

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 30 of 2014

Petitioner : Adam Khan,
through Mr. M. Muzaffar Ayub Rana Advocate.

Respondent No.1 : Ghulam Rasool, called absent.

Respondent No.2 : District Judge Karachi East.

Date of hearing : 31.08.2022.

ORDER

NADEEM AKHTAR, J. – Rent Case No.107/2012 was filed by the petitioner / landlord against the respondent No.1 / tenant for his eviction on the grounds of personal need and default in payment of the monthly rent. In his said rent case, the petitioner filed an application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, (**‘the Ordinance’**) praying that respondent No.1 be directed to deposit the arrears of rent and also the future monthly rent. The said application was allowed by the Rent Controller vide tentative order dated 27.11.2012 by directing respondent No.1 to deposit the arrears of rent amounting to Rs.67,500.00 in Court within thirty (30) days and also to deposit future monthly rent with effect from April 2012 at the rate of Rs.4,500.00 per month before the tenth day of each English calendar month. As respondent No.1 failed to comply with the aforesaid tentative rent order, the petitioner filed an application under Section 16(2) of the Ordinance which was allowed by the Rent Controller vide order dated 18.03.2013 by striking off the defense of respondent No.1 and directing him to handover the peaceful and vacant possession of the demised premises to the petitioner within thirty (30) days. Against his aforesaid order of eviction, F.R.A. No.51/2013 was filed by respondent No.1 which was allowed by the appellate Court vide impugned judgment dated 09.12.2013 by setting aside the eviction order passed by the Rent Controller. This Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioner against the judgment of the appellate Court.

2. Record shows that instead of filing his written statement in the rent case, respondent No.1 filed a counter affidavit claiming that he had purchased the demised premises from the petitioner and his Suit No.239/2011 had been

decreed by the trial Court. It was also stated by him in his said counter affidavit that the petitioner had failed to produce any document of title in his favour in respect of the demised premises. Similar plea was taken by respondent No.1 in the counter affidavits filed by him in response to the applications filed by the petitioner under Sections 16(1) and 16(2) of the Ordinance. Perusal of the judgment and decree dated 12.11.2011 passed by the trial Court in Suit No.239/2011 filed by respondent No.1 against the petitioner and one Zeeshan shows that the said Suit was filed by him only for permanent injunction and not for declaration that he was the owner of the demised premises ; and, his said Suit was decreed ex-parte only to such extent.

3. Record further shows that after passing of the eviction order by the Rent Controller, respondent No.1 filed Suit No.230/2013 against the petitioner, the Province of Sindh, the Sub-Registrar concerned and the SHO concerned, seeking a declaration that he was the lawful owner of the demised premises. In his said Suit, it was also prayed by him that the petitioner and official defendants be restrained from dispossessing him from the demised premises, and the petitioner be directed to handover all the title documents of the demised premises to him and to transfer the same in his favour after receiving the balance sale consideration. This Suit was dismissed by the trial Court vide judgment and decree dated 27.08.2018 and 01.09.2018, respectively ; and, Civil Appeal No.147/2018 filed by respondent No.1 against the dismissal of his above Suit was dismissed by the appellate Court vide judgment and decree dated 22.02.2021.

4. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the rented premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the premises in accordance with law only if he succeeds in his Suit ; till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover rent ; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a sale agreement, the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy. The above view is fortified by Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller /

Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another, PLD 2009 SC 546, and Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320.

5. In the instant case, respondent No.1 had not filed any Suit for declaration and or specific performance nor was there any such decree in his favour when the eviction application was filed by the petitioner or when the tentative rent order was passed therein by the Rent Controller or when the eviction order was passed by the Rent Controller due to his non-compliance of the tentative rent order. As noted above, respondent No.1 had failed to establish his alleged title in respect of the demised premises as the Suit for declaration and specific performance filed by him subsequently was dismissed which dismissal has attained finality. In such circumstances, he had no *locus standi* to question or challenge the title of the petitioner in the rent case filed by the latter claiming to be the landlord and owner of the demised premises, especially when respondent No.1 himself had admitted in his above mentioned counter affidavit that he had agreed to purchase the demised premises from the petitioner and had paid a substantial part of the alleged sale consideration to the petitioner.

6. While allowing the appeal of respondent No.1 and setting aside the eviction order passed by the Rent Controller, it was held by the appellate Court that the issue regarding the relationship of landlord and tenant between the parties had not been decided by the Rent Controller. It was further held by the appellate Court that the lease in respect of the demised premises had not been executed in favour of the petitioner and as such he could not claim himself to be the owner thereof. The appellate Court failed to notice the above mentioned important admission made by respondent No.1 in the counter affidavit filed by him before the Rent Controller that he had agreed to purchase the demised premises from the petitioner and had paid a substantial part of the alleged sale consideration to the petitioner. Moreover, the impugned judgment of the appellate Court is contrary to the law laid down by the Hon'ble Supreme Court as discussed in paragraph 5 above.

7. In response to the notice issued to respondent No.1 in the present petition, a counsel filed power on his behalf on 05.12.2014. The petition was dismissed for non-prosecution vide order dated 03.05.2017, however, it was restored vide order dated 24.02.2020 with the consent of the counsel for respondent No.1. Record shows that respondent No.1 and his counsel remained absent on all subsequent dates of hearing after restoration of the

petition. It is pertinent to mention here that an application bearing CMA No.11864/2017 under Order XXIII Rule 3 CPC was filed by the parties on 14.09.2018 praying that the petition be disposed of on the terms and conditions stipulated therein. The said application was dismissed vide order dated 14.09.2018 by observing that it was misconceived and not maintainable in a disposed of case as the petition had been dismissed on 03.05.2017 for non-prosecution. It was, however, observed that the parties will be at liberty to file such application if the petition is restored. It may be noted that in this compromise application signed by both the parties and their respective counsel, respondent No.1 had admitted that the petitioner is the owner of the demised premises and he is his tenant, and he is ready to hand over the peaceful possession thereof to the petitioner. It was stated in the said application that the petitioner shall pay an amount of Rs.400,000.00 to respondent No.1 at the time of taking over the possession of the demised premises from him whereafter respondent No.1 shall withdraw his Suit No.230/2013 ; and, in case possession of the demised premises is not handed over by respondent No.1 to the petitioner, the executing Court will issue the writ of possession in respect of the demised premises with police aid without notice to him. The contents of the aforesaid application signed by respondent No.1 are contrary to the stance taken by him in his counter affidavit before the Rent Controller and the appeal filed by him against the order of his eviction.

8. In the present case, it is an admitted position that compliance of the tentative rent order was not made by respondent No.1. Therefore, the Rent Controller had no option, but to strike off his defence as held by the Hon'ble Supreme Court in Safeer Travels (Pvt.) Ltd. V/S Muhammad Khalid Shafi through legal heirs, PLD 2007 S.C. 504. The impugned judgment, being not in accord with the law laid down by the Hon'ble Supreme Court, cannot be allowed to remain in the field and as such is liable to be set aside.

9. Foregoing are the reasons of the short order announced by me on 31.08.2022 whereby this petition was allowed with no order as to costs by setting aside the impugned judgment of the appellate Court and restoring the order of eviction passed by the Rent Controller.

J U D G E