

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Const. Petition No.S-74 of 2021

Petitioner Attaullah son of Bhawal Khan through Mr. Abdul Sattar Sarki, Advocate.

Respondent Ali Gulab son of Abdul Ghani through Mr. Hameedullah Dahri, Advocate.

Date of hearing **24.01.2022**

Date of order 14.02.2022

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JUDGMENT

SHAMSUDDIN ABBASI, J:- This Constitution Petition under Article 199 of the Constitution of Islamic of Pakistan, 1973, arises from the concurrent findings of two Courts below, whereby both the Courts below ordered eviction of the petitioner on the ground of default in the payment of rent.

2. The respondent is Campus Administrator & Incharge Security Affairs of Liaquat University of Medical & Health Sciences (LUMHS) Jamshoro, which owned a shopping centre at Railway Phatak, Jamshoro. Since 2008 most of the shops of the shopping centre were let out to different tenants whereas the petitioner is tenant in respect of shops No.1, 2, 3 and 4, rent of which was being collected through bank A/c No.2625-7, lying with National Bank of Pakistan (NBP), LUMHS Jamshoro Branch. In the year 2012 the petitioner and other tenants filed Constitution Petition No.D-1248 of 2012 before this Court on the issue of rent, which was disposed of vide order dated 13.10.2015 with direction to the respondent to act strictly in accordance with law since the petitioners of the said petition were statutory tenants. This led to execution of new rent agreement dated 11.12.2015 whereby monthly rent of the shops in question was fixed @ Rs.7,500/- against security deposit of Rs.50,000/-. It was further agreed that the petitioner shall pay a sum of Rs.67,500/- towards arrears of rent of each shop in four equal installments of Rs.16,875/- each on 01.01.2016, 01.04.2016, 01.08.2016 and 01.12.2016, however, the petitioner paid only two installments and failed to pay other amount of installments. The petitioner, thus, committed willful default in the

payment of rent since February 2016. He was, therefore, served with four notices dated 09.12.2016, 13.03.2017, 07.03.2019 and 11.03.2019 and on his failure to pay the rent was served with final notice dated 05.04.2019, but to no avail and an amount of Rs.1,365,000/- is outstanding against the petitioners as arrears of rent and amount of installments. This led to filing of eviction application (Rent Application No.04 of 2019) against petitioner on the ground of willful default in the payment of rent since February 2016 with the following prayer:-

- a) *That the Honourable Court may be pleased to evict the opponent (tenant) from tenancy of shop No.1 to 4, as he has infringed all the obligations, terms and conditions related to agreement being a willful defaulter;*
- b) *That the Honourable Court may kindly be pleased to direct the opponent (tenant) to pay Rs.1,230,000/- the arrears of rent which he did not pay since the February 2016 till to June 2019 and the remaining amount of 2 installments of 4 shops Rs.1,35,000/- total amounting to be Rs.1,365,000/-;*
- c) *Cost of the litigation be allowed in favour of the applicant; and*
- d) *Any other suitable relief.*

3. The petitioner contested the eviction application and filed his written statement, wherein he has denied all the allegations leveled against him by the respondent and submitted that when the shops in question were let out to him there was no business activity and he expend huge amount on renovation and decoration etc. In the year 2015 the agreement was renewed enhancing the rent from Rs.1,500/- to 7,500/- per month. He, however, claimed his signature on the rent agreement as forged. The respondent just to compel the petitioner disconnected water connection and also demolished the boundary wall and other construction in collusion with the concerned departments for which the petitioner born Rs.400,000/- on reconstruction. It is further the case of the petitioner that during construction of overhead bridge the shops in question remained closed for more than one year and rent of such period was agreed to be waived. He denied to have signed rent agreement dated 11.12.2015, which is fake and engineered one. The petitioner denied to have committed any default in the payment of rent and submitted that he has paid rent upto 2015 when respondent started illegal tactics just to compel him to vacate the shops in question.

4. Following issues were framed:-

1. *Whether the opponent/tenant has committed default in payment of rent?*
2. *What should the order be?*

5. The respondent examined Ali Gulab (authorized officer) at Ex.10, Atif Hassan at Ex.11 and Ubaidullah at Ex.12. On the other hand, the petitioner examined himself at Ex.19 and closed his side. All of them were subjected to cross-examination by the parties' respective counsel.

