

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 307 of 2023

Petitioner : Ghayas Muhammad through Mr. Zahid Hussain advocate

Respondents : Nemo

Date of hearing : 17.04.2023

Date of judgment : 17.04.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 14.03.2023 passed by learned VII-Additional District Judge (Model Civil Appellate Court) Karachi South in FRA No. 85 of 2022 and order dated 19.03.2022 passed by learned VII-Rent Controller Karachi South passed in Rent Case No. 746/2017, whereby, it was inter-alia directed to the petitioner to vacate the demised premises and handover its peaceful possession to the respondents within 30 days from the date of passing of the order.

2. Concisely relevant facts are that respondents No.1 to 3 filed rent application before Rent Controller wherein it was stated that their father Sheikh Muhammad Inam was owner of plot No. GK-7/99, situated at M.A.Jinnah Road, Merewether Tower, Karachi. The said property was gifted by Sheikh Muhammad Inam to the respondents No.1 to 3 being his son through Registered Gift Deed dated 11.07.2018. It was further submitted that respondent No.4 was inducted as tenant in shop of No.9 on ground floor of the said property at the rate of Rs.576/- per month exclusive of water and conservancy charges by Sheikh Muhammad Inam, however, respondent No.4 failed to pay rent as well as other charges since March 1999 and further he sublet the demised shop without prior permission to another unknown person, who started business gas cylinder in the demised shop, hence the respondents No.1 to 3 approached respondent No.4 for handing over vacant and peaceful possession of the demised shop, which is in damaged condition. The respondents No.1 to 3 had also applied for NOC to the concerned authorities for reconstruction of the building. However, the respondent No.4 did not pay heed, therefore, the respondents No.1 to 3 filed ejectment application against respondent No.4, which was proceeded ex parte and was allowed vide order

dated 18.10.2017, thereafter, the execution application was filed by the respondents No. 1 to 3. However, the petitioner appeared and filed two applications under Section 12(2) CPC for recalling *ex parte* order and under Order 1 Rule 10 CPC for impleading him as opponent, which were firstly contested by the respondents No. 1 to 3, but subsequently, no objection was recorded by them, hence *ex parte* order was recalled and petitioner was impleaded as opponent in the rent proceedings, consequent thereto, execution application was also disposed of being infructuous.

3. Petitioner contested rent application by filing written statement. Both the parties filed their respective counter affidavits and after completion of their cross-examination, learned Rent Controller vide order dated 19.03.2022 allowed the ejection application, which order was challenged before learned Appellate Court, but it also met the same fate, hence this petition.

4. Learned counsel for the petitioner argued that learned Appellate Court as well as learned Rent Controller passed the impugned judgment/order without taking into consideration the material brought before them; that petitioner was inducted as tenant by previous owner but such fact was not considered by the trial Court; that rent was paid to previous owner up till December 2017 but as practice no receipt was issued and after December 2017 when rent was refused, the same was deposited by the petitioner in M.R.C No. 579/2018; that there exists no relationship of tenant/landlord between the petitioner and the respondents No.1 to 3, but actually he was tenant of their father; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned judgment/order. It is lastly prayed that impugned judgment/order passed by Appellate Court/ Rent Controller may be set aside.

5. Heard and perused the record.

6. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless

it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

“12. I have carefully considered arguments advanced at bar and have gone through the R&Ps of Trial court and perused the record. From the perusal of the Impugned order, it appears that learned Trial Court observed the non-existence of relationship between parties (appellant and respondents No. 01 to 03) and decided such issue in negative and affirmed the issue pertaining to Sub-letting against the appellant. Thus is the moot question before Court in terms of appeal that whether the appellant is tenant who is regularly depositing the rent within MRC after refusal of landlord or he is Sublette in the premises therefore has no say in the case. The appellant is claiming self as original tenant in the premises being so inducted as tenant within premises by one Sheikh Muhammad Inam and contend to have been paying to rent collector of owner and after refusal depositing the rent in Court. While it is the contention of the respondents No. 01 to 03 that appellants are Sublette in the premises and not the tenant. Although this aspect has been decided in negative however would like to address the same and would like to see respective status of the parties.

