

HIGH COURT OF SINDH, AT KARACHI

CP No.S-673 of 2014

ORDER

Appellants : Tanveer Ahmed Shah,
Through Mr. Nazakat Ali Tanwari, Advocate.

Respondent No.1 : Rent Controller Faisal Cantt. Karachi.

Respondent No.2 : Naghma Ansari w/o Abdul Ghafoor Ansari.

DATE OF HEARING : 20.05.2014

NAZAR AKBAR, J. Pursuant to the order dated 20.5.2014 the learned counsel for the petitioner has filed written arguments and a statement at bar at his own.

1. Briefly stated this petition is arising out of the proceeding in Rent Case No.19/2010 pending before the Rent Controller, Faisal Cantonment, Karachi and the petitioner has sought the following reliefs;

- i. Call Record and Papers of Rent Case No.19/2010 from the Rent Controller Faisal Cantonment / Respondent No.1. Declare that the proceedings before Respondent No.1 and examine it that “how much illegalities are going on in such proceedings”.
- ii. Direct the rent controller / respondent No.1 to decide the application of petitioner for rejection of rent case within the span of ten days.
- iii. Set aside the order dated 24.4.2014 & 8.5.2014 and direct respondent No.1 to allow the petitioner to produce his witnesses (appear as a witness for cross examination).
- iv. Suspend the proceedings of Rent Case No.19/2010 pending before Respondent No.1 till final disposal of captioned petition.
- v. Grant any other relief deemed fit and appropriate in the circumstances of the case.

2. The office has raised the objection to the petition that:-

“copy of impugned orders to be filed as mentioned in prayer clause”.

Learned counsel for the petitioner instead of complying with the objection replied that;

“put up before Hon’ble Court”

3. I have examined the entire record and do not find the impugned order mentioned in prayer clause. The counsel for petitioner has not presented the same in Court before hearing of petition on 20.5.2014. However, the counsel was directed to satisfy the Court that how this petition is maintainable against the orders, which are interim in nature and not final order. He had no answer and requested time and therefore he was given two days to file written arguments. The counsel has filed a statement at the bar along with the written argument. However, even with the written arguments, the petitioner has not filed copies of impugned orders mentioned in prayer clause. He has prayed through the statement at the bar that instant petition may be fixed before Mr. Justice Faisal Arab, who has passed order on CP No.S-107/2013 between the same parties. I have examined the file of C.P. No.107/2013. The CP No.S-107/2013 was dismissed for non-prosecution on 26.9.2013 and his restoration application CMA No.6287/2013 was listed for hearing on 07.4.2014 when the same was disposed of in the following terms.

“7.4.2014

Mr. Nazakat Ali, adv.
Mr. Tariq Ali, adv.

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1. This is the restoration application since plausible reason has been disclosed, the petition is restored to its original petition.

Counsel for respondent No.2 states that Respondent No.2 does not want to examine any other witness. In view of such statement, this petition has become infructuous. Let the opponent be cross-examined on the affidavit-in-evidence that has already been filed.”

Since the petition No.107/2013 was dismissed as infructuous, therefore, I do not see any justification in sending the case to my brother Faisal Arab.J. The

idea is to keep this petition pending and claim adjournment before Rent Controller in rent case on the ground of pendency of this petition. In the first place impugned orders are not before the Court nor filed by the petitioner, therefore under any circumstances, without examining the order itself the same cannot be set aside, nor can the maintainability of the petition be examined. However, I would still like to examine the maintainability of the petition in the light of written arguments, filed by the counsel for the petitioner.

4. The petitioner, beside the prayer for setting aside the two unavailable impugned orders has also prayed that this Court should examine that “how much illegality/irregularity is going on in such proceedings”. It goes without saying that any illegality/irregularity committed by trial Court would provide him with good grounds to strike the final order in appeal. Therefore, it is a frivolous, prayer. However, this prayer is not without purpose. Probably the petitioner is interested in threatening the Rent Controller that he has approached the High Court and wants to start an inquiry against the Rent Controller under the cover of prayer that this Court should examine that “how much illegal activity/irregularity is going on in such proceedings”. Such efforts of the litigants through the constitution petition on the pretext that no remedy lies against interim orders speaks of the malafide and dishonest conduct on their part. The very fact that the petitioner has not filed copies of the so called impugned orders and made an attempt to get the injunction against the proceedings of the learned Rent Controller is an attempt to abuse the process of this Court by misguiding it. Counsel has not given any explanation in his written arguments that how the petition can be maintained even without impugned order before the Court.

