

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 142 of 2018

Date	Order with signature of Judge
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Petitioner : Mst. Surriya Bibi,
through Mr. Muhammad Arshad Mughal Advocate.

Respondent No.1 : Muhammad Ali Qureshi,
through Mr. Fida Muhammad Khan Khel Advocate.

Respondents 2 & 3 : IVth Additional District Judge Karachi West and
Ist Senior Civil Judge/Rent Controller, Karachi West.

Date of hearing : 04.09.2019.

ORDER

NADEEM AKHTAR, J. – Rent Case No.268/2006 filed by respondent No.1 for eviction of the petitioner on the grounds of default and personal need was allowed by the learned Rent Controller on both the grounds vide order dated 08.03.2012, and First Rent Appeal No.01/2013 filed by the petitioner against the order of her eviction was dismissed by the learned appellate Court on 20.03.2013 as being barred by limitation. Thereafter, the petitioner filed an application under Section 12(2) CPC on 09.07.2013 in execution proceedings before the learned Rent Controller seeking dismissal of the respondent No.1's execution application as well as his main rent case, which was dismissed by the learned Rent Controller vide order dated 21.04.2014. The said order of dismissal of her application under Section 12(2) CPC was challenged by the petitioner in First Rent Appeal No.12/2014 which was dismissed by the learned appellate Court through judgment dated 15.12.2017. The above concurrent findings of both the learned Courts below on her application under Section 12(2) CPC have been impugned by the petitioner through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Perusal of the application filed by the petitioner under Section 12(2) CPC shows that the only ground urged therein by her was that respondent No.1 was not her landlord or the owner of the demised premises, which were owned by SITE Limited Karachi ; and, due to this reason the learned Rent Controller had no jurisdiction to decide the rent case filed by respondent No.1. According to her, respondent No.1 had committed fraud by filing the rent case against her claiming himself to be her landlord. Her application was dismissed on the ground that she had failed to satisfy the learned Rent Controller the manner in

which respondent No.1 had committed any misrepresentation or fraud in obtaining the eviction order against her. The appeal filed by her against dismissal of her application was also dismissed, wherein it was held by the learned appellate Court that she was aware of the eviction order as it was passed after notice to her and she was being represented in the rent case by a counsel ; after dismissal of her appeal against the eviction order, she did not challenge the said order any further and as such the same had attained finality ; the eviction order was passed in the rent case and not in the execution proceedings where she had filed the application under Section 12(2) CPC ; there was no element on record to show misrepresentation or fraud on the part of respondent No.1 ; and, the said application was malafide and an abuse of the process of Court.

3. It is an admitted position that the order of eviction passed by the learned Rent Controller against the petitioner had attained finality long ago as her appeal was dismissed by the learned appellate Court on the ground of limitation which order was not challenged by her any further. The question involved in the present petition is whether the application under Section 12(2) CPC filed by the petitioner in the execution proceedings before the learned Rent Controller was maintainable or not. It may be noted that instead of alleging any fraud or misrepresentation in her said application and praying therein that the eviction order passed against her be set aside on such ground, it was prayed by her that the main rent case filed by respondent No.1 against her, wherein the eviction order was passed, as well as the execution application filed by respondent No.1 for execution of the said eviction order, be dismissed. I am of the view that in view of the above her said application was not maintainable as the above prayer made by her was beyond the scope of Section 12(2) CPC. Even otherwise, the respondent No.1's rent case could not be dismissed as the final order of the petitioner's eviction passed therein had attained finality which could not be reopened by the learned Rent Controller in execution proceedings nor could he sit in appeal against his said final order. Needless to say in execution proceedings the learned Rent Controller was duty-bound only to execute the eviction order and not to go behind the said order.

4. The application filed by the petitioner under Section 12(2) CPC was not only beyond the scope of the said Section, as already held above, but was also not in compliance of the mandatory requirement envisaged in the said Section as specific allegations of misrepresentation and or fraud with all relevant details thereof were not disclosed by her in her application. It is well-settled that in the absence of such specific allegations and details, the provision of Section 12(2) CPC cannot be invoked. With regard to the sole ground urged by her regarding

lack of relationship of landlord and tenant between the parties and consequently lack of jurisdiction of the learned Rent Controller, it may be noted that a specific issue was framed in this behalf by the learned Rent Controller which was decided against her and in favour of respondent No.1 ; and, it was only after following the proper course that the order of eviction was passed against her by the learned Rent Controller which order attained finality much prior to the filing of her said application.

5. Sub-Section (2) of Section 12 CPC is a special provision that can be invoked only in special and peculiar circumstances as enumerated therein. An order, judgment or decree passed by a Court can be challenged under this provision only (a) if the same were obtained by means of misrepresentation and or fraud, or (b) if the Court did not have the jurisdiction to pass the same. The scope of this provision is limited only to the above extent as specifically provided therein. In the present case, the application filed by the petitioner was clearly beyond the scope of this provision, and the mandatory requirement thereof regarding disclosure of misrepresentation and or fraud with all relevant details and particulars was lacking. Thus, the application was not maintainable and was rightly dismissed. Accordingly, the concurrent findings of both the learned Courts below do not require any interference by this Court.

6. In view of the above discussion, this petition and the stay application pending therein are dismissed, however, with no order as to costs.

J U D G E