13. Now it is settled principle of law, domain of Rent Controller is quasi-Judicial domain and it can be exercised only if there exists relationship of landlord and tenant between parties. The terms landlord and tenant has been defined in Sindh Rented Premises Ordinance, 1979 vide its section 2(f) & (j) respectively. The terms Landlord is defined in terms of section 2(f) of Sindh Rented Premises Ordinance, 1979 which means and includes the **owner of the premises** or **any person for the time being authorized to or entitle to collect the rent**, is known as landlord. Highlighted is mine for laid emphasis. These three are the elements presence of anyone in accordance would render such propriety holder a landlord within context of rental domain. While in terms of section 2(j) of Sindh Rented Premises Ordinance, 1979 a tenant is a **person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person in his behalf** and includes his/her legal heirs. Highlighted is mine for laid emphasis. These are the elements whereby virtue oral/written tenancy agreement or virtue of acquiring premises with undertaking to pay the rent to owner thereof would be termed as tenant. Thus these are the two standing of parties respectively which the Rent Controller is to oblige to see before exercising his domain under the law.

14. Now I would like to see the pleadings and material on record of parties before learned Trial Court to see as to what is the respective status of the parties and whether there exists relationship of landlord and tenant between parties or not. Now I lay reference to PLD 2009 SC 453, 2018 MLD 1231, wherein with regards relationship of landlord & tenant, it been held that in Normal circumstances, in absence of any evidence to contrary, the owner of the property/premises by virtue of his title is presumed to be the landlord and the person in possession of premises is considered as tenant. The admitted fact on record is that premises was owned by one Sheikh Muhammad Inam. This element is observed not just from mouth of the respondent No. 01 to 03, but also from the mouth of the appellant. The appellant claims that he was inducted as tenant by Sheikh Muhammad Inam whom appellant claims as his landlord/owner of premises. The respondent No. 01 to 03 claims selves as children of Sheikh Muhammad Inam and claim that property been gifted to them by their father, Sheikh Muhammad Inam. The Gift Deed is registered with concern Sub-Registrar and within evidence, the respondent No. 01 to 03 produced extract of building as well alongside registered Gift Deed. It is settled principle of law that registered instrument create sanctity to it and such document shows that admitted owner actually gifted the property to respondent No. 01 to 03 who are his sons. Thus such document in absence of anything contrary are sufficient to establish the respondents as owner/landlord in terms of section 2(f) Sindh Rented Premises Ordinance, 1979 in view of dictum laid supra.

15. The appellant admittedly is in possession of demised premise whom respondent claim as intruder/sub- lette while he claims self as tenant. It is also an admitted fact that rent is being deposited in MRC by the appellant. Now it is not a case where tenant denies relationship, but it is a case where landlord denies the relationship with person claiming self as tenant within premises. So in normal circumstances, if landlord alleges relationship which if denied by otherwise, then in such circumstances virtue title such person having title as stated supra would be considered as owner/landlord while person in possession having no adverse title would be presumed as tenant. But as stated in present case, landlord/owner deny the relationship. Therefore, it was for the appellant to show self as tenant within premises.

16. It is observed that appellant, though claim to have been inducted as tenant by Sheikh Muhammad Inam, but since when is not in clarity. It is fact not denied, even within appeal, that appellant had filed an application under section 12(2) CPC, available on record and perusal thereof shows that therein the appellant had claimed to have acquired premises about 10 years back while within written reply claimed to have acquired premises 20 years back. Thus in any eventuality apart the fact that no specific date, month or year been provided for acquiring the premises on rent it is also observed that no where it is provided that acquisition of premises was under oral agreement or underwritten tenancy agreement and evidence of the appellant is silent thereto. It is also observed that one hands the appellant claim respondent No. 04 as fictitious person while on the same hand claim him as previous tenant within premises. No rent receipts been produced to show rent being paid for the period as claims to be in possession. However, it is observed that in order to prove the contention that rent was being paid to previous rent collector, the appellant produced certain document being power of Attorney's executed by father of the respondent No. 01 to 03 alongside statement of their father in rent case. Now these documents do substantiate the version of the appellant however it is also observed that per appellant, he was paying the rent regularly to such rent collector of Sheikh Muhammad Inam up till December 2017 where-after he refused the rent and thereafter following procedure, rent being deposited in MRC. However, pertinent to mention here that on perusal, it is also observed that Sheikh Muhammad Inam passed away in 2014 and his death certificate has been appended with objections to application under Order 01 Rule 10 CPC and this element is not disputed by appellant. Further when a person died to whom the rent was being paid. Now if regularly the rent was being paid to rent collector and per own version, the rent collector refused to receive the rent who was sent money order and thereafter being deposited in rent, then such deposit of rent either should have been at the name of Sheikh Muhammad Inam or the rent collector however surprisingly the rent being deposited Vide MRC No. 579/2018 which is incepted at the name of Respondent No. 01/Sheikh Akbar whereas it is own contention of the appellant that no notice under section 18 Sindh Rented Premises Ordinance, 1979 been served hence when no notice was served then how come started depositing the rent at the name of respondent No. 01 when does not claim him as owner of rent collector which element is also available within written reply that respondents/applicants are strangers. One hand claim respondents/applicants as stranger to him, at one hand claiming having no knowledge of transfer of property at the name of the respondents, one hand claiming no notice under section 18 Sindh Rented Premises Ordinance, 1979 served, one hand claiming to be paying the rent to previous rent collector and then stating refusal of rent by such rent collector then how in the world rent is being deposited in MRC at the name of person whom self-claimed stranger or having no knowledge about change of ownership to him. The respondents claim to have been gifted property in year 2013 while per own version of the appellant no knowledge thereof was with him and he, per own version, was paying the rent to previous rent collector up till December 2017. And as stated that no previous rent receipts been produced. The contention that no rent receipts were issued is also devoid of credence and in such scenario, the only person to blame is the tenant himself as receipt of rent is the element through which the tenant can rebut the payment of rent when default is claimed by landlord however in present case no single rent receipt been produced despite claiming to be in possession for past 20 years. Reference in this regard can be placed on 2009 MLD 367. The burden was on the appellant to show self as tenant within premises and mere deposit of rent in MRC at the name of respondent No. 01 would not ipso facto make the appellant as tenant within premises. No explanation been provided

