

HIGH COURT OF SINDH KARACHI

C.P No.S-427 of 2021

[Syed Nusratullah & Others versus Muhammad Amin & Others]

Petitioners : Through M/s Khuwaja Shams-ul-Islam and Zohaib Sarki advocates

Respondent No.1 : Through M/s Muhammad Yaseen Azad, Muhammad Sarmad Khan, Muniruddin and Muhammad Qasim Iqbal advocates

Respondent No.2 : None present

Mr. Muhammad Kamran Khan, Assistant A.G

Date of hearing : 21.11.2023, 29.11.2023, 06.12.2023 & 12.12.2023

Date of decision : 22.04.2024

ORDER

KAUSAR SULTANA HUSSAIN J.- Through this constitutional petition Petitioners have challenged the Order dated 06.05.2021 passed by learned XIIth Additional District Judge Karachi South [**Appellate Court**] in F.R.A No.31 of 2021 [*Muhammad Amin versus Javed Iqbal & Ilyas Kashmiri & Co. and Others*], whereby said appeal was allowed and in result whereof Order dated 13.02.2021 passed by learned VIth Rent Controller Karachi South (**Rent Controller**) was set aside.

2. At the very outset it appears that petitioners No.2 and 3 have not filed any proceedings before the Courts below and have directly joined the petitioner No.1 through captioned petition, therefore, I confine myself to hear this petition only to the extent of petitioner No.1.

3. Concise facts of the matter are that respondent No.1/landlord had filed a Rent Case bearing No.390 of 2012 [*Muhammad Amin versus Javed Iqbal & Ilyas Kashmiri & Co.*] for recovery of possession of first floor before the learned Rent Controller in respect of Mandviwala Building constructed on Survey No.21, SB-4 situated at Saddar Bazar Quarters, Zaibunissa Street/Inverarity Road Karachi (**Demised Building**) on the ground of default for the month of April 2012 with the claim that demised building was purchased by him through registered Sale Deed dated 26.05.2003 and the respondent No.2/opponent being tenant was already occupying the first floor of the demised building and after purchase he was issued notice under Section 18 of Sindh Rented Premises Ordinance 1979 (**SRPO 1979**) for payment of rent but tenant failed to pay the same. The said Rent Case of the respondent No.1/landlord was dismissed by the Rent Controller vide Order dated 24.04.2017, however, in appeal bearing FRA No.263 of 2017 the

Order dated 24.04.2017 was set aside and respondent No.2/opponent was directed to vacate the demised building within 60 days. No appeal was filed against the judgment passed by appellate Court and subsequently respondent No.1/landlord filed Rent Execution Application No.27 of 2019 before the learned Rent Controller, which was allowed vide Order dated 20.12.2019, following by the orders of writ of possession and in consequence whereof seven rooms situated at first floor of the demised building were sealed on 28.09.2020.

4. After sealing of the aforesaid rooms of demised building the petitioner No.1/objector moved an application under Section 12(2) CPC r/w SRPO before the learned Rent Controller on the ground that respondent No.1/landlord obtained the orders by misrepresentation and fraud as the respondent No.1/landlord had already sold out the first floor of demised building to petitioner No.1/objector through sub-leases dated 07.06.2012. The said application was dismissed by the Rent Controller vide Order dated 30.09.2020 with following observations:

“Sequel to the above discussion in light of provision of section 12(2) CPC, I am of humble view that, at this juncture, the instant application is devoid of merits; resultantly the same is hereby dismissed with no order as to costs. As the title of rented premises has become disputed between the parties viz: decree holder and the alleged intervener and the keys of the said rented premises are lying before the Nazir of District and Sessions Court Karachi South in this matter, hence the keys of the rented premises shall remain in the custody of Nazir of District and Session Courts Karachi South till decision of the title by Civil Court or any order by any competent Court of law.”

5. After passing of above Order the petitioner No.1/objector moved an application under Section 12(2) r/w Section 151 CPC before the learned appellate Court in F.R.A No.263 of 2017 and the same vide Order dated 16.10.2020 was decided in the following manner:

15. For what has been discussed, the instant application filed under section 12(2) R/W 151 CPC is disposed of with direction to learned executing Court to decide the dispute between the parties as discussed, by exercising jurisdiction under section 22 of SRPO-1979 in accordance with law and put the appellant into possession of rented premises instead of undisputed property owned by applicant by virtue of sub-lease dated 07.06.2012.”

6. In compliance of above Order learned Rent Controller/Executing Court directed the Mukhtiarkar concerned to inspect the demised building and after perusing the report dated 29.01.2021 submitted by the Mukhtiarkar concerned vide Order dated 13.02.2021 ordered that seven (07) rooms at first floor of demised building be de-sealed and keys of the said rooms be handed over to petitioner No.1/objector (Syed Nusratullah), which was appealed by the respondent No.1/landlord before the learned appellate Court through FRA No.31 of 2021 and the learned appellate Court vide Order dated 06.05.2021 (**Impugned**

Order) after hearing the parties set aside the Order dated 13.02.2021 passed by Rent Controller/Executing Court in the following manner:

“9. In view of above discussion, without finally determination of rented premises as well as undisputed property owned by objector, directing de-sealing of property in impugned order is against the own earlier order of learned rent controller and against the earlier order of this court dated 16.12.2020, thus impugned order is not proper and legal, requires interference of this court and the same is set-aside and executing court is directed to pass an appropriate order with regard to rented premises/undisputed property in the light of Nazir report after measurement/demarcation of premises with the assistance of Mukhtiarkar concerned as per law. Instant Appeal is allowed accordingly and listed application stands disposed of.”

