

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.563/2010

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner: Hussain Jamal through  
Mr. Muhammad Akbar, Advocate

Respondent No.3: None

Date of hearing: 28.4.2014  
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**Nazar Akbar, J.** This constitutional petition is directed against concurrent findings of ejectment of the petitioner from office No.AF-35 on shop No.4, constructed on plot No.M.R.7/61, New Neham Road, Ram Bharti Street, Karachi.

2. Briefly stated the respondent has filed Rent Case No.1177/2006 against the petitioner on the ground of default in payment of rent amounting to Rs.3780/-by the time the rent case was filed. The default period of rent was shown from 19.8.2006.

3. The opponent/petitioner on service filed written statement and denied the relationship of landlord and tenant between the parties. However, the petitioner's defence was struck off by order dated 01.9.2009 and before such order, the following date wise facts from the lower Court proceedings are important: -

- i. On 27.5.2007, the learned Rent Controller directed the petitioner to tentatively deposit monthly rent in terms of section 16(1) of Sindh Rented Premises Ordinance, 1979, ("SRPO, 1979") at the rate of Rs.180/- per month from 19.8.2006 amounting to Rs.3780/- and also deposit future monthly rent at the rate of Rs.180/- per month on or before the 10<sup>th</sup> of each calendar month.
- ii. On 16.9.2008, the respondent No.3, on failure of petitioner to comply with tentative rent order, filed an application under section 16(2) of SRPO, 1979.
- iii. On 12.1.2009, petitioner received copy of the application under section 16(2) of the SRPO, 1979, but he did not file objections/reply.
- iv. On 06.5.2009, learned Rent Controller, after notice to petitioner, called for Nazir report.

- v. On 14.7.2009, the petitioner filed an application for review of order dated 06.5.2009, whereby the report was called from Nazir.
- vi. On 01.9.2009, the Rent Controller dismissed the review application and after striking off the defence of the petitioner directed him to vacate the premises in question.
- vii. The petitioner preferred First Rent Appeal No.285/2009, which was also dismissed, since he admitted that he had not complied with the orders of Rent Controller in terms of section 16(1) of SRPO, 1979.

4. I have heard the counsel for the petitioner and examined the objections filed by respondent No.3. The counsel for the petitioner has relied upon the R&P of previous litigation between the petitioner and respondent No.3. The previous litigation was also a rent case, which ended in a compromise at the execution stage. However, none of the documents referred to and relied upon by the appellant confirms that the ownership of tenement in possession of the petitioner has been conferred on the petitioner. None of the documents by any stretch of imagination can be treated as transfer of ownership to the petitioner, therefore, the contention of the petitioner that no tentative rent order could have been passed by the learned Rent Controller pending issue of relationship between the petitioner and the respondent No.3, does not appear to have any force. Merely taking a plea of denial of tenancy is not enough to take away the jurisdiction of the Rent Controller to pass a tentative rent order. The tenant, unless he establishes his ownership rights by positive documentary evidence conferring title on him continues to be tenant, and under obligation to tender rent to the landlord. However, in the case in hand the learned Rent Controller in his tentative rent order has taken care of the issue of relationship of landlord and tenant. The relevant portion from the order is reproduced below: -

*“From the perusal of written statement as well as objection to application U/S 16 (1) SRPO 1979 it is clear that inductions of the opponent was as tenant in the rented premises and thereafter no doubt some litigation and compromise have been effected but admittedly in view of para 10 of objection filed to the application U/S 16 (1) SRPO 1979 till which (date) opponent is not holding any title document, therefore, I order the opponent to deposit monthly rent from 19-08-2006 till date at the rate of Rs.180/- per month which comes to Rs.3780/- and future rent at the same rate on or before 10<sup>th</sup> of succeeding calendar month but the rent deposited shall be subject to withdrawal after final Judgment/order”.*

