

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

C.P. No.S-659 of 2014.

Date of hearing 10.08.2015.
Date of decision .08.2015
Petitioners Abdul Salam & 2 others through Mr. Imdad Ali Unar.
Respondents: Muhammad Mubeen Shaikh & others through Mrs.
Razia Ali Zaman Advocate.

NAZAR AKBAR, J.- The petitioners through this petition have assailed order dated 28.09.2013 passed by learned IVth Additional District Judge, Hyderabad, whereby their First Rent Appeal No.34/2013 was dismissed, consequently ejectment order dated 28.05.2014 passed by learned 3rd Senior Civil Judge/ Rent Controller Hyderabad allowing Rent Application No.325/2012 filed by the respondent was maintained.

2. The brief facts giving rise to this petition are that the respondent/ applicant filed Rent Application before learned Rent Controller for ejectment of the petitioners/opponents from shop constructed on C.S. No.97 admeasuring 200 Sq. Ft situated opposite Girls Guide Center, Ward A Hirabad, Hyderabad (hereinafter the “tenement”), which was purchased by the respondent through registered sale Deed dated 25.05.2011. The case of the respondent was that the petitioner/opponent No.1 who was tenant of previous owner at the rate of Rs.5000/- per month was served with a notice under section 18 of the Sindh Rented Premises Ordinance, 1979 (S.R.P.O 1979) claiming rent of the tenement from May, 2011. Petitioner No.1 despite having received the said notice failed to tender the rent to him and thereby committed willful default in payment of rent. The respondent/landlord prior to filing of rent case served petitioner No.1 with notice dated 15.09.2012 and also approached him to vacate the shop in question but he refused. The respondent/landlord filed rent case on the ground of default and also subletting the portion of the shop to petitioners/opponents

No.2 & 3 without his permission. The respondent also sought eviction of the petitioners on the ground of personal bonafide need.

3. The petitioners contested the Rent Application before learned Rent Controller and filed written objections. The main objection of the petitioners was that the shop in question(the tenement) was a separate property and its plot was let out by previous owner to petitioner No.1, who has raised construction thereon from his own funds and the respondent has no concern with the same. The petitioners further contended that the respondent did not intimate them about change of ownership and that petitioner No.1 was still paying rent to one Waheed Ali son of Mst. Jamila Khatoon. Petitioner No.1 has denied allegation of subletting a portion of shop to petitioners No.2 & 3 and stated that they are his workers.

4. The parties led their evidence before the learned Rent Controller and after hearing learned counsel for the parties, learned Rent Controller by order dated 28.09.2013 allowed the Rent Application and directed the petitioners to vacate the tenement within 60 days and handover its vacant possession to the respondent/landlord.

5. The petitioners challenged the aforesaid order by filing FRA No.34/2013 and after hearing, same was also dismissed by learned IVth Additional District Judge, Hyderabad by order dated 08.05.2014.The petitioners have now filed this petition against concurrent findings.

6. I have heard learned counsel for the parties and carefully examined the record.

7. The learned counsel for the petitioners has failed to point out any misreading or non-reading of evidence by the courts below in coming to the conclusion that petitioner No.1 was guilty of default in payment of rent from May, 2011. The counsel for the petitioners has attempted to argue that the

impugned orders of the courts below suffer from illegality as according to him, the Courts below have not complied with requirements of section 19(5) of SRPO, 1979. The requirements of section 19 are that the Rent Controller is supposed to frame points for determination in his Judgment after recording evidence and hearing the arguments of the parties. The learned counsel for the petitioners in support of his contention that requirement of section 19(5) of S.R.P.O. 1979 was mandatory and non-compliance was illegality has relied on the following cases:-

- i. reported as *Agha Daver Hussain Vs. Mrs. Zaibun Nisa* (1999 MLD 3088),
- ii. *Mst. Shabana & another Vs. M/s N.P Cotton Mills (Pvt) Ltd* (1999 YLR 230 Kar),
- iii. *Abid Hussain Vs. Muhammad Mazhar* (1992 MLD 1740),
- iv. *Shabbir Hussain Vs. Mst. Shamim Khatoon* (1985 MLD 124)
- v. *Javaid Mubarak Vs. Shammsuddin and 5 others* (1984 CLC 3252)

On examination of impugned orders, I have noticed that both the courts below have formulated points for determination and therefore, this contention is contrary to the record. Therefore, the case law referred by the learned counsel for the petitioners is of no consequence in the case in hand. Learned counsel for the petitioners has not suggested any other error or so called illegality in the impugned orders.

8. On merit, petitioner No.1 himself in his cross examination has admitted that:

“It is correct to suggest that case premises was sold out by Mst. Sarwat to the applicant Muhammad Mubeen. It is correct to suggest that the applicant Mubeen has served me with notice as to change of ownership of the premises dated 15.09.2012. It is correct to suggest that I have replied notice of application on 26.09.2012. It is correct to suggest that I have not tendered the monthly rent alongwith my reply dated 26.09.2012 to the application (applicant). It is correct to suggest that I have not deposited the rent in favour of applicant after receiving notice of this rent application. Vol: says that I do not accept the applicant as landlord. It is correct to suggest that I have not produced any extract of city survey which shows the case premises is separate from property purchased by Muhammad Mubeen Sheikh. It is correct to suggest that I have not paid

the amount of rent to the applicant Mubeen since May, 2011, Vol: says that I am depositing the rent with previous owner in the court.

The above admissions of petitioner No.1 in clear and loud answer to the two points raised by the Rent Controller for determination in his Judgment, namely; (1) the relationship between petitioner No.1 and respondent No.1; and (2) default committed by petitioner No.1 in payment of rent. Therefore, both the courts below have rightly ordered ejection of the petitioners from the tenement.

9. In view of the above quoted piece of evidence, no case is made out for interference in the impugned orders by this court in its constitutional jurisdiction. The petitioners under the cover of this petition have already enjoyed possession of the tenement for more than a year since the dismissal of their rent appeal. The appellate court has dismissed the appeal of the petitioners on 08.05.2014, whereas learned Rent Controller had granted 60 days' time to them for vacating the tenement on 28.09.2013, therefore, the petitioners are directed to vacate the tenement within 30 days from today and in case of their failure the executing court on receiving execution application shall straight away issue writ of possession by giving 15 days' time to the petitioners and thereafter writ of possession shall be issued with police aid for ejection of the petitioners from the premises in question.

JUDGE.

A.K