that when for decades rent was being paid to attorney/rent collector of Sheikh Muhammad Inam/Previous owner/landlord who per own version refused rent after December 2017 and at such relevant time, appellant per own contention had no knowledge of present respondents as owner or otherwise, then how did the MRC incepted at respondent's name and not the owner to whom already the rent was being paid per own version. No specification thereto is provided. Otherwise no money order or refusal been produced to show the rent being refused prior to inception of MRC. It is also a fact observed that one hand the appellant had claimed the respondent No. 04 not ever being in possession (this is observed from own application under section 12(2) CPC) while then again claiming that he was previous tenant (written reply). Therefore, since it was own claim of the appellant that he is tenant and being inducted by previous owner then it was for him, never the less to specify the facts thereto as to whether oral or under written agreement, when, how and for what rent, premises was acquired from Sheikh Abdul Inam and divergent stances been observed against the appellant in such behalf. No rate of rent even provided at which initially premise was acquired or subsequently having been increased. It is also settled principle of law that Court is to place the evidence of both sides in Juxta Position then on the principle of preponderance of probabilities may adjudge both in relation to appealing to prudence of mind. The contradiction self on part of the appellant does not show with cogency that he was inducted as tenant within premises by Sheikh Muhammad Inam. He has not been able to show with cogency that he was paying the rent up-till December 2017 to previous owner/owner's rent collector. He has not been able to show that when rent was being paid to previous landlord's rent collector then instead of previous owner or his rent collector, started depositing the rent at the name of respondent No. 01 when self has no knowledge about his existence at relevant time. Irrespective of period of 10 years or 20 years (both versions of appellant) for which retaining the possession of premises, no any amenity bills having been paid for such length of period been produced never the less to shown occupancy of the premises. The contention that premises is Shop No. 09 while rent receipt pertain to 06-B however per own suggestion as posed by appellant side to respondents side, qua having not provided in pleadings that old number of Shop No. 09 was 06-B being replied in affirmative, such suggestion itself shows otherwise that indeed premises 06-B & 09 are same. So also when claim that outgoing tenant in the premises was very respondent No.04 of present appeal whom also one hand, the appellant claimed as fictitious person and after him same been acquired by appellant, as claimed, then receipt is at the name of such person/respondent No. 04 who as stated by appellant is fictitious person yet as stated by appellant is outgoing tenant. Thus when self-assertion is that the respondent No. 04 was outgoing tenant then such person was tenant in a premises which is now in possession of appellant so whether it is 06-B or 09 does not make much difference. Thus in circumstances, it does not appear that appellant was inducted as tenant within premises and mere submission of rent in MRC would not suffice to establish and hold the existence of relationship between parties. Thus the status of the appellant does not get establish in terms of section 2(j) Sindh Rented Premises Ordinance, 1979.