6. The learned Rent Controller-I, Kotri, after hearing the parties' respective counsel allowed rent application vide order dated **25.11.2020** and ordered eviction of the petitioner directing him to vacate the shops in question and deliver its vacant and peaceful possession to the respondent within thirty days and pay a sum of Rs.1,410,000/- towards arrears of rent.

7. Feeling aggrieved by the eviction order, the petitioner filed First Rent Appeal (FRA No.06 of 2020) mainly agitating that the impugned order is harsh, bad in law and facts, based on erroneous findings treating each and every plea of respondent as gospel truth and ignoring the neutral appreciation of whole evidence brought on record, without application of a judicial mind and beyond the mechanism provided by this Court in CP No.D-1248 of 2012.

8. The appeal fails whereby the order of the learned Rent Controller was upheld vide judgment dated **16.02.2021**, penned down by the learned Additional District Judge-II, Jamshoro @ Kotri (MCAC) Hyderabad, which necessitated the filing of the listed petition.

9. Heard and record perused minutely.

10. Reviewing the case of the respondent in Rent Application No.04 of 2019, it is noted that, the respondent sought eviction of the petitioner on the ground of willful default in the payment of rent since February 2016. The petitioner alongwith other tenants of the respondent filed CP No.D-

1248 of 2012, which was disposed of with direction to the respondent to act strictly in accordance with law. The parties entered into fresh tenancy agreement whereby the petitioner agreed and undertaken to pay the arrears of rent as well as monthly rent @ Rs.7,500/-, but failed to honour his commitment and committed willful default in the payment of rent since February 2016 despite of repeated notices. The petitioner, on the other hand, denied the claim of the respondent and pleaded that he has not committed any default in the payment of rent and it was the respondent who did not follow the principles laid down by this Court in CP No.D-1248 of 2012. His contention is that such principles had binding effect on both parties and any remedy, if available to the respondent was to file application for fixation of fair rent and not eviction application, which is against the guidelines given by this Court in the petition (supra). This contention, on the face of it, seems to be legally incorrect. It is a well settled that in cases where the tenant has committed willful default in the payment of rent, the landlord has a remedy to seek eviction of tenant on such a ground. In the case in hand, there are admissions on the part of petitioner that after 2016 neither he paid the rent nor vacated the shops. It has also been admitted that he has paid rent @ Rs.7,500/- per shop on 13.12.2016 and 28.07.2016 alongwith arrears of rent @ Rs.16,875/- as installments of the previous year. Insofar as the other contention that rent agreement does not bear his signature and the same is forged and engineered one, nothing has been brought on record on behalf of the petitioner to substantiate that rent application was filed on the basis of a fake agreement.

11. In like cases the landlord would only require to establish that tenant has committed willful default in the payment of rent. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such default. This would carry presumption of truth hence strong evidence would be required from tenant to rebut it. The petitioner though refuted the default in his pleadings but admitted the same in his evidence. I am, therefore, of the view that impugned judgment passed by the learned Additional District Judge-II, Jamshoro @ Kotri is based on fair evaluation of evidence and other material brought on record. The record is suggestive of the fact that the learned Rent Controller has premised its findings on the

issue of willful default in payment of rent by the petitioner. Finding of facts given by learned Rent Controller are concurred by the learned Appellate Court, therefore, at this juncture under the constitutional jurisdiction this Court avoids to give contrary findings until and unless the same are prove to be perverse, based on misreading or non-reading of evidence. Even otherwise, the powers in rent matters under Constitutional Jurisdiction of this Court are limited and confined only to ascertain whether the learned Courts below have flouted the statute or failed to follow the law relating thereto. In the case in hand, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the impugned orders passed by both the Courts below. Besides, I do not see misreading or non-reading of evidence which could warrant interference of this Court.

12. For the foregoing discussion, I find no infirmity or illegality in the impugned orders (concurrent findings of the two Courts below). This Constitutional Petition is, therefore, bereft of merit stands dismissed alongwith all pending application(s), if any, however, with no order as to costs. The petitioner is directed to vacate the subject shops and handover its vacant and peaceful possession to the respondent within thirty days from the date of this judgment subject to payment of monthly rent and other applicable dues, failure thereof he shall be evicted without notice.

JUDGE