

Judgment Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. S – 1671 of 2015

Petitioners : Muhammad Shabbir,
through Mr. M. Jamshed Malik Advocate.

Respondents 1 & 2 : Mst. Tahira Begum and Mairaj Ali,
through Ms. Sarwat Jawahir Advocate.

Respondent No.3 : IVth Rent Controller, Karachi East.

Respondent No.4 : VIIIth Additional District Judge, Karachi East.
Qazi Muhammad Bashir, AAG Sindh.

Dates of hearing : 13.09.2021 and 15.10.2021.

J U D G M E N T

NADEEM AKHTAR, J. – Rent Case No.236/2013 was filed by respondents 1 and 2 against the petitioner for his eviction from Flat No.403, 4th Floor, Plot Survey No. MC-2, Sector 1, Lines Area Re-development Project, Scheme No.35, Karachi, (**‘demised premises’**) on the grounds of personal need and default in the payment of monthly rent and utility bills. Subsequently, respondents 1 and 2 filed an application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, (**‘the Ordinance’**) in their aforesaid case praying that the petitioner be directed to deposit an amount of Rs.98,000.00 in Court towards the arrears of monthly rent for the period 01.01.2013 to 28.02.2014 (14 months) at the rate of Rs.7,000.00 per month as well as the future monthly rent with effect from 01.03.2014. Vide order dated 28.08.2014, the above application was allowed by the learned Rent Controller by directing the petitioner to deposit within thirty (30) days an amount of Rs.133,000.00 being the arrears of rent from 01.01.2013 to 31.07.2014. As the petitioner did not comply with the aforesaid tentative rent order, an application under Section 16(2) of the Ordinance was filed by respondents 1 and 2 which was allowed by the learned Rent Controller vide order dated 30.04.2015 whereby the defence of petitioner was struck off and he was directed to handover the vacant and peaceful possession of the demised premises to respondents 1 and 2 within thirty (30) days. Against the above order, First Rent Appeal No.63/2015 was filed by the petitioner which was dismissed by the learned appellate Court vide impugned order dated 18.09.2015 by directing him to hand over peaceful possession of the demised premises to respondents 1 and 2 within thirty (30) days. Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the concurrent findings of the learned Courts below.

2. It is contended by learned counsel for the petitioner that in pursuance of an agreement between the parties, respondents 1 and 2 were liable to transfer the demised premises in favour of the petitioner ; both the learned Courts below have failed to appreciate that in his written statement the petitioner had specifically denied the relationship of landlord and tenant between the parties, and as such an issue to this effect ought to have been framed by the Rent Controller ; by not framing such issue, the Rent Controller had failed in exercising the jurisdiction vested in him by law, and by upholding this illegal defect, the appellate Court has erred in law ; the petitioner was not bound or obliged to deposit the rent in Court or to follow the order passed by the Rent Controller under Section 16(1) of the Ordinance ; and, the impugned orders, being contrary to law, are not sustainable and are liable to be set aside. In support of his submissions, learned counsel placed reliance upon Mst. Miskina Jan V/S Rehmat Din, 1992 SCMR 1149, Mrs. Jumana Khursheed V/S Ist A.D.J. Karachi East and 2 others, 2007 YLR 363, and Santoo Mal alias Santosh Kumar V/S Gordhan Das, 1997 MLD 1124.

3. On 15.10.2021, learned counsel for the petitioner filed a statement which reads as under :

“It is respectfully submitted that the petitioner filed a Suit for declaration, permanent injunction, specific performance of contract and possession, for the subject property of this petition, bearing Suit No.1040/2014 before the learned Court of IVth Senior Civil Judge Karachi East. This Suit was withdrawn by the petitioner and another Suit bearing Suit No.69/2014 was filed before the District & Sessions Judge Karachi (South). The prayer to this Suit also contains a prayer for the transfer of the subject property in case the defendants fail to pay the amounts. The Suit is pending final adjudication and otherwise these proceedings has no prejudicial bearing for the petitioner on the question of law raised in the instant petition.”

4. On the other hand, it is contended by learned counsel for respondents 1 and 2 that there was/is no agreement between the parties regarding the transfer of the demised premises in favour of the petitioner ; there is no decree to this effect from any competent civil Court in favour of the petitioner ; the status of the petitioner has always been and is still that of a tenant ; as the petitioner had committed default in payment of the monthly rent and utility bills, he was liable to be evicted from the demised premises ; the impugned orders are legal and fully justified as the petitioner had failed to comply with the tentative rent order passed by the rent controller ; and, the petitioner was/is liable to be evicted also on the ground that the demised premises were/are required by respondents 1 and 2 for their personal occupation.

5. I have heard learned counsel for the parties at length and have also examined the material available on record. It has been frankly conceded on behalf of the petitioner that he has not paid or deposited the rent for any period, as claimed by the petitioners and/or as ordered by the learned Rent Controller,

or otherwise ; the demised premises are still in the names of respondents 1 and 2 ; the same were never transferred in the petitioner's name ; and, till date no decree has been passed by any civil Court regarding the transfer of the title of the demised premises in favour of the petitioner.