17. Now, even if consider the status of the appellant as tenant within premises yet it is observed that appellant while considering self as tenant within premises, when self-claim that no notice under section 18 Sindh Rented Premises Ordinance, 1979 was served then at filing of rent case was infact notice to appellant and he should have tendered or offered the rent to respondents but even the same not been done. Now even if consider that relationship of landlord and tenant exists between parties yet it is observed that when rent case was filed and appearance was made virtue own application and within written reply claimed respondents as strangers but admittedly depositing the rent within MRC at name of respondent then even on such score alone, the appellant is liable to be evicted as when tenant denies the relationship and later it surfaces that such relation exists then opponent is directly to be evicted and in this regard reference can be placed on 1992 SCMR 117 and PLD 2009 SCMR 453. However as stated that while considering both versions in juxta-position with one another, the evidence of the respondents side is more feasible and appearing to prudence of mind. Otherwise the contention that respondents did not produce title document is devoid of credence as one hand claim them as landlord while other hand dispute their ownership which is not permissible under the law. Thus the evidence of the appellant in support of contentions as advanced is not appealing to prudence of mind which is deficit to prove the

factum of relationship while in contrast the version of the respondents is more plausible and as stated supra that even if relationship is considered the acts of the appellant clearly spill the beans and suffice to earn appellant eviction in any eventuality. Therefore, in my humble opinion, eviction as allowed on sole ground of subletting which observation on the basis of evidence as before Court is correct and legally sustainable which does not require interference from this Court. It seems that the learned Rent Controller given proper appraisal of evidence produced by both the parties and thoroughly discussed the issue and while drawing the conclusions/giving findings within impugned order has observed the documentary as well oral evidence of parties in accordance with the law.”

7. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:

“13. It would be pertinent to point out that, from the perusal of record it appears that, the opponent no 2 in his application U/S 12 (2) CPC has taken the stance that, the applicants have obtained the ex parte order in their favour by impleading some unknown person as opponent. He further asserted that, he is tenant in the demised premises since last 10 years opponent no 1 shown as tenant by the applicants was never in possession of the demised premises. However, in his written statement/objections he changed his earlier stance and submitted that, he is in occupation of tenement since 20 years and that the opponent no 1 has vacated the tenement 20 years ago. Now, reverting back to the counter folio of rent receipts produced by the applicants and denied by the opponent No: 2. Though it is nowhere specifically provided that the old number of the demised premises was 6/A, however, it gets corroboration from the cross examination of applicant when learned counsel for opponent no 2 posed question and in its reply the applicant stated that, “*it is correct that I have not provided that the old number of premises was 6/A.*” the question put by the counsel suggests that the opponent was in knowledge that earlier the old number of demised premises was 6/A. The law provides that, the evidence adduced by a party is to be read, evaluated and assessed as a whole, therefore, the impact of evidence when read as whole would suggest that, the argument that the counter folio supra is fake and managed carries no weight. The opponent no. 2 has entirely failed to produce any document or witness to prove his stance or even to suggest that there exists relationship of landlord and tenant between the applicants and opponent no 2.

14. Furthermore, I also do not concede with the argument advanced by learned counsel for opponent when he says that, that no notice was tendered by the applicant with regard to default in payment of rent or subletting for the reasons that, indulgence shown by the landlord in not taking steps for eviction for a long time or failure of applicant to serve opponent with legal notice would not by itself give rise to presumption that the stance of opponent is true. Moreover, I also do not agree with the argument advanced by learned counsel for opponent when he says that, the opponent no 2 is depositing rent regularly in MRC in favour of applicant, the reason for disagreement is that, the Honourable apex court in **1990 CLC 1320** held that, sub tenant has no locus standi to offer rent in his own right.

15. Therefore, in view of facts, reasons and attending circumstances of the case I opine issue no 1 in negative and hold that there exists no relationship of landlord and tenant between applicants and opponent no 2.

16. It is the claim of applicants that the applicants are the owner/landlord of the demised premises wherein the opponent No: 1 is tenant, however, the demised premises was later on subletted by the opponent No: 1 to someone else. It is further claim of the applicants that the opponent No: 1 has committed willful default in payment of monthly rent since 1999. It is matter of record that opportunities were provided to opponent No: 1 for filing written statement but he failed to do so, consequently, the opponent No: 1 was debarred from doing so vide order dated 12-10-2017. The applicant No: 3 himself as well as on behalf of applicants No: 1 & 2 being their attorney appeared into witness box and reiterated the same facts as mentioned in the rent application as well as affidavit-in-evidence on oath and there is nothing in rebuttal from the side of

the opponent No: 1. Resultantly, the contents of ejectment application remained un-rebutted.

21. The burden to prove this issue is lying upon the shoulder of the applicant. It is the claim of applicants that the building wherein the demised premises is situated is in dilapidated condition and there is apprehension of its collapse at any time and applicants wants to demolish the whole building for its reconstruction. No doubt such claim of applicant remained un-rebutted, but it is admitted fact that applicant has not produced any proof which shows that any competent authority has declared the subject building being dangerous. Moreover, applicant has claimed that he applied for NOC for reconstruction of building from concern authority. It is also admitted fact that he has not produce any document to suggest that he applied for NOC for reconstruction of building from any competent authorities i.e. KDA or SBCA or any other authority, even the applicant has not applied for proposed approval plan for reconstruction of building. Moreover, the provision of section 15(2)(vi) SRPO provides that *“the premises is required by the landlord for reconstruction or erection of a new building at the site and the landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction.”* In the present matter, the applicant yet not applied for any necessary sanction for reconstruction of building. In view of the above, I am of the opinion that the applicant has failed to establish his claim, hence the issue under determination is answered in negative.”

