

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P.No.S-837 of 2023**

Nadeem & another ..... Petitioners  
 Vs.  
 Learned District & Sessions Judge, Karachi Central  
 & others ..... Respondents

Mr. Muhammad Ali Lakhani, advocate for petitioners  
 Syed Ashar Askar Zaidi a/w Ms. Maria Tahir, advocate for respondent  
 No.3.

**06.08.2024.**

**ORDER**

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**MUHAMMAD IQBAL KALHORO J:** Respondent No.3 filed a rent case in the court of V-Rent Controller, Karachi Central for ejection of petitioners from her plot No.ST-13/9-A admeasuring 5000 Sq. Yds. situated at Block No.2 F.B. Industrial Area Azizabad, Karachi given to them on rent through tenancy agreement dated 06.06.2005 on two grounds viz. personal bonafide use and default in payment of monthly rent. Respondent contested the matter not only on merits but on jurisdiction of the court to entertain the rent application. Rent application was decided by a judgment dated 07.03.2023 in favour of respondent No.3 directing the petitioners to handover vacant and peaceful possession of demised premises to respondent No.3 within 15 days. This judgment was challenged by the petitioners in FRA No.52/2023 before learned District Judge, Karachi Central, who vide order dated 25.08.2023 has been pleased to dismiss the same upholding default by the petitioners in payment of outstanding amount of Rs.20,00,000/- on account of water charges which has been challenged by the petitioners by means of this petition.

2. Learned counsel for petitioners has contended that jurisdiction of Sindh Rented Premises Ordinance (SRPO) is not attracted in the present case as demised premises is an industrial plot, it is not a residential or commercial tenement; point of jurisdiction was raised by the petitioners not only before the Rent Controller but before the appellate court but both the courts have failed to attend to such ground and give findings thereon. He has further contended that Rent Controller accepted rent application by observing that the petitioners were found in default in payment of rent to respondent No.3, who was also in personal use of the premises. But learned appellate court has disagreed with him on these two grounds. Although it has dismissed the appeal on the

ground of default in payment of water charges, but it was not the ground on the basis of which the rent application was filed, hence both the impugned orders are bad in law and liable to be set-aside. He has also argued that petitioners cannot be held liable for default in payment of water charges as there is no agreement that such charges would be paid to the landlord by them and not directly to the relevant agencies. He has relied upon 1981 CLC 1114, 1992 CLC 1652, 2012 SCMR 1931, 1994 SCMR 1900, 1998 CLC 1883, 1982 CLC 2141.

3. On the other hand, learned counsel for respondent No.3 has opposed the contentions of petitioners and has relied upon 2022 PIC 1146.

4. I have considered submissions of parties and perused material available on record including the case law cited at bar. As for objection of the petitioners with regard to jurisdiction of Rent Controller is concerned, it may be said that in written statement filed by the petitioners, they have not taken such specific objection to the jurisdiction of the Rent Controller. It has been simply mentioned by them that the application is not maintainable under the law. Even the law under which it was not maintainable has not been specified. Further, the contentions of petitioners recorded in the impugned orders, both by the Rent Controller and appellate court, do not reflect any suggestion by them of lack of jurisdiction by the Rent Controller in the instant matter. It is clear that in written statement question of maintainability of the rent application was made only in generic terms without any specification. At no occasion, the petitioners led any evidence or brought any document on record to show that Rent Controller had no jurisdiction to entertain the application of respondent No.3 for ejection and issue directions of their eviction from the demised premises.

5. The agreement under which demised premises was given to the petitioners is titled as "Tenancy Agreement" with a mention that the amount to be given to respondent No.3 monthly-wise against such possession would be rent. The endorsement before the paras starts in the agreement also show that petitioners had agreed to take the plot against consideration of monthly rent of Rs.58,300/. No doubt it is not disputed that the plot is an industrial one but the tenancy agreement shows that it was not let out to the petitioners as a factory but a vacant plot which was to be used by the petitioners for commercial purpose in terms of para 7 of the agreement. The cluster of above facts would indicate that the demised premises was handed over to the petitioners under a

tenancy agreement against certain amount of rent and the relations between the parties, therefore are amenable to the jurisdiction of Rent Controller.

6. Insofar as merits of the case are concerned, the Rent Controller found the petitioners in default in payment of rent besides finding respondent No.3 entitled to possession of the premises on the basis of personal need. Although the appellate court has given a distinct opinion by interpreting default in a different way but in any case it has also found the petitioners in default in payment of water charges to the tune of Rs.20,00,000/-, which has not been disputed by the petitioners.

7. It is not safe to comment upon findings of the appellate court, which by simply observing that the petitioners were paying the rent along with arrears to respondent No.3 monthly wise, has held that acceptance of such amount would amount to waiver by respondent in respect of arrears. However, suffice it to say that such observation is in conflict with the ratio laid down by this court in case of Shakila Appa (late) Vs. Nadeem Ghani and others (2022 CLC 1146) interpreting default in true sense. Since on factual aspects of the case, the adverse findings have been recorded by the appellate court against the petitioners and which do not appear to be an outcome of gross negligence or mis-appreciation of factual as well as legal aspects of the case, interference of this court in constitutional jurisdiction reversing such findings without any cogent material to justify the same, would not be warranted. I, therefore, find no merits in the instant petition and dismiss it alongwith pending application.

The petition stands disposed of.

Judge

A.K.