

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-1670 of 2017

Date	Order with signature of Judge
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1. For hearing of CMA No. 7504 of 2017 (Stay).
2. For hearing of main case.

04th March 2020

Mr. Rehan Aziz Malik, advocate for petitioner.
Mr. Masood Khan Ghory, advocate for respondent No.1.
Ms. Leela Kalpana, Addl. A.G. Sindh.

Heard learned counsel for the respected parties at length.

Since instant petition is against the concurrent findings recorded by both the courts below, thus it would be conducive to refer paragraphs No.12, 15 & 16 of impugned judgment passed by the appellate Court which are that:

“12. I have given my anxious consideration to the arguments advanced by the learned counsels for the respective parties and perused the case file and with reference of relevant provisions of law. Perusal of the record shows that admittedly the respondent filed ejectment application against the appellant in respect of subject tenement whereby she stated that she become owner of demised premises by virtue of conveyance deed from previous owner namely Muhammad Hanif s/o Abdul Sattar. It is further averred that she sent a legal notice to the appellant in respect of change of ownership and the payment of rent w.e.f. January, 2011 and same being replied by the appellant dated 28.7.2011. It is further alleged that respondent also sent notice u/s 18 of SRPO 1979 dated 21.9.2011. That the appellant never paid the monthly rent in respect of demised premises as per tenancy agreement already existed between the appellant and the earlier owner of the demised premises. On other hand, the appellant stated that he was tenant in respect of 02 shops out of which previous owner sold out the shop No.6 to the appellant and sale negotiation in respect of shop No.5/rented premises were in progress but the previous owner without informing the appellant sold out the said shop to the respondent. The appellant admitted the legal notice and also admitted that the same was replied by his counsel wherein the proof of change of ownership of the rented premises was demanded but respondent failed to provide the same. It is further claimed by the respondent that he is an old tenant for the last about 40 years and regularly paying the rent , thereafter he started depositing the rent in MRC No.500/2011.

15. As per record, the relationship of landlord and tenant is admitted between the parties. It is further admitted that the respondent is also owner of the rented premises. It is also admitted that notice with reference to change of ownership was sent by the respondent and same was replied by appellant.

Further the appellant claimed that he was/is regular in payment of rent to the respondent and thereafter he started depositing the rent in MRC No.500/2011 before learned VI Rent Controller, Karachi South but during the evidence he did not produce any documentary proof to show that he is paying the rent in respect of demised premises to the respondent. Further perusal of copy of MRC No.500/2011 available on record, it does not transpire that the rent being deposited by the appellant in the name of respondent. Moreover, the learned trial court rightly relied upon the case law. The point No.1 rightly answered by the trial court in light of material available on record.

16. On the point of personal need, it is the claim of the respondent that the said demised premises is required for personal bonafide use for the respondent's sons namely Aqeel and Kashif who are jobless, who intend to establish/run their own business of hosiery and demised premises is much suitable for the respondent in this respect. It was further stated that the respondent served the legal notice to the appellant and requested to fulfill personal bonafide requirement of the respondent in respect of the tenement as she has no other premises to meet his requirement, but the appellant failed to fulfill the desire of the respondent. It has come on record that during the examination of evidence of the parties on this point, that the evidence of the respondent remained unshaken and unsheltered owing the fact that appellant has not been able to bring on record any iota of substance, which negates the plea of personal need raised by the respondent. Here, I would like to reproduce the relevant cross examination of the appellant which reads as under:-

"It is correct that in her application, applicant Syeda, Zubaida in para No.5 has mentioned that she has 02 sons namely Aqeel and Kashif who are jobless and wants to start business of hosiery."

Here, I would like to reproduce the relevant cross examination of the respondent which reads as under:-

"It is incorrect that I am owner of some other shops in the same locality. It is incorrect that I am doing business of estate property. I cannot say whether the opponent wants to purchase the demised shop but I need the same for my son Muhammad Aqeel who is jobless. It is incorrect that I am vacating the demised shop from the opponent in order to reletout the same on high rent but I need the same for my son."

as well trial Court has adjudicated the issue in para-10, 11 & 12 which are that:-

"10- Bare reading of the above provisions reveals that there is nothing in it, that the new owner shall also provide ownership documents or any other proof of his title to the tenant, in case, if he purchases any property, in occupation of the tenant. In my humble view, mere intimation of change of ownership is sufficient for the purposes of section 18 of Sindh Rented Premises Ordinance, 1979 which has been duly complied with by the present applicant. Even otherwise, in a case of Ghulam Waris v/S Riaz Ahmed advocate

reported as 1990 MLD 2300 [Karachi] it has been held that "*section 18 of the Sindh Rented Premises Ordinance 1979, only speaks of intimation of change of ownership. The application for ejectment is, therefore, a sufficient notice of this change*". In these circumstances, otherwise, if it believed that applicant had served a defective notice under section 18 and did not provide any proof of ownership then even her instant application was a sufficient notice in the light of dictum laid by the Hon'ble Superior Courts, where-after, the applicant was bound to offer and pay the rent to the applicant, but unfortunately, he has failed to discharge his obligation and claimed that he has deposited the rent before the Rent Controller.

11. It is also a fact that no record of the said MRC has been produced before this Court, the learned counsel for the applicant submitted that the said MRC has never been opened in the name of present applicant, nor the rent so deposited, if any, has ever been withdrawn by the applicant. Therefore, the opponent has avoided to produce the record of the said MRC before this Court.

12- Admittedly, no deposits of the rent, if any, in the said MRC has been disclosed before this Court and no plausible plea by the opponent for non payment of the rent to the applicant has been proved. Therefore, the default in payment of rent on the part of applicant is undoubted and has been proved. The point is therefore, answered in affirmative.

Perusal of above in juxtaposition of contentions raised by learned counsel suffice to say that this is not a case to exercise the *writ of certiorari* when admittedly impugned judgments are in accordance with law and petitioner has failed to point out any irregularity or illegality. Besides it has come on record that even petitioner has stopped to pay the rent amount in MRC and this fact is not disputed. Accordingly, instant petition is dismissed alongwith pending application.

JUDGE

