

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. S- 416 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
05.04.2021	

For orders on office objection
For hearing of MA 1085/20
For hearing of main case

Mr. Mumtaz Alam Leghari, Advocate for Petitioner
Mr. Shaukat Ali Birhamani, Advocate for Respondent No.1
Mr. Wali Muhammad Jamari, Asstt: A.G.

ZULFIQAR AHMAD KHAN, J.- Through this constitutional petition, the petitioner has assailed the legality and propriety of the Judgment dated 14.09.2020, passed by learned District Judge / MCAC Dadu in FRA No. 03 of 2020 (re: Shamsuddin v. Sajjan Ali), whereby the learned appellate Court while dismissing the said appeal maintained the order dated 27.01.2020, passed by learned Rent Controller Dadu, whereby the rent application under Section 15 of the Sindh Rented Premises Ordinance, 1979.

2. Brief facts of the case are that respondent Sajjan Ali, filed Rent Application No.10/2019 before learned Rent Controller Dadu, claiming therein that, his father Ali Hassan owned three shops and one godown, constructed over plot No.610 of Ward B, Dadu, herein after called as “premises” His father had rented out the said premises to petitioner at the rate of Rs.70000/- per month. Appellant used to pay monthly rent of premises to his father, who expired on 31.5.2016. Thereafter appellant paid him Rs.15000/- only instead of Rs.70000/- towards rent of premises for the month of May, 2016. Thereafter, since June 2016 till today, Appellant did not pay rent of premises to him and became default in payment of rent as well he needs premises for his personal use, he being jobless, therefore he filed the above Rent Application praying therein that, he may be directed to vacate the premises and hand over its possession to him, as well he (tenant) may be directed to pay him arrears of monthly rent of premises since June 2016 , till he vacates and hand over its possession to him.

3. Upon notice, petitioner /opponent appeared before trial court and contested the Rent Application. In objections, he admitted himself to be tenant of the premises in question since 1990. He asserted that Muhammad Hassan, the father of Applicant had obtained advance amount of Rs.16,00,000/- (sixteen thousand) from him and had executed tenancy agreement with him, wherein monthly rent of the premises was fixed at Rs.15000/- per month. He further asserted that he was paying rent of three shops to father of Applicant and after his death, to Applicant and he did not commit any default in payment of rent. He also asserted that godown has been sold out by Applicant to one Adam Bhand. He denied if premises requires to respondent No.1 / applicant for his personal use. He prayed for dismissal of Rent Application.

4. From pleadings of parties, learned Rent Controller framed following points:-

1. Whether there is relationship of landlord and tenant between applicant and opponent to the extent of Go down?
2. Whether the tenancy agreements dated 25.06.2011, 20.07.2012, 28.07.2012, 18.11.2013 executed by applicant and tenancy agreements dated:21.12.2013 & 15.12.2014 executed by father of applicant?
3. Whether the opponent has committed default in payment of monthly rent?
4. Whether the applicant is entitled to get the rent of demised premises since June-2016, till realization of possession?
5. Whether the applicant requires the premises in good faith for personal bonafide need?
6. What should the order be?

5. In support of his claim, Respondent No.1 / applicant examined himself and his two witnesses Sardar Ahmed and Sikandar Ali. Then he closed the side. In rebuttal, Petitioner / Opponent examined himself and produced six Rent Tenancy Agreements and two books/registers of his shop. He also examined Abdul Ghaffar and Mir Muhammad. Then he closed the side.

6. After hearing learned counsel for parties and examining evidence on record, learned Rent Controller allowed Rent Application and directed the petitioner / Opponent to vacate premises and hand over its possession to Respondent/Applicant within 45 days vide Order dated 27.01.2020. The

petitioner / opponent being aggrieved of the said order preferred Rent Appeal No.3 of 2020 before learned District Judge / MCAC Dadu, who after framing the points for determination also dismissed the appeal, hence the instant petition under Article 199 of the Constitution of Pakistan.