8. The petitioner claimed that he was inducted as tenant by father of the respondents No.1 to 3 and the respondents No.1 to 3 who are not 100% owners of the property but they are owners of 81.85% of the total plot of land on the basis of false and fabricated documents, hence they are strangers and are not competent to file ejectment application, whereas, the respondents No.1 to 3 claimed that petitioner is stranger and the demised shop which was rented out to respondent No.4, who sublet the same to the petitioner illegal and unlawfully. The respondents No.1 to 3 in order to prove their ownership over the property produced at trial registered Gift Deed according to which Sheikh Muhammad Inam gifted the said property to the respondents No.1 to 3. It is well settled that a registered document always carries sanctity therewith and strong evidence is required to cast an aspersion on the genuineness thereof. Thus such registered gift deed is sufficient to establish that the respondents No.1 to 3 are landlords/owners of the demised shop in terms of Section 2(f) of Sindh Rented Premises Ordinance, 1979.

10. With regard to the claim of the petitioner regarding his induction as tenant in the demised shop by the father of the respondents No.1 to 3, the petitioner has taken divergent stances. In his application under Section 12(2) CPC, he claimed that he obtained demised shop about 10 years back however in written reply he asserted that the same was taken 20 years back. No specific date month or year of his induction as tenant in the demised shop has been depicted by the petitioner. Even nothing has been brought on record that whether he was inducted in the demised shop orally or through a written tenancy agreement and further no rent receipt has been produced at trial by the

petitioner to substantiate his claim. As per petitioner, he was paying regular rent to rent collector of Sheikh Muhammad Inam up till December 2017 and thereafter, on refusal by rent collector, he started to deposit rent in MRC bearing No.579/2018, surprisingly, in the name of one of the respondent to whom he calls as stranger and claims that he had no knowledge about change of ownership of the demised shop as no notice under Section 18 of SRPO was ever served upon him by the respondents No.1 to 3. Further it is stated by the petitioner in his application under section 12(2) CPC that respondent No.4 was never in possession of tenement in question whereas in his written reply he claims that respondent No.4 was previous tenant. On the other hand, the claim of the respondents No.1 to 3 is that the respondent No.4 sublet the demised shop to the petitioner illegally and unlawfully. It appears that the petitioner has failed to show that as to how and on what rent the demised shop was acquired by him. Thus, mere filing of MRC would not establish relationship of tenant and landlords between the parties. Therefore, findings of both the Courts below in this regard are entirely unexceptionable.

11. Learned counsel for the petitioner then contended that petitioner filed an application for bringing on record additional evidence before the learned appellate Court which was not decided and impugned judgment was passed without applying judicial mind, hence the matter may be remanded to the appellate Court to first decide that application. In support of his submissions he relied upon **1980 CLC 1002, 1993 CLC 1319 and 1994 CLC 397**. The submission of learned counsel for the petitioner appears to be misconceived and it cannot be allowed for the reasons that petitioner was fully aware of existence of such documents but he did not bring on record the same at the time of filing of his affidavit-in-evidence or even during trial of the ejectment application. The explanation that the documents were misplaced during shifting appears to be not tenable as copies of such documents could always be obtained. Further, it is settled law that in order to be able to produce additional evidence whether oral or documentary at the appeal stage a party is required to establish that the Court against whose decree/order the appeal has been filed refused to admit evidence which ought to have been admitted. Moreover, the appellate Court while exercising its power to allow additional evidence does not normally favour a delinquent litigant to fill up the lacuna of his case. It is categorically held in a number of judgments including that reported as **Muhammad Tariq and others v. Mst. Shamsa Tanveer and others (PLD 2011 SC 151)** that, ".....such power should not be exercised as a matter of course to favour a delinquent litigant,

rather in genuine cases", and that too within the strict scope of Order XLI, Rule 27 of the C.P.C. Therefore, there is no force in the contention of the learned counsel for the petitioner.

12. For what has been discussed above, petitioner has failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant petition is dismissed in *limine*. However, three months' time is granted to the petitioner to vacate the demised shop.

13. These are the reasons for the short order announced on 17.04.2023.

J U D G E

Sajid