

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No.S-118 of 2014

(Saif-ul-Islam -vs - Mst. Fahmeeda Ahmed & Another)

Date Order with signature(s) of Judge(s)

Hg:/Priority.

1. For hearing of Misc. No.3819 /24
2. For hearing of Misc. No.674 /14
3. For hearing of main case.

27.04.2026.

Mr. Muhammad Aqail Zaidi, Advocate for the Petitioners.

Barrister Main Shahbaz Ali, Advocate for the Respondent No.1.

Mr. Muhammad Kamran, Assistant Advocate General Sindh.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the conflicting findings of the facts by the courts below. Rent application No.750 of 2009 (re: Mrs. Fahmeeda Ahmed v. Mr. Saif ul Islam) was dismissed by the Court of Vth Rent Controller (Central) Karachi (**Trial Court**) vide order dated 20.05.2011. FRA No.111 of 2011 (re: Mrs. Fahmeeda Ahmed -vs - Saif-ul-Islam) was allowed by the Court of IVth Additional District Judge (Central) Karachi (**Appellate Court**) vide judgment dated 20.11.2023, Rent application was allowed and order of Trial Court was set aside .

2. Learned counsel for the petitioner contended that the petitioner is a co-owner of the demised premises, namely House No. 1026, Block-8, Azizabad, Federal 'B' Area, Karachi, which was jointly purchased by the petitioner and Respondent No. 1. He further contended that no relationship of landlord and tenant existed between the parties, and this fact was established before Trial Court, for the said reason, the rent case was dismissed. He further contended that Respondent No. 1 failed to establish either her ownership or the existence of a tenancy relationship. He next contends that the Appellate Court misread and non-appreciated the evidence and erroneously allowed First Rent Appeal No. 111 of 2011 by holding that a written agreement was not necessary and that the petitioner had committed willful default in the payment of rent; consequently, the order of ejectment passed is prima facie illegal. He prayed to allow this petition and set aside the judgment of Appellate Court.

3. Learned counsel for the respondent No 1 controverting the submissions argued that the respondent No 1's ownership is not denied; that the petitioner was residing in the demised premises since 1999 without paying any rent, and a substantial amount of utility bills remained outstanding against the property, which the petitioner has failed to pay. He further submitted that the demised premises are required for the bona fide personal need of the respondent No 1, for which the affidavit in evidence of Respondent No 1 was a sufficient evidence. He further contended that Section 5 of the Sindh Rented Premises Ordinance, 1979 (SRPO) is directory in nature, as the non-execution of a written rent agreement did not entail any penal consequences, and therefore, prayed for dismissal of the petition.

4. Heard arguments and perused the material available on record.

5. Admittedly the respondent No 1's ownership over demised premises stands admitted. Petitioner in his cross examination available at page-219 of the Court's File, admitted the title of the property in favor of respondent No.1 Mst. Fahmeeda Ahmed but voluntarily suggested that she got transferred the property fraudulently. Though there is no written acknowledgement of rent agreement between the parties but in order to establish that the petitioner was residing in demised premises as co-owner, he was required to produce the relevant record that he had any title in the property. Moreover, the petitioner was in possession of the demised premises since 1999 and failed to pay the utility bills which included in the definition of rent defined under Section 2 of the SRPO as follows:

“ Section 2(i)“rent” includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid; “tenant” means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes –

- (i) any person who continues to be in possession or occupation of the premises after the termination of his tenancy;*
- (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant; and*

6. The learned trial Court dismissed the rent case on the ground that no tenancy relationship existed between the parties. However, the learned trial Court failed to consider that Section 5 of the SRPO is directory in nature and does not entail penal consequences for non-execution of a

written rent agreement. An oral tenancy agreement is as valid and enforceable as a written one under the law. The learned Appellate Court, upon proper appraisal of evidence, rightly concluded that the respondent No 1 was the owner of the demised premises/subject property and that the petitioner was residing therein as a tenant. No illegality or infirmity has been pointed in the impugned judgment dated 20.11.2013 passed by the Appellate Court. Accordingly, this petition fails and is hereby dismissed along with all pending applications.

JUDGE

Approved for reporting