IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. S-338 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE

Hearing of case (priority):

1. For orders on office objection.
2. For hearing of CMA No. 1714/2020
3. For hearing of main case.

10th December 2020

Mr. Iftikhar Javed Qazi, advocate for the petitioner.
Syed Hassan Ali, advocate for Respondent No. 1

The controversy involved in this petition is that the landlord filed eviction application on the plea that his tenant (petitioner) failed to deposit rent in the year 2005, hence on the ground of default eviction is allowed. However, it is asserted that one Jan Muhammad was nominated by the landlord to receive the rent as the landlord was not residing in the country; that rent of 2004 was paid by one go in March 2004; after that the said attorney passed away. Both the courts below decided the issue against the tenant (petitioner) on the plea that he has committed default in 2005.

2. The petitioner *pleaded* to have not committed any default while the respondent's side supported the judgment of two courts below while relying upon the cases reported in 2007 SCMR 128; 2006 SCMR 1872 and 2005 SCMR 1801.

3. *Prima facie,* the concurrent findings of two courts below are there which could only be interfered if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. Reference is made to the case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214. Accordingly,

concurrent findings of two courts below shall always be examined, keeping in view the said *four-lines;* mere *concurrent view* alone would never be sufficient to earn a stamp unless the perusal of record brings it out from meaning of a*n error of law.*

4.   In the instant matter, it was never disputed that status of **landlord** was assigned to one **'*Jan Muhammad'*** as he was receiving the rent (Section 2(f) of SRPO 1979). The perusal of the record shows that rent of 2004 was paid in one go in March 2004 whereafter, the said attorney passed away therefore, *prima facie,* there was no authorized person for collection of the **rent** as nothing in this regard is produced by respondent nor it is proved that petitioner (tenant) had active knowledge of such *death* of said Jan Muhammad as well appointment of any other person for such purpose, hence in my view, the tenant was not aware as to whom rent is to be paid, therefore, plea of petitioner (tenant) was carrying weight that despite efforts the said attorney was not available to receive the amount, hence having no option, he (tenant) opened MRC in the month of May 2005 and continued deposing rent.   It is also a matter of record that landlord executed power of attorney in favour of his son in the year 2009.

5.   Be that as it may, if the tendency of receiving rent of whole year *together* is given its due weight which, *otherwise,* had never been a matter of dispute, then burden to prove *default* in making payment of rent was / is upon the landlord. Nothing in this regard is there rather ***Affidavit-in-evidence,*** filed by the son of the landlord, categorically speaks that he demanded rent in June 2005. This, *prima facie,* shows demand of payment of rent in month of **June 2005** which (*demand)* if honoured would have been sufficient to dislodge plea of ***default.***

6.   Be that as it may, what seems to have been ignored by two courts below is the fact that tenant opened MRC in the month of May 2005 hence, *prima facie,* the demand of rent, *undeniably,* made in the month of **June 2005,** stood honoured through a legal course, provided by Section 10(4) of Ordinance, therefore, concurrent findings of two courts below on this *issue* appears to be not in accordance with facts and available material.

Accordingly impugned judgments accorded by both the courts below are hereby set-aside and eviction application is dismissed.

In view of foregoing terms, instant petition is allowed.

J U D G E

Zahid Baig