhammad Faisal Azam & others	-----	Respondents

Order with signature of Judge

ORDER

Mr. Abdul Wajid Wyne for petitioner
Mr. Rahman Aziz Malik for respondent
.X.X.X.X.

Petitioner has filed this application under section 12(2) CPC challenging the order dated 20.3.2013 whereby this constitutional petition was dismissed.

Brief facts are that an application for ejectment of the petitioner was filed bearing Rent Case No.1160/2003 which was contested by the petitioner. The evidence was recorded in the matter. The Rent Controller vide order dated 23.4.2005 allowed the application. The issues as framed by the Rent Controller are as under:-

- “1. Whether there exists relationship between the applicant and Opponent as landlord and tenant?
2. Whether the Opponent has committed willful default in payment of rent from May 2003 to September 2003?
3. What should the order?

The petitioner though denied the relationship but the Rent Controller, on the basis of evidence had reached the conclusion that the relationship exists between the parties. The Rent Controller, on the

basis of forensic report of “Criminalogistic Division Karachi” which report was based on admitted handwritten samples, reached to the conclusion that the rent receipts produced were genuine and hence relationship exists between them. There were certain other material, which were relied upon including the cross examination dated 29.5.2004 in the matter, which was taken into consideration and consequently the Issue No.1 was answered in affirmative.

The petitioner preferred a FRA bearing No.133/2005 which maintained order of the Rent Controller. The order of the appellate Court was passed on 07.1.2006.

The said order was impugned in this petition.

Notices were issued to the respondents in this petition to engage a Counsel and the matter was heard on 20.3.2013 whereby the petition was dismissed. No one was in attendance on behalf of the petitioner on the day when the petition was dismissed on merits. The petitioner preferred Civil Petition No. 966/2013 before Hon’ble Supreme Court, which was also dismissed. The petition was found to be barred by time and no grounds was found available for the condonation of delay and the miscellaneous application being misconceived was also dismissed.

With this set of facts learned Counsel for the applicant submitted that material facts were concealed by the respondent from the two Courts below. Petitioner/applicant’s Counsel has attempted to argue that respondents has concealed the agreement of tenancy dated 01.1.1992 between M/s. Zubair Associates on behalf of the KMC and Muhammad Azam Qureshi son of Abdul Rahman Qureshi from whom the petitioner has acquired this property for consideration. It is claimed that when respondent himself was not the owner, neither better title could have been passed on nor any rent agreement could be executed and these were the material facts which were concealed as the respondent was not even entitled to execute any rent agreement.

Counsel has relied upon the judgment of Hon'ble Supreme Court reported in PLD 2015 SC 358 that for all intent and purposes it is the final order/decreed of the last Court in the series, even if such decree be of affirmation, which had to be executed and considered to be final judgment/decreed, to invoke the provisions of Section 12(2) CPC. Notwithstanding the reversal or modification of the decree/order, if the decree/order of a forum below, which had been affirmed by the higher forum on merits, both on the points of the facts and law involved therein, it shall be that decree/order, which attained the status of the final decree/order within the purview of Section 12(2) CPC.

It is further pointed out that the judgment also suffers as it does not provide valid reasoning in terms of Section 24-A(2) of the General Clauses Act 1897 and relied upon the judgment reported in 2005 YLR 1394. He argued that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with judicial powers and since the judgment under challenge is devoid of such reasoning, it can be subjected to the provisions of Section 12(2) CPC.

Learned Counsel for the respondent on the other hand has taken me to the facts that the contents of paras-3 and 4 of the application are totally misleading and incorrect. The alleged documents on the basis of which they claimed to have filed this application as being a cause, was in their possession since 2004 which they have received through a written statement in Suit No.995/2003, the acknowledgment of which is available on record and hence on this count alone the application is liable to be dismissed. He further argued that the Hon'ble Supreme Court has already dismissed the petition and hence the application has been filed just to delay the proceedings and to deny the fruits of the decree in execution proceedings which is pending since 2013, ever-since this petition was dismissed. Counsel submits that the order under

challenge, without prejudice to the above and its applicability to the impugned orders, provides reasons to affirm the order of two Courts below and hence shelter of Section 24-A(2) of the General Clauses Act 1897 is also not available. Learned Counsel further submits that even if it is devoid of any reasoning, they have already exhausted the remedy of challenging the order on all counts, on which they failed and it cannot be subjected to the provisions of Section 12(2) CPC yet again.

I have heard the learned Counsels and perused the material available on record.

The two Courts below dealt with the application and gave reasoning i.e. the Rent Controller allowed the application and the appellate Court maintained it. The order of two Courts below then assailed through this petition and on the crucial day when the petition was decided, petitioner's Counsel was not in attendance. Be that as it may, the judgment dated 20.3.2013 was on merits and in consideration of the facts and circumstances of the case. Paras-6 and 7 of the judgment disclose the reasons for affirming the orders of two Courts below hence it cannot be out-rightly said that the judgment is devoid of reasoning, even if it is so, they have exhausted the remedy by filing petition before the Hon'ble Supreme Court which was found barred by time. The Hon'ble Supreme Court also considered the contention that the tragedy regarding son-in-law of the petitioner's Counsel took place on 30.3.2013 whereas the case was decided on 20.3.2013 and the ground being urged was thus found frivolous apart from the fact that it was barred by time. In pending Suit No.32/1999 the respondent No.8/opponent has conceded to his status of being a tenant. Para-3 of the order passed in Suit No.32/1999 dated 04.12.2007 is reproduced as under:-

“3. The learned Counsel for the Intervener states that he is owner of shop No.2 and go down No.1143 and the defendant No.8 is his tenant. Learned Counsel further

submits that he has filed ejectment proceedings against the defendant No.8 which was allowed and now the matter is pending in C.P. No.90/2006. He submits that instead of defendant No.8 this applicant may be impleaded as defendant No.8 and the name of defendant No.8 may be struck off from the array of the plaint. Mr. Abdul Muqtadir Khan the learned counsel for defendant No.8 states that the defendant No.8 is in possession of the shop and go down as tenant and depositing rent in Court and has every right to protect his possession till such time he was evicted through due process of law” ”

“Landlord” has separately been defined under Sindh Rented Premises Ordinance, 1979 and hence no further indulgence is required.

The point of merger insofar as invoking the jurisdiction in terms of Section 12(2) CPC is concerned has already attained the finality in terms of judgment reported in PLD 2015 SC 358 and there are no issues on its maintainability. However the case as presented does not come within the frame of Section 12(2) CPC.

Thus there appears to be no reason or occasion to invoke the provisions of Section 12(2) CPC. The application is misconceived and is dismissed.

Above are the reasons for the short order dated 15.5.2017 whereby the application bearing CMA No.6165/2013 was dismissed.

Judge