

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No.S-506 of 2014

1. For hearing of M.A No.6654/14.
2. For hearing of M.A No.6857/14.
3. For hearing of main case.

Petitioner : Through Mr. Suresh Kumar, Advocate.
Respondents No.1 & 2. : Through Mr. Arbab Ali Hakro, Advocate.
Date of hearing : 22.01.2021
& Judgment

J U D G M E N T

NAZAR AKBAR, J: This petition challenges the impugned judgment dated 31.05.2014 passed by learned 6th Addl. District Judge, Hyderabad in First Rent Appeal No.31 of 2012, whereby the learned appellate Court while dismissing the said appeal maintained the order dated 12.04.2012, passed by learned 4th Senior Civil Judge / Rent Controller, Hyderabad in Rent Application No.41 of 2010. Being aggrieved and dissatisfied with the above referred judgment and order, the petitioner has maintained this petition against concurrent findings of learned Courts below.

2. Briefly, facts of the case are that respondents No.1 & 2 / applicants had filed Rent Application No.41 of 2010 before learned Rent Controller for seeking ejection of petitioner from Shop bearing C.S No.A/1148, situated at Nauabad Gali, Hyderabad consisting upon first and ground floor. The petitioner / opponent filed written statement and parties led their evidence. Then after hearing both the parties, learned Rent Controller has allowed the ejection application of respondents No.1 & 2 by order dated 12.04.2012 and even then appeal was also dismissed by judgment dated 31.05.2014.

3. Learned counsel for petitioner has mainly contended that learned Courts below have committed gross illegality and irregularly while deciding the matters and did not consider the fact that respondents No.1 & 2 had admitted the tenancy between them and petitioner since 1992; that since 1992, there are six rent agreements which were executed time to time and the petitioner has never committed default in making payment of rent but the courts below did not consider even this aspect of the case; that both the Courts below did not consider the documents produced by the petitioner result of which is miss-reading and

non-reading of evidence, hence, same are liable to be set-aside. Learned counsel for petitioner further argued that respondents No.1 and 2 have no personal bonfide need and both the grounds taken by them in their Rent Application are false and frivolous hence, judgment and order passed by both the Courts below are liable to be set-aside.

4. Conversely, learned counsel appearing on behalf of respondents No.1 and 2 has contended that petitioner is tenant of respondents No.1 and 2 of disputed shop No.4 vide Rent Agreement dated 16.12.2006 at the rate of Rs.2300/- per month, which was paid up-to 2009 and thereafter he failed to pay the rent and committed willful default in payment of rent; that petitioner has admitted in his affidavit-in-evidence that last rent paid by him is for the month of November, 2009 and has failed to pay the rent from December, 2009. While concluding this arguments, learned counsel has relied upon the case laws reported as Muhammad Asif Khan v. Shaikh Israr [2006 SCMR 1872], Mst. Yasmeen Khan v. Abdul Qadir [2006 SCMR 1501], Dr. Ahmed Ali v. Mst. Shahana Yousif [2012 MLD 1190], Haroon Kassam v. Azam Suleman Madha [PLD 1990 SC 394], Mst. Sughra & another v. Muhammad Ishaq [2004 PLD Karachi 48], Qamaruddin through LRs v. Hakim Mehmood Khan [1998 SCMR 819]. Learned counsel lastly prayed for dismissal of instant petition.

5. I have heard the arguments advanced by learned counsel for the parties and perused the material available on record with their able assistance. Perusal of record shows that instant petition is filed against the concurrent findings of the Courts below in Rent proceedings. No element has been shown where the petitioners can be said to have been adjudged in violation of their fundamental rights. Nothing has been shown to exercise any powers under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 as propose procedure is present on record based upon evidence as present in the matter. A review of the judgment and order passed by the Courts below shows no illegality or material irregularity, of which this Court could have taken cognizance of under the Constitutional jurisdiction. In this context, reliance can be placed from the case of *Mst. Sughra & 11 others v. Muhammad Ishaque & another* [PLD 2004 Karachi 48], wherein it was held that:

6. The scope of exercise of jurisdiction by this Court under Article 199 of the Constitution in the matter arising out of the proceedings under the Sindh Rented Premises Ordinance, 1979 was examined in the case of *Messrs Mehraj (Pot.) Ltd. v. Miss Laima Saeed and others* 2003 MLD 1033, the relevant observations read as under:--

"Besides, the contention of Mr. Imran Ahmed with regard to the maintainability of this petition has also much substance. In this context it may be observed that by conferring only one right of appeal under section 21 of the Sindh Rented Premises Ordinance, 1979 the Legislature in its wisdom seems to have tried to shorten the span of litigation in rent cases. In such circumstances interference by this Court in exercise of its Constitutional jurisdiction under Article 199, in the judicial orders passed by the Tribunals, would not serve any other purpose but would add to the misery of prolonged litigation for the parties and would defeat the spirit and object of the statute. The dictum laid down in the case of Secretary to the Government of the Punjab (supra) also postulates similar view and is fully applicable to the facts and circumstances of the present case."

6. Appraisal of record shows that the Rent Controller as well as Appellate Court had exercised their powers as provided under the law. The petitioner in the matter was heard, evidence was recorded and orders had been passed in accordance with law. It is not available that a constitution petition is to be treated as another appeal by re-appraisal of evidence and no element has been shown whereby the fundamental rights of the petitioner were found to have been jeopardized.

7. It is an admitted position that petitioner is tenant in the demise premises since last more than 37 years and as admitted he is not paying the rent since November, 2009. However, it is legal proposition of law that after the expiry of the term of tenancy and if thereafter the tenant holds such a property without the consent of the landlord, it shall be a clear violation and the infringement of the condition of the tenancy, on which the property was held by him, because the condition of tenancy is for a particular period of time.

8. By now it is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the concurrent findings of facts by the courts below. The scope of rent proceeding is limited to the three factual controversies. That is, (1) default in payment of rent; (2) personal bonafide need of landlord; and (3) any unauthorized addition and alteration in the demised shop by the tenant. These issues are issues of fact and once decided after recording evidence can be subjected to scrutiny only by the appellate forum provided under the rent Laws. The Sindh Rented Premises Ordinance, 1979 is special law and it provides only one remedy of appeal under Section 21 of the Ordinance, 1979 against the eviction. And in rent cases concurrent findings of the two courts are sacrosanct except in extra-ordinary circumstances in which there is something like jurisdictional defect in the proceedings.

9. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, consequently this constitution petition was

dismissed and the Petitioner was directed to vacate the demised shop within three (03) months from today. If the Petitioner fails to vacate the demised shop within three months, the Executing Court will issue writ of possession with police aid with permission to break open the locks without notice to the Petitioner.

10. The above are the reasons for short order dated 22.01.2021 whereby this petition was dismissed for reasons to be recorded.

Hafiz Fahad

Sd/- NAZAR AKBAR,
JUDGE.

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