

HIGH COURT OF SINDH, AT KARACHI

CP No.S-460 of 2011

ORDER

Petitioner : Mst. Kulsoom Ibrahim,
Through Mr. Khalid Riaz, Advocate.

Respondent No.1 : Muhammad Yousuf
Through Mr. Abid Hussain, advocate (absent)

Respondent No.2 : VIth Additional District & Sessions
Judge, Karachi, South.

Respondent No.3 : VIIIth Sr. Civil Judge & Rent Controller,
Karachi, South.

DATE OF HEARING: 23.04.2015

NAZAR AKBAR, J. This petition is directed against the concurrent findings of VIIIth Rent Controller and VIth A.D.J (South) Karachi, whereby both the Courts have ordered ejectment of the petitioner from the premises bearing Flat No.35, Ground Floor, Wali Muhammad Compound, Ranchore Line, 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.

2. The counsel for Landlord/ Respondent No. 1 has filed objections to the maintainability of this petition and also filed even copies of case laws relied by him. He relied on the case of (1) Suleman Mala and others vs. Khawaja Muhammad Ramzan and others, **2003 YLR 226** (2) Safdar Ali and others vs. Municipal Committee Charsadda **2003 YLR 233** and (3) Dr. Ruqia Shaukat vs. Additional District and Sessions Judge and others, **2003 CLC 1310**. The petitioner's counsel in the memo of petition has not referred to any specific piece of evidence which could be treated as misreading and non-reading of evidence to interfere in the concurrent findings of the Courts below.

3. The counsel for the petitioner was heard and counsel for the Respondent was absent.

4. Learned counsel for the petitioner argued that the impugned orders are absolutely void unwarranted illegal and have been passed without considering evidence available on record, therefore, the impugned orders are liable to be set-aside. The learned Courts below, according to the counsel, have totally failed to take into consideration the evidence of both the parties and has decided the case one sided in favour of respondent and there is crystal clear misreading and non-reading of evidence. He was directed to assist the Court and point out the part of evidence which according to him could be an example of misreading or non-reading of evidence by the Court of Rent Controller and the First Appellate Court in coming to the conclusion that the Respondents have made out a case of personal bonafide need.

5. The counsel for the petitioner has read contents of notice under **Section 18** of SRPO, 1979 and contended that it contents were not proper as enhanced rate of rent was mentioned in it. Admittedly after notice under **Section 18** of SRPO, 1979, the petitioner did not tender rent to the respondent / landlord. He was unable to point out any legal infirmity in ejectment order passed by the learned Rent Controller in Rent Case No.1085 of 2008 and upheld by the Appellate Court in FRA No.345 of 2010.

6. The petitioner's counsel had no answer to any of the citation relied upon by the Appellate Court and discussed in detail in the impugned judgment. He, however, referred to and relied upon the case law reported in (1) **PLD 1991 Karachi 452**(Moizur Rehman ..Vs.. Mrs. Fakhra Javed),(2) **1986 CLC 1542** (Moosa ..Vs.. Muhammad Anwar), (3) **1988 SCMR 890** (Mrs. Shazaeh Pooya ..Vs.. Mrs. Mubarak Shah) and (4) **2012 CLC 143** (Syed Abid Ali ..Vs..Ghulam

Moinuddin Khan and 2 others).I have examined these citations. The first three judgments were not dealing with the constitution petitions arising out of concurrent finding in rent cases and therefore findings recorded in these citations by the Hon'ble Courts are findings of an appellate forum and therefore the same were on different footings. The fourth citation is against the petitioner as in the said case law this court has refused to interfere in the concurrent findings of fact in exercise of constitutional jurisdiction under Article 199 of the constitution. The jurisdiction of High Court under **Article 199** of the Constitution of Pakistan, 1973 cannot be equated with the powers of an appellate Court. Unlike the appellate Court, the High Court in exercise of its jurisdiction under **Article 199** of the constitution is not competent to undertake the exercise of reappraising the evidence in order to come to its own conclusion neither finding on question of fact recorded by the Courts below can be substituted.

5. In view of the above facts and law since the case in hand is the one in which concurrent findings of both the Trial Court and the Appellate Court have been challenged and the petitioner has failed to show any jurisdictional defect or other infirmity in the impugned judgments, consequently the petition is dismissed with no order as to cost.

JUDGE

Karachi

Dated:_____

SM