

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1246 of 2011

Mst. Hajra Khatoon

Versus

Javed Akhtar & others

Date of Hearing: 08.11.2017

Petitioner: Through Mr. Sh. Rehan Farooq Advocate

Respondent No.1: Through Mr. Muhammad Fazle Rabbi Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Respondent No.1 filed an application under section 15 of Sindh Rented Premises Ordinance, 1979 for eviction of the petitioner on the ground of default and has prayed accordingly.

It is pleaded in the application that w.e.f. June 2005 to June 2008 (37 months) the petitioner has not paid the rent at the rate of Rs.1200/- per month and so also the utility charges. The respondent No.1's father inducted the petitioner at the rate of Rs.1200/- per month who died somewhere in the year 2006. The petitioner has not denied such fact but claimed that an agreement of sale was executed and thus has denied the relationship of landlord and tenant accordingly. The petitioner claimed to have entered into an agreement of sale with the father of respondent No.1 against total sale consideration of Rs.2,75,000/-. On the basis of the evidence the ejectment order was passed on the ground of default as the petitioner failed to prove the payment of the alleged arrears of rent as prayed for and the defence that the petitioner entered into an agreement of sale was not appreciated. The petitioner filed an appeal bearing FRA No.74 of 2010 which was also dismissed by the Court of III-Additional District Judge Karachi West. Against these concurrent findings

the petitioner/tenant has filed this petition mainly on the strength of a sale agreement.

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

There appears to be a solitary defence for non-payment of rent, which is a sale agreement claimed to have been entered between petitioner and the father of respondent No.1. Such could hardly be taken into consideration on account of the fact that the petitioner admitted to have been inducted in the premises as tenant and he cannot resile from such relationship on the pretext of an agreement of sale. The petitioner in order to prove such claim had to surrender the possession as being tenant and only in case he succeeds in establishing his case for specific performance, the possession could be restored and/or he be absolved from payment of the rent after decree. Since non-payment of rent is not denied, no further scrutiny is required against the concurrent findings of the two Courts below and the petition was accordingly dismissed vide short order dated 08.11.2017 of which these are the reasons.

Dated:

Judge