

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S- 849/2014

Petitioner: Gul Muhammad bin Habib through his
legal heirs through M/s. M. Arshad &
Syed Ishrat Hassan advocates

Respondent Habib Muhammad Naseeb and others
No.1 to 3: through Mr. Abdul Qayyum Khan
advocate

Date of hearing: 21.01.2015

Date of judgment: 21.01.2015

JUDGMENT

ABDUL MAALIK GADDI, J:- The petitioner is aggrieved by the judgment dated 13.3.2014 passed by learned District Judge, Karachi South whereby he dismissed the First Rent Appeal No.174/2013 filed by the petitioner against the order dated 7.5.2013 passed by the VIth Rent Controller, Karachi South allowing the ejectment application filed by the respondents No.1 to 3 and ordering ejectment of the petitioner from the demised premises.

2. Brief facts of the case, relevant for the purpose of disposing of this petition are that the respondents No.1 to 3 are the owners of the property bearing Plot No.RB-6/74, Muhammadi building, Harmusji street, Mazar wali gali, Gari Khata M.A. Jinnah Road, Karachi, whereas petitioner is tenant in respect of rented premises at ground floor at monthly rent of Rs.120 per month payable after the expiry of English calendar month. The rent of demised shop was being collected by the rent collector namely Jan Muhammad who was authorized by the owner/landlords, who died in the month of July, 2004, thereafter no rent was being collected by the said respondents nor the tenant has offered the rent to them. In the month of June, 2005 the son of the respondent No.1 demanded the rent from the petitioner but he refused to pay the same. The petitioner has failed to pay the same from January, 2005 at the rate of Rs.120 per month till filing of ejectment application.

3. The petitioner filed written statement denying the averments made in the ejectment application by taking plea that he has not committed default in payment of rent as nobody on behalf of respondents No.1 to 3 demanded rent from him.

4. On the basis of pleadings of the parties, the following issues were framed by the trial court:

(i) Whether the opponent has committed default in payment of rent to the applicants?

What should the judgment be?

As per record it appears that in order to prove his case attorney of the respondents No.1 to 3 and their witnesses have filed their affidavit-in-evidence supporting the averments made in the ejectment application, they were cross-examined by the petitioner's advocates but they remained unshattered.

5. From the perusal of record it further appears that inspite of repeated opportunities petitioner's side failed to lead evidence in support of his version nor petitioner argued the matter. Therefore the learned VIth Rent Controller, Karachi South allowed the ejectment application vide his order dated 7.5.2013. The petitioner challenged the said order through First Rent Appeal No.174/2013, which was dismissed by the learned District Judge, Karachi South vide impugned judgment dated 13.3.2014 on merits as well as on the ground that the appeal filed by petitioner was time barred. Hence this petition.

6. It is contended by the learned counsel for petitioner that the respondents No.4 and 5 while passing the impugned judgments have erred in law and did not consider any of the averments, ocular as well as documentary evidence of the petitioner as such the

impugned order of ejectment passed by learned VIth Rent Controller, Karachi South and order passed in First Rent Appeal are liable to be reversed/set aside on the following grounds:

(a). That the respondents No.1 to 3 did not give/serve any prior Legal Notice to the petitioner demanding rent and he concocted false story and on the basis of fictitious documents and false averments, obtained the impugned orders which are liable to be set aside.

(b). That the liable trial Court/Respondent No.4 has decided the ejectment/rent application arbitrary and unilaterally in an exparte manner as the petitioner/tenant was not allowed reasonable chances and opportunity to record his evidence/deposition so that the case may be decided on merits even his last adjournment application was dismissed without any speaking or reasonable order in a hurried and harsh manner therefore, the exparte judgment was passed by trial court against petitioner which is liable to be set aside and reverse because no person should be condemned unheard as per settled principles of justice and law.

(c). That the learned trial Court has erred in law while passing the ejectment order which is lacking and defective by non-reading and mis-readin or pleadings and evidence.

