

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1465 of 2013

Muhammad Ishaq Kalota

Versus

Nafees Ahmed & others

Date of Hearing: 30.11.2017

Petitioner: Through Mr. Naeem Suleman Advocate.

Respondents No.1 to 4: Through Mr. Abdul Wajid Wyne Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-This petition involves the ejectment of the petitioner on the ground of default for the month of July, 2006 onwards. The ejectment application of the respondents bearing Rent Case No. 705 of 2009 was dismissed vide judgment dated 31.05.2012 passed by V-Rent Controller Karachi South whereas decision was reversed and the ejectment application was allowed by VII-Additional District Judge Karachi South in FRA No.189 of 2012 in terms of order/ judgment dated 25.11.2013.

2. After service of ejectment application, the petitioner filed written statement in the Rent Case and denied the contents of the ejectment application and it is claimed that there was no default as the rent was deposited in MRC after its refusal by the respondents.

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

4. Respondents No.1 to 4 purchased the subject building on 15.07.2006 where the tenement in question is situated. The sale deed was executed on 15.07.2006 and was registered on 16.07.2006. Accordingly, a notice under section 18 of Sindh Rented Premises

Ordinance, 1979 was issued and served upon the petitioner on 26.07.2006 claiming rent w.e.f. July 2006. The acknowledgement receipt in respect of notice under section 18 appeared to have been returned on 27.07.2006. It is pleaded by the petitioner that the rent was personally offered to the respondents but was refused whereafter it was sent through money order on 25.08.2006 which was returned on 29.08.2006. The money order available on record as Annexure D/3 shows that it was sent on 25.08.2006 and consequently rent was deposited on 07.09.2006 in MRC No.1313 of 2006.

5. The petitioner also claimed to have filed an application under section 20 of Sindh Rented Premises Ordinance, 1979 for summoning the concerned postman, who attempted to serve money order, to be examined in support of his contention raised in written statement and affidavit-in-evidence which application was dismissed on 24.09.2011 on the ground that the concerned postal authority does not keep record beyond 18 months and hence the Rent Controller considered the application as time barred and dismissed.

6. The Rent Controller gave findings as to the issues framed, which include as to whether respondents were the landlords/co-owners of the demised premises at the time of issuance of notice under section 18 of Sindh Rented Premises Ordinance, 1979, and decided it in negative. The findings of the Rent Controller was then reversed by the appellate Court when it observed that it is a case of willful default as petitioner has failed to tender due rent to the respondents within 30 days of the receipt of notice under section 18 of Sindh Rented Premises Ordinance, 1979. However, the appellate Court failed to give its findings as to the application which was filed under section 20 of Sindh Rented Premises Ordinance, 1979 for summoning the witness from postal authorities with reference to the money order that is exhibited as Annexure D/3.

7. The first point that requires clarification is, whether the Rent Controller was justified to presume that the postal authorities do not keep record beyond 18 months and gave valid reasons to dismiss the application as being time barred. In all fairness the Rent Controller should have allowed the application and it would be up to the postal authorities to disclose/explain as to what extent/period they are required to keep the record under the law, however it is beyond justification to dismiss the application as time barred. Had they been summoned, it could have been rendered fruitless in view of the statement of the postal authorities that they do not keep their record beyond 18 months and the law would have taken its course, but this is not how it should have ended.

8. The case further requires explanation/deliberation that a notice of attornment by a seller followed by notice under section 18 of Sindh Rented Premises Ordinance, 1979 by a buyer is sufficient for the tenant to tender the rent to the prospective buyer of the premises/building in question and it was thus obligatory upon the tenant to tender due rent within 30 days to the new landlord on receipt of letter of attornment and/or notice, as above.

9. It is, however, to be seen in the matter whether the “due rent” was paid to the new landlords/ respondents within 30 days or otherwise.

10. For the sake of convenience, section 15 and 18 of the Sindh Rented Premises Ordinance, 1979 are reproduced as under:-

“15. Application to Controller.-(1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that-

(i) ;

(ii) *the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of which agreement, within sixty days after the rent has become due for payment;*

Provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;

Section 18

18. Change in ownership.-Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of subsection (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.”

11. The landlord may have asked the tenant to deposit rent in 30 days from the date of notice, but the requirement of law is otherwise. Section 18 of Sindh Rented Premises Ordinance, 1979 provides that petitioner/tenant was under obligation to pay “due rent” within 30 days of the receipt of notice. Admittedly, the rent up to June 2006 was paid to the previous landlord. The rent for the month of July, in the absence of any agreement for its payment in advance in terms of Section 15 of the Sindh Rented Premises Ordinance, 1979 was due on 10th of month next following. Section 10 provides the explanation of due rent in the absence of any date fixed in this behalf by mutual agreement. It provides a date of 10th of the month next following for which it is due.

Thus, the rent for the month of July 2006 was due on 10th of August 2006.

12. Section 18 of Sindh Rented Premises Ordinance, 1979 requires the payment of due rent within 30 days of the receipt of notice. The tenant shall not be deemed to have defaulted in payment of rent for the purpose of clause (ii) of subsection 2 of Section 15 of Sindh Rented Premises Ordinance, 1979 if the rent is paid within 30 days of its becoming due. Notice under section 18 of Sindh Rented Premises Ordinance, 1979 was stated to have been served on 26 July, 2006 but it is not the triggered date and is immaterial when the definition of due rent is applied. The rent for the month of July 2006 was due on 10th of August 2006 from where 30 days to be computed. Rent was accordingly tendered through money order on 25.08.2006 and was even deposited within 30 days in MRC No.1313 of 2006 i.e. on 07.09.2006.

13. The petitioner has also attempted to discharge the alleged burden that rent was refused but the application for calling the witness from postal authorities was dismissed by the Rent Controller, as discussed above. Even otherwise the stamped copies and the endorsement on Annexure D/2 and D/3 carry presumption that the rent was sent and on its refusal was deposited in Court in MRC.

14. Admission of alleged default by tenant in any previous litigation or even in this case cannot be relied upon. Admission could only be of facts and cannot be of law. The law takes effect when applied on facts. Admission of law, if any, has to pass through the test prescribed and required by law itself. If a person conceded to have defaulted being ignorant of law such is no admission unless approved by law as the law takes its course when applied on facts which may suggest otherwise than what allegedly conceded or admitted in facts.

15. In view of the above since this is the only ground contained in the application for ejectment, I therefore allow this petition and set aside order of the appellate Court and maintained the order of Rent Controller but on the basis of above findings.

Dated:

Judge