

# HIGH COURT OF SINDH, AT KARACHI

CP No.S-728 of 2012

## ORDER

Petitioners : Mst. Lubna Baluch  
Ms.t Aqsa Jadoon,  
Through Mr. Sikandar Khan, Advocate.

Respondent No.1 : Aftab Ahmed  
Through Mr. Fawad Ahmed Tanwri, Advocate.

Respondent No.2 : Learned VIIth ADJ South Karachi  
District South,

Respondent No.3 : Learned VIth Sr. Civil Judge District South  
Karachi.

DATE OF HEARING : 16.04.2014

**NAZAR AKBAR, J.** The petitioners through this petition have challenged the concurrent findings of VIth Rent Controller South, in Rent Case No.263/2010 affirmed by VIIth Addl. District & Sessions Judge in FRA No.223/2011 by judgment dated 25.5.2012.

2. Brief facts of the rent case are that the petitioners are tenants in Apartment No.406-A 4<sup>th</sup> Floor, Sea Breeze Centre, Block-5, KDA Scheme No.5, Kekhkashan, Clifton, Karachi, since 26.12.2005 under tenancy agreement @ Rs.8000/- per month. The rent was lastly increased in 2009 to Rs.12000/- per month. The petitioners defaulted in payment of rent for almost six months and at the same time the Respondent requested the petitioner through letter dated 25.9.2009 to handover the vacant physical possession of the demised premises as the same is needed by the respondent for his family. Consequently the Applicant/Respondent herein ultimately on 2.3.2010 filed rent case No.263/2010 through attorney in which specific default of Rs.72,000/- towards rent and Rs.10780/- towards conservancy charges as default and the personal

requirement. In para-3 of ejectment application the Opponents /Petitioners has averred that he has stored his valuable articles in one room of the premises under locked and key and some of the articles of the respondents are in use of the petitioners/opponents/tenants. The landlord in para-9 of the ejectment application has categorically stated that the premises is required for occupation of his own family. The Respondents/Petitioners filed written statement on 7.10.2010 and denied the averments of ejectment application. The contents of para 3 were admitted and in defense of default, he has replied that payment of rent is covered in MRC No.1296/2009. The Respondent filed their affidavit-in-evidence on 4.8.2010 and since then the petitioner started avoiding to contest the case as he never cross-examined the witness of the Respondent. Since the petitioners have failed to contest the matter after receiving the affidavit-in-evidence, the learned Trial Court framed one additional issue at the time of writing of judgment that “whether the opponents had not availed the fair opportunity to cross-examine the applicant side so also to file their affidavit-in-evidence? “. This issue was beside the issue of default and personal need. On point No.1 regarding fair opportunity, the learned Rent Controller has thoroughly scrutinized the Court diary and examined the circumstances, in which opportunities were provided to the petitioner to cross-examine the witness and the relevant portion of the order of the learned Rent Controller is as follows:-

*“After that the applicant side filed affidavit-in-evidence on 04.8.2010. On next date of hearing the cross examination was reserved due to the adjournment application on behalf of the opponents and case was adjourned to 23.08.2010 but they availed 04 opportunities to cross but failed, hence their cross examination was treated as Nil on 08.10.2010. The same was recalled by consent on 13.01.2011 on the application on behalf of the opponents and case was fixed for cross examination of the opponent side. On the same date their advocate filed statement, wherein he chosen to close his side of cross examination, order on it and matter was adjourned to 24.01.2011 for affidavit in evidence of the opponent or compromise statement, on this date none had appeared from the opponent side, in the larger interest of justice matter was adjourned to 02.02.2011 for the same purpose on which*

*he filed application for reopening the side which was declined after hearing of the both parties vide order dated 03.02.2011 and matter was again fixed for filing of affidavit in evidence on behalf of the opponent side. Despite of availing of 04 opportunities they have been failed to do so, therefore on 21.4.2011 their side was closed Suomuto by this Court and matter was fixed for final arguments. On 14.05.2011 the advocate for the applicant filed written arguments, but the opponent side failed to argue the matter or to file the written argument on the same date or on next date viz. 05.07.2011 thereafter the matter was fixed today for Judgment with direction to them to file their written arguments in the meanwhile but today at the belated stage they filed the same.*

*Apart from above it is pertinent to mention here that the opponent side filed adjournment application on 06.04.2011 on the pretext that they are intended to file transfer application order on it, which is reproduced hereunder:*

*“In case of failure of filing of transfer application last and final chance is allowed to file affidavit in evidence on next date without fail and excuse to avoid dely.”*

*Thereafter matter was adjourned to 21.04.2011, on the same date they again filed adjournment application on evasive ground as they had not enclosed the copy of transfer application which was declined and matter was fixed for final arguments on 03.05.2011.*

And ultimately relying of the judgment of Hon'ble Supreme Court in the case Muhammad Suleman Sulfi ..Vs.. Mst. Azra Shamim (**1989 SCMR 1810**) and other case law, the Rent Controller came to the conclusion that all fair opportunities were given. The learned Rent Controller thoroughly examined the evidence lead by Respondent / landlord and the written statement filed by the petitioners and answered both the question of default and personal need against the petitioner. Petitioners preferred FRA No.223/2011 which was again decided against the petitioners and the findings of the learned Rent Controller were affirmed by the Appellate Court holding that several opportunities were given but the appellant failed to avail the opportunities. Consequently through this petition concurrent findings are assailed.

3. I have heard the learned counsel of both the parties. Main contention of the learned counsel for the petitioner was that he had not been given opportunity

of hearing. However, despite my repeated direction to go through the impugned order of the learned Trial Court, counsel for the petitioner kept on arguing the case for more than half hours but he did not read a single line from the impugned orders of either the Rent Controller and the Appellate Court. He was insisting that his application for reopening of the side was dismissed which ought to have been granted by the learned Rent Controller but unfortunately the findings of the Rent Controller regarding conduct of the petitioners prolonging the case and willful failure to cross examine the witness of the landlord as well as failure to file his own affidavit-in-evidence has not been answered by the counsel for the petitioner. He has, however, relied on the case of MUHAMMAD IRFAN ..VS.. Mst. FATIMA SAEED and others (**2004 CLC 830**). When asked whether he has brought the complete citation he took more than 10 minutes and he said it is not readily available. Be that as it may, learned Rent Controller has relied on the judgment of Hon'ble Supreme Court reported in **1989 SCMR 1810** and reproduced the same in support of his conclusion on the point that a fair opportunity was given and petitioner has failed to avail the same. Learned counsel has relied on the case law of High Court and learned Rent Controller has given his verdict by following the judgment of Hon'ble Supreme Court, therefore, even if the counsel could have taken the trouble of bring the full text of **2004 CLC 830**, I am afraid it could not have served the purpose.

4. I repeatedly asked the learned counsel for the petitioners whether he has examined the case law referred to and relied upon by the both the learned Trial Court, learned counsel never replied this question. In view of the above facts and circumstances since petitioners have failed to even properly plead their case on account of their own fault right from 2010 and he has enjoyed the occupation of the premises in question for more two years under the cover pendency of this petition against the concurrent findings, I think enough time has been consumed

by the petitioner without any merit. This petition is dismissed as it is not maintainable against factual findings of the two Courts below, which are based on the appreciations of the facts before the Court. The petitioners are directed to vacate the premises within 30 days from the date of this order subject to payment of rent and utility dues. Learned Trial Court on competition of 30 days should issue writ of possession with police aid, if the premises is not vacated by the petitioners on or before completion of 30 days.

JUDGE

Karachi  
Dated:29.4.2014

SM