Then again in the order striking off defence, the Rent Controller has again discussed the nature of plea of ownership raised and the legal status of petitioner's such claim in the following terms: -

*“The contention of the opponent is that in view of compromise Dt:04.04.2000 between parties before the IVTH Rent Controller South he has acquired ownership right which the applicant failed to transfer till to date. It is matter of record that opponent has accepted the possession of demise premises as tenant vide order Dt:26.11.2004 passed by learned IInd Rent Controller South Karachi. I am of the view in these circumstances the opponent is bound to tender rent of the demise premises. The opponent is now a will full defaulter in view of non-compliance of tentative order admittedly Dt:27.05.2007. So far as the claim of ownership right against the applicant, the opponent is at liberty to seek Civil Remedy under the law from the competent court. Due to non-compliance of tentative order by the opponent. The opponent received copy on 12.01.2009 of the application U/S 16(2) SRPO, 1979 but did not filed any objection to it hence Nazir report was ordered to call by Ld IIIrd Rent Controller South by order dated 06.05.2009.”*

5. The underlining in both the orders quoted above is given to emphasize that the learned Rent Controller was conscious of the plea of relationship of landlord and tenant between the parties. It is pertinent to mention here that the petitioner was directed to deposit a very meager amount of just Rs.3780/- as arrears of rent from September, 1996 till the date of passing of the order and the future monthly rent at the rate of only Rs.180/- per month. The interest of petitioner was fully secured by the Rent Controller in the tentative rent order when he has observed that even that meager amount of arrears of rent and future rent “shall be subject to withdrawal after final judgment/order.” The petitioner's refusal to comply with the tentative rent order despite the fact that respondent was not allowed to withdraw the same during the trial, merely on the grounds that according to the wisdom of the petitioner he has acquired the ownership rights without transfer of the title in his favour cannot be termed as anything except contumacious and willful disobedience of the tentative rent order. The petitioner knowing well the penal consequences of non-compliance of tentative rent order should have deposited the rent in Court instead of putting his claim of ownership at risk and physical dispossession from the tenement.

6. The case of the petitioner even before this Court is that ever since he has entered into a compromise, he was under the impression that on compromise he has acquired the ownership rights. The compromise before the Rent Controller cannot be termed as absolute transfer of ownership right in favour of the petitioner, nor can the

terms of compromise be enforced against respondent No.3 in a fresh round of litigation before the Rent Controller. That compromise, wherein according to the petitioner, the respondent was under an obligation to transfer the ownership, was not enforceable through the Rent Controller and that too, as a defence to deny payment of rent to the respondent/owner. If at all the petitioner has acquired any rights under the said compromise, such rights were denied by the respondent, the petitioner should have filed a suit for specific performance of the contract/compromise to enforce the terms of compromise. It is by now settled law that a compromise even in Court of law between the parties is not more than a mere contract and a breach thereof would give rise to the fresh cause of action and a fresh suit can be filed by an aggrieved person for the redressal of his grievances. If any authority is required on this point, one may refer to **2009 SCMR 1268 (Peer Dil v. Dad Muhammad)**.

7. In view of above factual and legal position that the petitioner was a tenant and he continued to be a tenant even after the compromise, since the promise was not acted upon by the landlord on whatever pretext. In the given facts and circumstances, the plea of the petitioner that he has challenged the relationship of landlord and tenant was not strong enough to defeat the mandatory requirement of compliance of order under section 16(1) the SRPO, 1979. The tenant cannot be allowed to enjoy the tenement as an absolute owner pending the rent case merely on the grounds that landlord has promised to transfer the title in favour of tenant. It is indeed clear from the petitioner's own showing that the compromise was executed on 04.4.2000 and that compromise has not been honoured by the parties. The petitioner has not even made any effort to perfect his title in the last fourteen years from the date of compromise till date.

8. The crux of the above discussion is that the concurrent findings of the Rent Controller and the Appellate Court do not call for any interference and this constitution petition is dismissed.

JUDGE





