

# **HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

## **Constitution Petition No. S-802 of 2022**

[Syed Farman Ali Vs. Abdul Ghafoor & others]

## **Constitution Petition No. S-803 of 2022**

[Muhammad Shafi Vs. Abdul Ghafoor & others]

Mr. Ghulam Murtaza Shaikh, Advocate for petitioners.  
Mr. Imtiaz Ali Abbasi, Advocate for respondent No.1.

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Date of hearing & order: 21.11.2022.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** By this single order, I intend to dispose of captioned petitions as both pertain to one and the same property i.e shop Nos. 4 & 6 wherein the petitioners have impugned two judgments firstly on application under Section 15 of the Sindh Rented Premises Ordinance, 1979 dated 19.07.2022 whereby Rent Controller allowing the said application issued directions to the petitioners to handover vacant physical possession of the Premises to respondent No.1 within sixty days from the date of said judgment, secondly, judgment dated 15.10.2022 passed by learned Model Civil Appellate Court-II / VI<sup>th</sup> Additional District Judge Hyderabad upholding the findings of learned Rent Controller, Hyderabad dismissing First Rent Appeal No.41 of 2022 filed by the present petitioners.

2. Brief facts for deciding the instant petitions are that respondent No.1 is the exclusive owner of house part of C.S No.F/762 measuring 160-2 square yards situated at Khokhar Muhallah Hyderabad which he purchased through sale deed dated 20.08.2013 from its previous owners namely Mst.Khair-un-Nisa alias Rani Begum, Farhan Ahmed, Mst. Farhana and Mst.Sumera and the shops are constructed at the said property out of which Shop Nos. 4 & 6 are in possession of petitioners as tenants; however, after purchase of said property respondent No.1 sent legal notice to all tenants including petitioners that he has now become the owner of premises and fixed the rent at rate of Rs.2000/- per month, however, the quantum of rent of like shops in the same area was from Rs.20,000/- to Rs.25,000/- per month; that the petitioners were irregular in payment of monthly rent and since January 2018 they failed to remit the same so also did not pay utility bills; that for this reason coupled with the reason that he was Civil Engineer and due to jobless had no source of income so he intended to start his own business with his brother in the subject premises hence in August 2021 he requested the petitioners to vacate the

premises but they refused, therefore, instant Rent proceedings were initiated; in the said proceedings learned Rent Controller while allowing the application directed the petitioners to vacate the premises in question within 60 days; that the said order was challenged in appeal which was also dismissed, hence the instant petitions.

3 The main thrust of arguments advanced by Mr. Ghulam Murtaza Shaikh, learned counsel for the petitioner is that it is settled principle of law that in the matters like the premises required for personal use the owner ought to have examined himself but without doing so rent application has been allowed by the Rent Controller which order has been maintained by the Appellate Court; that the father of petitioner namely Syed Munawar had executed rent agreement way back in March 1986 at the rate of Rs.500/- with advance amount of Rs.25000/- to the attorney of deceased husband of respondent No.4; later on fresh tenancy agreement was executed by said respondent No.4 with father of petitioner and since the demise of his father in the year 2006 the petitioner continued tenancy and respondent No.4 used to deposit rent before Rent Controller; that the courts below did not consider that there was property dispute between respondent No.4 and his brother-in-law Muhammad Shafi Soomro which was pending before Honourable Supreme Court in CP No. 305-K/98 and in the said proceedings Honourable Supreme Court directed that the rent shall be deposited by the tenant in court which shall not be reimbursed to any of the contesting parties till disposal of suit by the civil court and as per said direction he is depositing the rent Court. He lastly prayed for allowing the instant constitutional petitions by setting-aside the impugned orders of Courts below.

4. Mr. Imtiaz Ali Abbasi, advocate appearing for respondent No.1 supported the impugned orders by contending that respondent No.1 being owner of subject premises was entitled to its possession; therefore, the instant petition may be dismissed maintaining the orders of courts below.

5. I have heard learned counsel for the parties and also gone through the record with their able assistance.

6. It appears from the record that respondent No.1 filed rent application No.250 of 2021 against the petitioners which was contested and finally allowed with direction to the petitioners to vacate the premises and hand over its vacant possession to respondent No.1 within 60 days. The First Rent Appeal No.41 of 2022 was preferred against the impugned judgment dated 19.07.2022 passed by learned Senior Civil Judge/Rent Controller-IV

Hyderabad in Rent Application No.250 of 2021 and the same was too dismissed vide Judgment dated 15.10.2022.

7. The ground taken by the petitioner that he has been paying rent in terms of order dated 19.11.1998 passed by Hon'ble Supreme Court before learned Additional District Judge / Guardian Judge Hyderabad and never committed default; that the father of petitioner Syed Munawar had executed rent agreement to the attorney of deceased husband of respondent No.4; later on fresh tenancy agreement was also executed with father of petitioner on fresh terms and conditions; that the courts below did not consider that there was property dispute between respondent No.4 and his brother-in-law Muhammad Shafi Soomro which was pending before Honourable Supreme Court in CP No. 305-K/98 and in the said proceedings Honourable Supreme Court directed that the rent shall be deposited by the tenant in court which shall not be reimbursed to any of the contesting parties till disposal of suit by the civil court and as per said direction he is depositing the rent Court and the Civil proceedings are pending adjudication before the competent forum. Learned counsel emphasized that learned Additional District Judge Hyderabad has appointed No.4 respondent Mst.Khair-un-Nisa as guardian of the property, as such, she was required to seek permission from the Guardian Court to transfer the property to anyone and such permission has not been obtained by respondents 4 & 5. Learned counsel referred the cross-examination of respondent No.1 who has admitted that one of the legal heirs / younger daughter of deceased Fazal Raheem was of unsound mind and she was not able to execute any power of attorney, whereas the power of attorney shown by respondent No.5 of all the legal heirs without permission of the Guardian Court; that both the Courts below failed to appreciate that the premises were not required by respondent for personal use. He prayed for allowing the petitions and setting aside the judgment of appellate Court and the judgment of Rent Controller by dismissing the Rent Application filed by respondent No.1.

8. The grounds as discussed supra are not tenable for the simple reason that the Courts below have discussed each and every issue in an elaborative manner and the petitioners failed to point out any illegality or irregularity in the impugned judgments of two Courts below; therefore, these petitions are dismissed with direction to the petitioners to vacate the subject premises within 30 days; in case of failure the executing court shall take steps for possession of the subject premises forthwith.

JUDGE