6. The contention of the petitioner that an issue regarding the relationship of landlord and tenant between the parties ought to have been framed by the Rent Controller is absolutely misconceived as it was not his case in his written statement that the demised premises were purchased by him from respondents 1 and 2 or he ceased to be a tenant due to this reason. On the contrary, it was categorically admitted by him at two places in paragraph 1 of his written statement that he was inducted as a tenant by the predecessor-in-interest (deceased husband / father) of the respondents. It was claimed by him that as the deceased was required to pay some installments in respect of the demised premises, it was agreed that the demised premises will be transferred in his name by the deceased after payment of such installments ; however, it transpired subsequently that the deceased had already cleared the installments in his life time. It was also claimed by the petitioner in his written statement that an amount of Rs.2,474,076.00 was borrowed from him as a loan by the deceased who received a further amount of Rs.500,000.00 from him. On the basis of these averments, it was claimed by the petitioner that the deceased had agreed to transfer the demised premises in his name in order to settle the above mentioned amounts. The above pleas taken by the petitioner in his written statement were inconsistent as on the one hand it was claimed by him that the deceased had agreed to transfer the demised premises in his name after payment of installments, and on the other hand it was claimed by him that such transfer was to take place in order to settle the loan allegedly advanced by him to the deceased. Be that as it may, the fact remains that till date the petitioner has not been able to establish his alleged claim in respect of the demised premises before any competent civil Court. Needless to say the controversy alleged by the petitioner could not be decided by the Rent Controller.

7. In the above context, the law laid down by the Hon'ble Supreme Court is briefly discussed below :

I. In Haji Jumma Khan V/S Haji Zarin Khan, **PLD 1999 SC 1101**, it was held, inter alia, by the Hon'ble Supreme Court that till the time that the tenant is able to establish his claim for specific performance on the basis of alleged sale agreement, the landlord would continue to enjoy the status of being the owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy ; genuineness or otherwise of alleged sale agreement and its consequential effect will be independently determined by the Civil

Court ; and, ejectment proceedings could not be resisted by taking shelter under Section 53-A of the Transfer of Property Act.

II. In Kassim and another V/S S. Rahim Shah, **1990 SCMR 647**, the Hon'ble Supreme Court was pleased to hold that till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord was entitled to recover rent.

III. In Muhammad Iqbal Haider and another V/S Vth Rent Controller/Senior Civil Judge, Karachi Central and others, **2009 SCMR 1396**, it was held, inter alia, by the Hon'ble Supreme Court that Article 115 of the Qanun-e-Shahadat lays down that during the continuance of the tenancy, no tenant of immovable property shall be permitted to deny the title of his landlord ; once a person was prima facie shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of Suits for specific performance and cancellation of sale deed ; the relationship of landlord and tenant is not severed even if the execution of an agreement to sell is admitted ; and, institution of two Civil Suits by the tenant one for specific performance of the agreement and the other for cancellation of sale deed in favour of the landlord, per se would not be sufficient to refuse compliance of an order passed by the Rent Controller under Section 16(1) of SRPO pending final determination.

IV. In Syed Imran Ahmed V/S Bilal and another, **PLD 2009 SC 546**, it was held, inter alia, that a sale agreement in favour of a tenant does not itself create any interest or even a charge on the property in dispute ; and, till such time that a person suing for ownership of property obtains a decree for specific performance in his favour, he cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the said property.

V. In Abdul Rasheed V/S Maqbool Ahmed and others, **2011 SCMR 320**, it was held, inter alia, by the Hon'ble Supreme Court that it is settled law that where in a case filed for eviction of the tenant by the landlord, the tenant takes up a position that he had purchased the property and hence is no more a tenant then he has to vacate the premises and file a Suit for specific performance of the sale agreement and if he succeeds, he would be given easy access to the premises ; and, the relationship between the parties for the purposes of jurisdiction of the Rent Controller stood established and by passing the tentative rent order, the Rent Controller had carried out a summary exercise by deciding such relationship. The order passed by the Rent Controller was maintained by the Hon'ble Supreme Court.

8. The cases cited and relied upon by learned counsel for the petitioner cannot be applied to the present case as the facts and circumstances therein were clearly distinguishable. The impugned orders are in accord with the law laid down by the Hon'ble Supreme Court, as discussed in the preceding paragraph, which is fully applicable to the facts and circumstances of the present case. The petitioner has not been able to demonstrate the infringement of any fundamental right that would require interference by this Court under Article 199 of the Constitution. Accordingly, the petition is liable to be dismissed.

9. Foregoing are the reasons of the short order announced by me on 15.10.2021 whereby this petition and the application pending therein were dismissed with no order as to costs.

J U D G E