7. The above impugned Order has been challenged by the petitioner(s)/objector through captioned petition on the ground that through sub-lease dated 07.06.2012 the entire first floor of the demised building was sold out by the respondent No.1/landlord to petitioner No.1 wherein petitioner constructed 18 rooms strictly in view of the terms and conditions of the sub-lease dated 07.06.2012 and is the exclusive owner of said rooms, but respondent No.1/landlord at the time of filing rent case deliberately did not disclose the said fact and obtained the orders, which include sealing of rooms No.1 to 7, by misrepresentation and fraud. He finally submits that since the respondent No.1/landlord has no title documents in respect of the rooms in question as such he was not empowered to initiate rent proceedings in respect of said rooms.

8. Despite service of notice no one effected appearance on behalf of respondent No.2/tenant. Whereas learned counsel for respondent No.1/landlord argued that write of possession had already been issued in respect of rented premises, however, the petitioner/objector resisted to handover the possession of rooms in question as such Bailiff sealed the rooms No.112 to 118; that the petitioner No.1/objector was in illegal occupation of an area of 2423.75 square feet at first floor of demised building. He supported the impugned Order and prayed for dismissal of this petition.

9. Arguments heard and record perused.

10. There is no dispute with regard to purchase of demised building by the respondent No.1/landlord by virtue of Sale Deed dated 26.05.2003, however, record reflects that by means of subsequent sub-leases dated 07.06.2012 the respondent No.1/landlord had sold out an area of about 5356.63 square feet on first floor of demised building in favour of petitioner No.1/objector with the permission that petitioner No.1/objector would construct shops on said area on first floor. This fact of execution of sub-leases in favour of petitioner No.1/objector has not been disputed by the respondent No.1/landlord, however at the time of filing rent proceedings against respondent No.2/tenant the respondent

No.1/landlord neither disclosed the said facts before the learned Rent Controller nor impleaded petitioner No.1/objector as party, which establish the element of misrepresentation and fraud on part of respondent No.1/landlord.

11. Since the Order dated 13.02.2021 was passed by the Rent Controller/Executing Court in compliance of earlier Order dated 16.10.2020 of appellate Court, as such I have gone through the said Order, reproduced under para-4 above, which reflects that while deciding the application under Section 12(2) read with Section 151 CPC the learned appellate Court directed the Rent Controller/Executing Court to decide the dispute between the parties as discussed by exercising jurisdiction under Section 22 of SRPO-1979 in accordance with law and put the respondent No.1/landlord [appellant] into possession of rented premises instead of undisputed property owned by petitioner/objector [applicant] by virtue of sub-lease dated 07.06.2012. In compliance of said Order of appellate Court the Nazir submitted his report dated 11.01.2021, mentioning therein that *there are total 18 rooms constructed on first floor of demised building out of which Rooms No.101 to 107 were found sealed and except said 18 rooms which are in the name of objector, no other area exists on first floor.*

12. Based on above report of Nazir the Rent Controller/Executing Court ordered for de-sealing of said shops/rooms and handing over the keys of said rooms to petitioner/objector while exercising the powers under Section 22 of Sindh Rented Premises Ordinance, 1979, which provides that final order passed under this Ordinance shall be executed by the Controller and all questions arising between the parties and relating to the execution, discharge or satisfaction the Order shall be determined by the Controller and not by a separate suit, but the said Order of Rent Controller/Executing Court has been set aside by the appellate Court through impugned Order, though besides powers conferred by Section 22 *ibid* the Rent Controller/Executing Court was also directed by the appellate Court in its earlier Order dated 16.10.2020 to decide the dispute between the parties and put the respondent No.1/landlord into possession of rented premises instead of undisputed property owned by petitioner/objector by virtue of sub-lease dated 07.06.2012.

13. It is also observed that respondent No.1/landlord had never challenged the sealing of seven rooms by the Bailiff. As such question arises that if at all the respondent No.1/landlord is claiming that he is the owner of said rooms then why he remained silent and did not raise any objection with regard to sealing of said rooms by the Bailiff.

14. In my view the Rent Controller/Executing Court has rightly passed the Order dated 13.02.2021 with regard to de-sealing of rooms and handing over keys of said rooms to petitioner/objector, since Section 22 *ibid* empowers the Rent

Controller/Executing Court to discharge or satisfy the final order in execution proceedings when neither the respondent No.1/landlord disclosed about selling of an area of about 5356.63 square feet on first floor of demised building in favour of petitioner No.1/objector by virtue of sub-leases dated 07.06.2012 nor denied the said sub-leases, coupled with the fact that Nazir specifically stated in his report that except 18 rooms, which are in the name of petitioner/objector by virtue of sub-leases dated 7.06.2012, no other area exists on first floor of demised building.

15. However, if the respondent No.1/landlord had any grievance that petitioner No.1/objector is allegedly holding any excess area on first floor of demised building he could or may have availed the proper remedy before the competent forum in accordance with law instead of filing rent proceedings in respect of a property already sold out by him, which too by concealment of true facts.

16. In view of the above instant petition is allowed. Consequently the impugned Order dated 06.05.2021 passed by the learned Appellate Court is set aside.

JUDGE