

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No. S – 424 of 2020

Petitioner : Tehrik-e-Jadid Anjuman Ahmadiyya Rabwah,
through Syed Ali Ahmed Tariq Advocate.

Respondent No.1 : Abdul Aziz deceased through LRs,
through Mr. Jaidev Sharma Advocate

Respondents 2 & 3 : Additional District Judge-I / Model Civil Appellate
Court Umerkot and IInd Senior Civil Judge /
Rent Controller.

Mr. Allah Bachayo Soomro, AAG Sindh.

Dates of hearing : 27.02.2023, 13.03.2023 and 17.03.2023.

ORDER

NADEEM AKHTAR, J. – Rent Application No.03/2015 filed by the petitioner against respondent No.1 under Section 15 of the Sindh Rented Premises Ordinance, 1979, seeking his eviction on the grounds of default in payment of monthly rent and repairs of the subject rented premises was dismissed by the Rent Controller vide order dated 28.02.2020 ; and, Rent Appeal No.01/2020 filed by the petitioner against dismissal of its said application was dismissed by the Appellate Court vide judgment dated 27.08.2020. Through this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the concurrent findings of the learned Courts below.

2. The subject matter of the present proceedings is Shop No.16 (**‘demised premises’**), situated in a shopping center comprising 70 shops on the ground floor and residential tenements on the first floor constructed in Purani Galla Mandi, Kunri Town. The petitioner, by claiming itself to be the owner of the demised premises, filed the above mentioned application. It was the case of the petitioner before the Rent Controller that respondent No.1 was its tenant in respect of the demised premises since about forty years ; the monthly rent was payable by the tenth day of each calendar month ; respondent No.1 had failed to pay the agreed monthly rent with effect from July 2004 despite repeated demands and a legal notice by the petitioner ; and, the roof of the demised premises was badly damaged due to heavy rains which could not be repaired unless the demised premises were vacated.

3. In his written statement, respondent No.1 denied the relationship of landlord and tenant between the parties by asserting that the petitioner was not the owner of the demised premises and he (respondent No.1) was in possession of the demised premises since the last fifty years in his own right as the owner thereof. It was further asserted by him that there was no agreement between the parties nor had he ever paid rent to the petitioner. In view of the above, it was pleaded by him that the Rent Controller did not have jurisdiction in respect of the petitioner's application. He had also raised an objection regarding the authority / *locus standi* of the petitioner's alleged attorney to file the application. Regarding the condition of the roof of the demised premises, it was stated by respondent No.1 that the same was in good condition, and also that in any event the petitioner, not being the owner, had no right to seek its repairs.

4. In view of the divergent pleadings of the parties, the main points for determination settled by the Rent Controller were whether the relationship of landlord and tenant existed between the parties and whether respondent No.1 had committed default in payment of monthly rent since July 2004. Both the parties led evidence by examining their respective witnesses and producing relevant documents. After evaluating the evidence of the parties and hearing the arguments advanced on their behalf, it was held by the Rent Controller that in its application and/or evidence the petitioner had not disclosed whether the alleged rent agreement was oral or written nor did it disclose any specific date or month of commencement of the alleged tenancy ; only Form-II was produced on behalf of the petitioner in support of its title wherein the specific number of the demised premises was not mentioned ; and, the number of the demised premises was also not mentioned in the bank statement produced by the petitioner showing deposit of rent by various tenants. In view of the above findings, it was held by the Rent Controller that the petitioner had miserably failed to bring on record any evidence to suggest that the relationship of landlord and tenant existed between the parties, and accordingly its application was dismissed.

5. The Appellate Court concurred with the findings of the Rent Controller, and further held that not only did the bank receipts / challans not disclose the number of the demised premises, but the name of respondent No.1 was also not mentioned therein ; the attorney / witness of the petitioner had admitted in his cross-examination that he did not produce any documentary evidence to show that the person who had authorized him on behalf of the petitioner had the authority to do so ; the said attorney / witness had also admitted in his cross-examination that similar rent applications filed by the petitioner against

other occupants of the subject building were dismissed and the appeals filed by the petitioner against such dismissal were withdrawn by the petitioner ; and, as per the documents relied upon by the petitioner, the subject land was acquired by it in the year 1977, whereas it was claimed by the petitioner that respondent No.1 was its tenant since 1975, which was not possible as the petitioner could not let out the demised premises prior to becoming the owner thereof. The appeal filed by the petitioner was dismissed by the Appellate Court in view of the above findings.