7. Heard arguments of learned counsel for appellant, respondent No.1 as well as learned A.A.G.

8. Learned counsel for the petitioner while admitting the relationship of landlord and tenant between the rival parties has primarily given rational of payment of Rs.15,000/- per month to respondent through the latest agreement entered between himself and the father of respondent available at pages 79 & 80 where the petitioner claimed to have made a payment of Rs.16,00,000/- in lump sum while reducing the monthly rent from Rs.75,000/- per month to Rs.15,000/-, however, despite given various opportunities, the learned counsel was unable to satisfy this court nor did he bring any evidence before any of the forum below that how and when the said amount of Rs.16,00,000/- was paid reducing the liability of the petitioner from Rs.70,000/- to Rs.15,000/-. Nonetheless, the very agreement has been denied by the respondent. Learned counsel for the petitioner was unable to satisfy that why no evidence was presented before the trial court of his client's regular payment of rentals and why he only brought this evidence before the appellate court. A review of the appellate Judgment with regard to the payment of such rentals shows that the appellate court has discussed this issue thread bore in the second last page of the Judgment. The relevant paragraph is reproduced hereunder:-

“ Coming to the contention of Mr Mugheri, that matter may be remanded back to learned Rent Controller, because appellant could not produce the rent receipts, mistakenly, before learned Rent Controller I do not find substance in his contention, mainly on the ground that, nowhere, in evidence either by Appellant or his witnesses had stated even a single word in respect of these receipts. In appeal, Appellant with memo of Rent Appeal has submitted 128 copies of rent receipts. After having cursory look over these rent receipts, I find that all 128 rent receipts have been issued on very first date of each and every month. It does not appeal to my mind that in all the 128 months (13 years and 2 months), Appellant did not commit delay even for a single day and he paid rent amount to Respondent on very first day of each month of 13 years. Moreover all the 128 rent receipts allegedly are shown to have been issued by Respondent Sajjan Ali. But his signature over rent receipts appears to be quite different from signature, he put over vakalatnama and or affidavit in evidence. Moreover, these receipts pertains to year 2007 and onwards. Here question arise that since Muhammad Hassan, the father of

respondent Sajjan Ali was receiving the rent from appellant, who was alive upto 31.5.2016 then how and why Appellant gave rent to Respondent. Had there been Rent receipts with Appellant, he might have produced the same before learned Rent Controller, in support of his claim. It appears that after losing his case, Appellant has managed these rent receipts and had submitted copies thereof before this court, only in order to create a ground for remand of his matter to trial court. In attending circumstances, I do not find substance in contents of Mr. Mugheri for remanding the matter to learned Rent Controller.

9. No strength could be gained from the arguments of the learned counsel for the petitioner to support the petitioner's case.

10. This Constitutional Petition is filed against the concurrent findings of the Courts below in rent proceedings, in which circumstances, it has to critically pass through the test laid down by the judgment rendered by Honourable Supreme Court of Pakistan in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (2001 SCMR 338) as well as in the cases reported as Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others (PLD 2018 SC 81), Mst. Samina Zaheer Abbas v. Hassan S. Akhtar and 3 others (2014 YLR 2331) and Pakistan State Oil Company (Pvt.) Ltd. v. Zulekha Khanum and 6 others (2016 CLC 1850).

11. A review of the judgments passed by the Courts below shows factual controversy with regard to landlord / tenant relationship and depositing of rent by the applicants was proved; so also no misreading or non-reading was seen to have been committed by the both Courts below while passing the impugned Judgment hence no illegality or material irregularity, of which this Court could have taken cognizance of under the Constitutional jurisdiction surfaced.

12. In the given circumstances where no mandate is available in the Constitution to openly interfere with rent proceedings unless patent illegality, lack of due process, malafide or misreading / non-reading of evidence is witnessed, this petition is dismissed as being meritless alongwith pending application.

JUDGE