(d). That the petitioner was neither defaulter nor committed any other material illegality hence ejectment

order is liable to be set aside and he may be allowed to contest/defend before trial court on merits afresh and case may be remanded back for fresh trial or the rent application of respondents No.1 to 3 may be dismissed.

(e). That the respondents No.1 to 3 have failed to prove his/their false allegations of default etc. and his evidence was highly doubtful.

(f). That the learned appellate Court/Respondent No.5 did not decide the appeal but dismissed only on the point of limitation although the petitioner has moved the application for condonation of such delay under Section 5 of the Limitation Act but it was not considered.

7. However, in support of his arguments/grounds taken in this petition learned counsel for petitioner relied upon case of Pir Zada Niaz Ahmed Farooqui through Lrs. Vs. Muhammad Bux & others reported as 2004 SCMR 862.

8. Conversely, learned counsel for respondents No. 1 to 3 has fully supported the impugned judgment/order of the two courts below and stated that since there are concurrent findings of the two Courts below and it has not been shown that any finding is against the evidence on record. Learned counsel further submitted that the trial court as well as the appellate court has given cogent reasons in support of their findings and the impugned judgment/order of two courts below do not call for any

interference from this court and prayed that the petition may be dismissed on the additional ground that appeal filed by petitioner before the Ist Appellate Court was hopelessly time barred but this petition has been filed by petitioner just to gain the time to retain the possession of demised premises without any justification. In support of his contention he has relied upon the case of Messrs. Pak Libya Holding Company Pvt. Limited vs. Bashir Ahmed Memon (1999 MLD 2132).

9. Heard the arguments and perused the record.

10. It is an admitted position that ejectment application has been filed by respondents No.1 to 3 against the petitioner on the ground of default in payment of rent as alleged in the rent application. Petitioner after filing written statement and after cross-examining the witnesses of respondents No.1 to 3 did not further contest the matter and chosen to remain absent even to argue the matter. Perusal of record shows that the learned Rent Controller before passing the impugned order had extended the ample opportunities to the petitioner to agitate his claim before him but the interest of the petitioner is very much crystal clear that he was not so vigilant to resist the rent application but has also not filed his affidavit-in-evidence. Therefore mere filing written statement which cannot take place of evidence. Perusal of written statement shows that the petitioner has deposited

the rent for the month of January 2005 to December 2005 in the MRC No.1103/2005 in the month of December 2005 because he was duty bound to make the payment of rent just after passing January and February, 2005 because he was enjoying the possession of the said premises on rental basis and it was his duty to tender such rent to the landlord at his door step instead to await for demand of rent on the part of landlord and it is the special statute in which rent application was filed by the respondents/landlords on the ground of default in payment of rent and so it is bounded duty of tenant to have acted in accordance to law, which procedure too he has failed to comply and there was clear default to make the payment rent to the respondents.

11. It is pertinent to mention here that learned Rent Controller had passed the ejectment order on 7.5.2013 and the First Rent Appeal was filed by petitioner on 13.8.2013 although petitioner applied for certified copies of impugned order on 25.7.2013 much after expiry of period of thirty days.

12. According to Section 21 of the Sindh Rented Premises Ordinance, 1979 the appeal is to be preferred within 30 days. No provision of any sort has been laid down under the ordinance whereby delay in filing the appeal can be condoned. No cogent reason has been

pointed out by the petitioner why the First Rent Appeal has been filed beyond the period of thirty days.

13. In view of the above facts and circumstances of the case no perversity, illegality and incorrectness have been found in the impugned order/judgment passed by two courts below. Both the courts below have appreciated all the points involved in this case. No illegality has been pointed out. I therefore, find no merit in this petition which is dismissed with no order as to cost. Since the petitioner is old tenant therefore he is granted 30 days` time to vacate the premises-in-question and hand over its vacant possession to the respondents No.1 to 3 without fail.

14. This petition was dismissed in Court by short order dated 21.1.2015 and these are the detailed reasons for the same.

JUDGE

MUSHARRAF ALI