5. I have, while examining the Court file, noted that in the ejectment application Respondent No.2 has shown the petitioner as her tenant since 4.3.2003 and she has filed three tenancy agreements of successive years

and the petitioner in the so called detailed written statement has declared that these tenancy agreements are forged. The authenticity of documents will be decided in the light of the evidence to be led by the parties. Such evidence would also reflect on the relationship of the parties as landlord and tenant. The Rent Controller has not completed evidence. The order passed on the earlier petition suggests that evidence of Respondent / landlord must have been completed and the petitioner instead of stepping into witness box is trying to linger on the proceeding. This second petition, when the Rent Controller is busy in recording evidence in Rent case No.19/2010, is second attempt to achieve the motive of delay. In the written submission the learned counsel has relied on two case laws reported in **1995 SCMR 791** Niaz Khalil..Vs.. Muhammad Shafiq and **PLD 2011 Peshawar 238** Mst. Shagufta Shaheen ..Vs.. Muhammad Ismail Qureshi. Both the cases are not relevant rather both are against the contentions of the learned counsel. In 1995 SCMR 791 the Hon'ble Supreme Court was seized of an appeal arising out of FRA. The provisions of Article 199 of the Constitution of Islamic Republic of Pakistan 1973 were not an issue in the reported case. Ruling from the Hon'ble Peshawar High Court is in respect of powers of the Rent Controller to review its order and not on the point of maintainability of constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 against any interim orders. Therefore, both the citations have no relevance to the present case.

6. The Rent Controller is seized of the matter since 2010 and evidence of the parties has not been concluded mostly on account of the petitioner at least since January 2013, when he filed earlier petition. In any case before recording of evidence, it cannot be said what issues will be framed by the Rent Court. Unlike a civil suit, in rent cases, the Rent Controllers are supposed to formulate "points for determinations / issues" after recording of evidence and hearing of the counsel for either side in the judgment. If

anything material is left to be taken care of by the Rent Controller during the trial or the Controller omitted the formulation of a necessary point for determination in the final judgment, it will ultimately result in favour of the petitioner as in the appeal against the final order he would capitalize on such irregularities in the proceeding. But the petitioner cannot be allowed to defeat the law whereby purposely to ward off the delay in rent cases, the legislature has not provided for remedy against any interim orders passed under the Cantonment Rent Restriction Act, 1963 and therefore, the prayer that this Court should examine that “how much illegal activity/irregularity is going on in such proceedings” i.e Rent case No.19/2010 is frivolous and amounts to exerting an uncalled for pressure on the learned Rent Controller.

7. All the facts and above discussion leads us to the inescapable conclusion the petitioner does not want to contest the Rent case No.19/2010 on merit. It is clear from the written argument of the petitioner that he knew that the petition is not maintainable. The Rent case No.19/2010 was filed in June, 2010 and the petitioner on 28.1.2013 filed earlier petition No.S-107/2013 which was finally disposed of on 7.4.2013. The petitioner has again approached this Court through instant petition. The petition since January 2013 when he filed earlier petition No.107/2013 has abused the authority of High Court to serve his ulterior motives of delaying the proceeding of Rent Case No.19/2010 before Rent Controller. The petitioner is also guilty of defeating the purpose of the enactment of rent laws therefore, this petition is dismissed with cost of Rs.10,000/- to be deposited by the petitioner in favour of High Court Employees Benevolent Fund. He should submit receipt thereof in the Court of Rent Controller Faisal Cantonment, Karachi within 15 days from now. If the petitioner fails to submit the receipt of payment of cost as ordered herein, the learned Rent Controller through the MIT-II should report non-compliance and in case of report of non-compliance this Court will take appropriate action against the petitioner.

8. The Rent Controller is further directed that he should decide rent case No.19/2010 according to his own wisdom in accordance with law within a period of four months from the date of receiving of this order without being influenced by any proceeding and any other external influence. In case the petitioner seeks any adjournment before the Rent Controller, the Rent Controller should impose cost or straightaway refuse the adjournment unless there are genuine compelling circumstances shown to the Rent Controller. In any case the Rent case No.19/2010 should be disposed of on merit within four months as stipulated in this order. Compliance of the order should also be reported to this Court through MIT-II. Copy of this order should instantly be send to the Rent Controller, Faisal Cantonment, Karachi.

JUDGE

Karachi
Dated:30.5.2014

SM