

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1414 of 2016

Mrs. Fareeda Aslam

Versus

The District Judge Karachi South & another

Date of Hearing: 01.04.2021

Petitioner: Through Mr. Muhammad Mushtaq Qadri
Advocate.

Respondent No.1: Through Mr. Zafar Iqbal Dutt Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition is filed against the conflicting findings of two Courts below in respect of default. The eviction application was filed on the ground of default, personal requirement and subletting. The trial Court allowed the application on the ground of default but declined to evict respondent No.2 on the ground of personal requirement whereas the third ground of subletting was not proved. Landlord did not prefer any appeal in respect of personal ground and the ground of subletting whereas petitioner/tenant filed FRA in respect of ground of default only, which appeal was allowed vide impugned order. There was no cross appeal or cross objections as well hence for all material purposes the issue left is only to the extent of default as far as present controversy is concerned.

2. I have heard learned counsel for parties and perused material available on record.

3. The default, as pleaded by the petitioner/landlady, was that there was no refusal on the part of the petitioner in terms of Section 10(3) of Sindh Rented Premises Ordinance, 1979 before it could have

been deposited in Court in MRC No.155 of 1998. In the application the period of default was stated to be w.e.f. January, 1998 as it was payable in advance, per learned counsel for petitioner. The eviction application was filed belatedly in the year 2010 as Rent Case No.455 of 2010.

4. Respondent No.2 filed written statement and in paragraph 3 categorically stated that the rent is being deposited in MRC No.155 of 1998 w.e.f. January 1998 at the rate of Rs.400/- per month. It was also stated in paragraph 3 that when husband of the landlady, who was also attorney was offered the rent of the said period, he avoided to receive the same. The record of MRC No.155 of 1998, which is judicial record, also reveals that after refusal from the rent collector/husband/attorney of landlady, the rent was sent through money order bearing No.1050 on 05.01.1998 and 983 dated 10.01.1998, which were also annexed along with MRC No.155 of 1998.

5. It is however pleaded by learned counsel for petitioner that the refusal was not established as the postman was not examined and/or that the endorsement of the postman as to the refusal of money order was not exhibited. The record reveals that along with affidavit-in-evidence the tenant/respondent No.2 also filed copies of pleadings of Civil Suit No.660 of 2002 and the written statement filed by the landlady/petitioner. Since these documents were filed along with affidavit-in-evidence were exhibited as O/4 and O/5.

6. In paragraph 3 and 4 of the plaint of the aforesaid suit the tenant/respondent has categorically stated that since the husband of defendant No.3 (which is petitioner's attorney here) refused to accept the rent, therefore, plaintiff (who is respondent No.2 here) started depositing rent in MRC No.155 of 1998. It is also stated in paragraph 4 that the plaintiff (respondent No.2) is very punctual and regular in payment of monthly rent. These two paragraphs of the plaint were not

denied in terms of paragraphs 3 and 4 of the written statement (filed by petitioner) which say that the contents being matter of record are “admitted”.

7. With these pleadings, which were exhibited before the Rent Controller, there is no issue left to be resolved that on account of refusal of the landlord and/her attorney/husband the rent was being deposited in Court in the aforesaid MRC. Though on account of such refusal, as admitted in the written statement of the aforesaid suit, there was no necessity of sending the rent through money order, yet record reveals that money orders were sent. Since the refusal of the landlady is independently proved through the pleadings of the petitioner, therefore, compliance of Section 10(3) of Sindh Rented Premises Ordinance, 1979 has been made and it was lawfully deposited in the aforesaid MRC.

8. With these facts and circumstances, no interference is required in the impugned judgment of the appellate Court in terms whereof eviction application was dismissed and consequently the petition was dismissed vide short order dated 01.04.2021 of which these are the reasons. Office is directed to send R & Ps to the concerned Courts.

Dated: 03.04.2021

Judge