

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-906 of 2022

[Jaffer Ali G. Hussain Shivji .....v..... Kamran Sadiq & others]

Date of Hearing : 16.03.2023  
Petitioner through : Mr. Muhammad Ilyas Khan Tanoli,  
Advocate.  
Respondents through : Mr. Fayyaz Ahmed Memon, Advocate  
for respondent No.2.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the concurrent findings of the learned trial Court dated 08.10.2022 as well as first Appellate Court dated 13.05.2022.

2. Brief facts of the case are that the petitioner filed an application under Section 12(2) CPC in a Rent Case No.438 of 2018 before the learned Rent Controller praying therein that the respondent No.1 obtained the order passed under Section 16(2) of Sindh Rented Premises Ordinance, 1979 against the respondent No.3 by way of fraud and misrepresentation of facts as he is the actual tenant of the tenement in question. The application filed by the petitioner under Section 12(2) CPC was dismissed by the learned Rent Controller vide order dated 13.05.2022, however, the petitioner impugned the order of the learned Rent Controller before the First Appellate by filing FRA No.135/2022 which met the same fate, hence the petitioner is against the concurrent findings of the courts below.

3. The petitioner's entire case was premised on the argument that his father was the tenant of one Fida Hussain in respect of the tenement in question and used to run his business with the name and style of Jaffar G. Autos but he was arrayed as party in the eviction

proceedings before the learned Rent Controller and that the respondent No.1 obtained the order of eviction against the respondent No.3 by way of fraud and misrepresentation of facts, therefore, the concurrent findings be set aside.

4. In contrast, learned counsel for the respondent No.1 argued that both courts below passed a well-reasoned order and the concurrent findings are against the petitioner.

5. I have heard learned counsel for the parties at length and have also scanned the available record. Perusal of record reveals that the learned Rent Controller as well as First Appellate Court are concurrent on the point that the petitioner is alleging to be the tenant in respect of the tenement in question and running his business under the name and style of Jaffar G. Autos but has not introduced on record any tenancy agreement or rent receipts or any document to show that he happens to be the tenant in respect of the tenement in question or having a tenancy right between him and the respondent No.1 & 2, whereas, the respondent No.3 contested the matter before the learned Rent Controller by filing his written statement admitting to be the tenant of respondent No.1. It is considered expedient to reproduce the relevant excerpt of the order of the learned Rent Controller which is reproduced hereunder:-

*4. I have carefully considered the contentions of learned counsel for the applicant/intervener and material placed on record. The applicant/intervener is alleging to be the tenant in respect of premises portion of plot No.60 having business under the name & style of Jaffar G. Autos Garden Road, Karachi. Admittedly, the applicant/intervener has not annexed any tenancy agreement or rent receipts or any document to show his locus standi to file present application. Record further reveals that Oponent namely Abdul Majeed Baker Butt has*

**filed written statement in this rent case and he himself has admitted in para No.2 of his written statement that he is tenant of the applicant No.1 in respect of the demised premises. Record further reveals that earlier Rent case bearing No.1006 of 2000 was also filed by present applicant No.1 namely Kamran Sadiq against opponent namely Abdul Majeed Baqar butt and such litigations were ended on compromise vide order dated 08.02.2003 passed by the learned Senior Civil Judge & Rent Controller-V, Karachi East. It is matter of record that neither during the proceedings of first round of litigation i.e. Rent Case No. 1006 of 2000 and nor during the proceedings of present rent case No.438 of 2018, the present applicant/intervener have never alleged to be in possession of demised premises as tenant. Moreover, the present applicant/intervener himself has mentioned in his application that he has no tenancy agreement nor he has produced any rent receipts, therefore, the applicant/intervener has failed to establish his locus standi to file present applications.”**

6. It is gleaned from appraisal of the foregoing that the petitioner failed to produce any concrete evidence before the learned Rent Controller as well as First Appellate Court with regards tenancy agreement or rent receipts or any document to show that he happens to be the tenant in respect of the tenement in question or having a tenancy right between him and the respondent No.1 & 2. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High

Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.<sup>1</sup>

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith the application.

Karachi  
Dated: 01.04.2023

JUDGE

Aadil Arab.

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<sup>1</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).