6. It was contended by learned counsel for the petitioner that there was sufficient material on record to establish the relationship of landlord and tenant between the parties and also that respondent No.1 had committed default, but both the learned courts below failed to appreciate the same in its true perspective. It was further contended by him that the learned courts below also failed to appreciate that the petitioner had established its title in respect of the demised premises and no other person had come forward to challenge the same except respondent No.1 who did not produce any document in support of his alleged title. It was urged by the learned counsel that the impugned order and judgment, being contrary to law, are liable to be set aside.

7. On the other hand, it was contended by learned counsel for respondent No.1 that no material whatsoever was produced by the petitioner to show that he was inducted by it as a tenant or rent in respect of the demised premises was ever paid to it by him ; similar eviction applications filed by the petitioner against other tenants were admittedly dismissed and the appeals filed against such dismissal by the petitioner were admittedly withdrawn by it ; the alleged attorney who had filed the eviction application on behalf of the petitioner had no authority to do so and even otherwise the number of the demised premises was not mentioned in his alleged power of attorney ; and, respondent No.1 was/is in occupation of the demised premises in his own right as the owner thereof.

8. I have heard learned counsel for the parties and have also examined the material available on record particularly the impugned order and judgment. It is an admitted position that no rent agreement was filed by the petitioner with its eviction application nor was it produced in evidence, and the eviction application was silent as to whether the alleged agreement was written or oral. It is also an admitted position that no rent receipt showing payment of monthly rent by respondent No.1 was filed with the application or was produced in evidence. The statement dated 28.01.1976 of Muslim Commercial Bank Limited produced in its evidence by the petitioner was a

consolidated statement wherein the name of respondent No.1 and number of the demised premises were not mentioned. The statements showing rent of shops / houses purportedly received during the months of July and November 1975 produced by the petitioner in its evidence showing the name of respondent No.1 and number of the demised premises, being the extracts of the ledger / register of the petitioner, were internal documents / statements prepared by the petitioner itself, and as such they did not prove that the amounts mentioned therein were actually paid by respondent No.1 towards rent. Be that as it may, all the said documents produced by the petitioner pertained to the year 1975 and not for the relevant period as default by respondent No.1 was alleged by the petitioner from July 2004.

9. The burden to prove that respondent No.1 was its tenant and he had committed default in payment of monthly rent was upon the petitioner, and in order to discharge this burden, the petitioner was required to produce convincing evidence showing payment of rent to it by respondent No.1 such as previous receipts of such payment, cheques, etc., or an acknowledgement from him in any other form. However, none of the above was produced by the petitioner and the statements / ledgers produced by it were its internal documents prepared by itself as noted above. In the above circumstances, the petitioner had failed in discharging the burden that was squarely upon it. This aspect had become more important and crucial as respondent No.1 had categorically denied the relationship of landlord and tenant between the parties. Merely a claim or assertion of ownership of the rented premises by a person is not sufficient to establish such relationship with the person in occupation thereof, unless there is an agreement to this effect between the parties or the conduct of the person in occupation establishes so. This fundamental ingredient was missing in the case at hand. It was rightly held by the learned courts below that the question of ownership of the demised premises and the relationship of landlord and tenant between the parties in the facts and circumstances of this case could be decided only by the competent civil court.

10. In view of the above discussion, the concurrent findings of fact cannot be looked into by this Court in its constitutional jurisdiction particularly when there is no misreading or non-reading of evidence by the learned courts below and there is also no jurisdictional defect or any other illegality in the impugned order and judgment. Accordingly, the petition and the stay application pending therein are dismissed with no order as to costs.

J U D G E