

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. S-96 of 2010

Date	Order with signature of Judge
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Hearing of case.

1. For orders on CMA No.3415 of 2015.
2. For hearing of CMA No.1392 of 2014.
3. For hearing of main case.

17.02.2020

Mr. Abdul Waheed Kanjoo, advocate for the petitioner.
Mrs. Shamim Akhtar, Attorney of respondent No.1, present in person.

Heard learned counsel for the petitioner as well as attorney of respondent No.1, present in person. It would be conducive, to refer paragraph No.11 of the impugned order, passed by the Appellate Court, which is that_

“11. I have given careful consideration to the submissions of learned counsel for the parties and perused the record. From perusal thereof, it transpires that the case of appellant, at the trial, is that the premises in question was let out by the previous owner to the respondent, who have committed default in payment of rent prior to his purchase and also not paying the utility bills according to his share. The respondent has controverted the grounds and has alleged that there exists no relationship of landlord and tenant between the parties. The learned Rent Controller has dismissed the application of appellants on the ground that the appellants have failed to prove that respondent was his tenant. The record further reveals that the learned counsel for appellants has failed to point out any admission of respondent in his cross-examination that he is in knowledge of execution of sale deed in respect of the property in question. I have gone through the impugned order dated 17.12.2008 and come to the conclusion that the findings of the learned Rent Controller, in view of above discussions and reasons, are proper and legal and the learned Rent Controller has properly appreciated the evidence of the parties while arriving on the conclusion as such I am of the opinion that the impugned order need no interference. I have also considered the case law cited by the learned counsel for appellant which is distinguishable with the facts and circumstances of the case in hand. With these observations, the appeal of appellant is dismissed with no order as to costs.”

As well as to the relevant paragraphs No.2 & 3, passed by the trial Court, which are that_

“The Attorney of the applicant admitted that the applicant has purchased the said property in question through sale agreement dated 08.08.2002 but the applicant has not sent any intimation /notice to the opponent w.e.f. 08.08.2002 till 13.09.2004. It is further reveals from the cross examination

of the applicant's attorney that the previous landlady has not mentioned in the previous litigation that she has sold out the said premises to the applicant nor she sent any intimation to the opponent. It is admitted fact that Mst. Shamshad Begum is still residing in the said property in question. Such discussion established that the applicant has failed to prove his little that he is owner of the property in question as he has not produced any original titled document along with affidavit in evidence.

It is further pertinent to mention here that the order passed on application under Section 16 (2) of S.R.P.O. 1979 is not a tentative rent order that was passed without recording of evidence of the parties and in the said order rate of rent was admitted, which was already deposited by the opponent i.e. Rs.140/- per month and period of default was also not accepted by the Court and against the said order the applicant has not filed any appeal or petition before the Superior Court. The opponent has deposited the rent in this case under protest just to save himself from the point of default and this fact is mentioned by the opponent in her affidavit in evidence and in her support the witnesses of the opponent have also fully supported the contentions of the opponent. It is also fact that the learned counsel of the applicant has not denied this fact throughout cross examination. On the other hand the attorney of the applicant as well as witnesses of the applicant have not stated any thing and their affidavits in evidence also keep quite regarding details of the sale of the property in question, therefore, the applicant has failed to prove the relationship as landlord and tenant between the parties. Therefore, this point is thus give answer in negative.”

From the above, in juxtaposition pleaded by the learned counsel for the petitioner and respondent, who is present in person. It is admitted fact that respondent No.1 is depositing rent regularly in MRC. Whereas, counsel for the petitioner contends that directions on the application under Section 16 (2) of S.R.P.O. 1979, passed by the learned trial Court were not complied in latter and spirit. Further perusal of impugned judgments reflect that plea of default is not substantiated by the petitioner through credible evidence, besides change of ownership notice under Section 18 of Sindh Rented Premises Ordinance 1979 was not served though respondent is claiming that in question property documents are bogus and fake. Since in Rent Application, findings with regard to legal character are not permissible under the law, however, impugned judgments are in accordance with the law.

Accordingly, instant petition is dismissed along with listed applications.

JUDGE