

# HIGH COURT OF SINDH, AT KARACHI

CP No.S-613 of 2013

## ORDER

Petitioner : Asadullah,  
Through Mr. Hakim Ali Khan, Advocate.

Respondent No.1 : Noor Ahmed

Respondent No.2 : Mrs. Nooriya Bibi  
Both through Mr.Shahzad Qammar Abbas,  
Advocate for Respondents

Respondent No.3 : VIIth Sr. Civil Judge & Rent Controller,  
Karachi, East.

Respondent No.4 : IIIrd Additional District & Sessions  
Judge, Karachi, East.

DATE OF HEARING: 24.04.2015

**NAZAR AKBAR, J.** This petition is directed against the concurrent findings of the learned Rent Controller and the Court of IIIrd A.D.J (East) Karachi, whereby both the Courts have ordered ejectment of the petitioner from the premises bearing Shop No.1, on Plot No.N-3685, Block No.1, Metroville III, KDA Scheme 33, Karachi. I need not to reiterate the facts of the case of the parties since in exercise of constitutional jurisdiction; this Court is not required to examine factual controversy.

This constitution petition is directed against the concurrent findings of ejectment of the petitioner on account of his failure to comply with the order passed by respondent No.3 under **Section 16(1)** of the Sindh Rented Premises Ordinance, 1979, (hereinafter referred to as SRPO, 1979). The learned counsel has attempted to point out fault in the order of the Rent Controller under **Section**

**16(1)** of SRPO, 1979 and claimed that he has been deceived by the figure mentioned in the order. He has also argued that the relationship of landlord and tenant has also been disputed and the petitioner has already filed a suit for specific performance of a contract against the previous owner namely Ch. Abdul Majeed and Respondent No.1 herein. The record shows that alongwith ejectment application even a tenancy agreement has been filed by Respondent No.1. Be that as it may, the very fact that the petitioner has filed a suit for specific performance suggest that he is not owner at this point of time and prima facie, he was tenant. It is settled law that the issue of ownership cannot be settled in the rent proceeding nor merely filing and pendency of a civil suit between the parties or between the tenant and any third party can be a bar in exercise of jurisdiction by the Rent Controller, if the case is otherwise made out. The petitioner's counsel has attempted to argue that he has deposited the unpaid rent in Court as soon as an order of the Rent Controller on application under **Section 16(2)** of the SRPO, 1979 was passed showing non-payment of two months' rent in time. In fact, he further contended, it was on account of miscalculation and immediately after the orders on the application under **Section 16(2)** of SRPO, 1979 the same has even deposited in Court by the petitioner therefore, the Appellate Court in FRA No.20/2012 has erred in holding that the petitioner has failed to comply with the orders passed on the application under **Section 16(1)** of SRPO, 1979. Be that as it may, the controversy decided by the Rent Controller while passing an order on the application under **Section 16(2)** is purely a question of fact and it may be reviewed or set aside by an Appellate Court but it cannot be interfered with by the High Court in exercise of its constitutional jurisdiction under **Article 199** of the Constitution of Pakistan, 1973. In the case in hand even Appellate Court has reaffirmed the findings of fact drawn by the learned Rent Controller on the basis of record available with the Rent Controller. The Counsel for the petitioner having

realized his difficulty in challenging the concurrent findings on question of fact, sought time to place on record case law. He was allowed to do so by next morning alongwith his written arguments. In the written synopsis of arguments, the petitioner has relied on the following case law and filed photocopies of the same.

- i. **2001 MLD 12** (Wazir Ali...Vs...Rent Controller No.VIII (East), City Courts, Karachi and 3 others)
- ii. **2010 CLC 466** (Messrs Roots School Network through Attorney ..Vs..Bashir Ahmed and 2 others)
- iii. **2001 CLC 1486** (Messrs S.M. Ayub & sons ..Vs.. Abdul Jabbar Qureshi and another).
- iv. **1992 SCMR 1149** (Mst. Miskina Jan ..Vs.. Rehmat Din)
- v. **1984 CLC 1750** (Arshad Mahmood Siddiqui..Vs.. Muhammad Haroon)
- vi. **1991 MLD 701** (Anwar Ahmed ..Vs.. Muhammad Sharif)
- vii. **2007 YLR 363** (Mrs.Jumana Khursheed ..Vs.. Ist A.D.J., Karachi East)
- viii. **1973 SCMR 112** (Hashim Khan ..Vs.. Ghulam Nabi and 7 others)
- ix. **1985 CLC 1945** (Maqsood Ahmed Khawaja and another ..Vs.. Asmat Begum)

Except the case law at Sr. No.2, the citations at Sr.No.1 and Sr. No.3 to 9 are all findings of Appellate Courts examining impugned order as an appellate authority either in First Rent Appeal or appeal to the Supreme Court against the order passed in rent appeals. In such proceedings evidence and findings of the Court of Rent Controller can be examined. But when the Court is exercising its power under constitutional jurisdiction, its scope is limited, it cannot review the findings on facts and after going through the reasoning of lower forum, it cannot substitute such findings with its own reasoning. By now it is settled principle of law that unlike the appellate forum provided under the relevant statute, the High Court in exercise of its writ jurisdiction is neither competent to undertake the exercise of re-appraising the evidence in order to come to its own conclusion nor findings of

facts drawn by the Court below can be substituted. It is pertinent to mention here that out of 09 case law the case law at Sr.No.2 and reported in **2010 CLC 466** (Messrs Roots School Network through Attorney..Vs..Bashir Ahmed and 2 others) is the only case law in which concurrent findings of the Rent Controller and the First Appellate Court on an application **under Section 16(2)** of SROP, 1979 were set aside. The learned counsel while relying on this citation has failed to appreciate that in this case, I had appeared on behalf of the respondent / landlord and on being challenged before the Supreme Court the interference by the High Court in the concurrent finding of lower courts were set aside and the judgment over-ruling the citation 2010 CLC 466 is reported in **2011 SCMR 290** (Bashir Ahmed ..Vs.. Messrs Roots School Neetwork through Administrator/owner and others). Therefore, the judgment reported in **2010 CLC 466** is no more a valid and binding judgment.

In view of the above discussion, I am not inclined to interfere with the concurrent finding of the Courts below; consequently the petition is dismissed with no order as to cost.

JUDGE

Karachi  
Dated:\_\_\_\_\_

SM