

IN THE HIGH COURT OF SINDH, AT KARACHI

C. P. No.S-203 of 2009

Date of hearing : 18.04.2013.

Date of order : .04.2013.

Petitioner Muhammad Asad through : Mr. Tahir Rahim, Advocate.

Respondent No.3 Muhammad Shariq through: Mr. Shahzad Afzal, Advocate.

ORDER

IRFAN SAADAT KHAN, J: This Constitution Petition has been filed against the order dated 15.01.2009 passed by the District Judge, Karachi Central, in FRA No.116/2008, with the following prayers:

- (i) *To set aside the impugned order of the respondent No.2 passed on 15-Jan-2009 in F.R.A. No.116/2008 being ultra-vires, not maintainable and violative of the Principles of justice and the Provisions of the Sindh Rented Premises Ordinance 1979.*
- (ii) *To further be pleased to dismiss the ejectment application of the respondent No.3 filed before the respondent No.2 bearing Rent Case No.554/2006 being disprove and malafide.*
- (iii) *Any other relief or reliefs which this Honourable Court may deem fit and proper under the circumstances of the petition.*

2. Briefly stated the facts of the case are that the petitioner is a tenant of the respondent No.3 in respect of the flat on third floor, situated at house No.B-14, Nazimabad No.2, Karachi. The date on which the said flat was let out is some time in 1989. The late father of the respondent No.3 let out the said flat to the petitioner at the rent of Rs.400/- plus Rs.100/- water charges per month, payable by 5th of each month. An amount of Rs.50,000/- being advance was also deposited by the petitioner with the then landlord and subsequently a further sum of Rs.10,000/- was also deposited by the applicant with the late father of the respondent No.3. With the passage of time the rent increased and till the time ejectment application was filed by the respondent No.3 the rent stood at Rs.700/- plus Rs.100/- water charges. Rent receipts were duly issued by the respondent No.3 up-till August 2005. In the month of September 2005 the respondent No.3

and his brother namely Rehan requested the petitioner to vacate the flat as they required the same for the bonafide use of their younger brother namely Muhammad Adnan, who was to get married shortly. The petitioner tried to pay the rent amount to the respondent No.3, which he refused and thereupon the petitioner paid the rent for the months of August and September 2005 by way of money order, which was received by the respondent No.3. For the month of October 2005 onwards, since a dispute arose between the parties, the petitioner started depositing the rent before the Rent Controller in MRC No.832/2005.

3. On the point of default in paying the rent in due time and on the point of personal bonafide use an application under Section 15 of Sindh Rented Premises Ordinance, 1979 (SRPO) was filed with the prayer to the Rent Controller to pass an order of eviction against the petitioner. The matter was heard at length by the IIIrd Rent Controller in Rent Case No.554/2006, who then vide order dated 12.08.2008 allowed the said application by observing that since the respondent No.3 required the said premises for his personal bonafide use, hence, the petitioner had to vacate the same and hand over its peaceful possession to the respondent No.3 within 60 days of the order. An appeal thereafter was filed before the District Judge, who also vide his order dated 15.01.2009, upheld the order of the Rent Controller. It is against this order that the present petition has been filed.

4. Mr. Tahir Rahim, Advocate has appeared on behalf of the petitioner and submitted that the order passed by the two Courts below are the result of misreading and non-reading of evidences, as both the Courts below have not considered the aspects firstly that there is no default in payment of rent and secondly the said flat was not required by the respondent No.3 for his personal bonafide use. While elaborating his viewpoint he submitted that there is no default in payment of rent, as the petitioner tried to pay the rent for the months of August and September 2005 to the respondent No.3, who refused to accept the same and thereafter the said rent was paid through money order, which the respondent No.3 accepted. However, so far as the payment of rent for the month

of October 2005 is concerned, the same was deposited before the Rent Controller, hence, according to him, there was no default. He further stated that the assertion of the respondent No.3 that the said flat was required for his personal bonafide use is also incorrect, as from the deposition of the said Muhammad Adnan it is clear that he never approached the petitioner for vacating the flat for his personal bonafide use and the said Muhammad Adnan has categorically admitted that he had some other house also. He further stated that even if, for argument sake, it is admitted that there was a default, then, according to him, the law prescribes that the rent could be paid within 60 days, whereas the said rent was paid much prior to the date fixed by the law itself for payment of rent, hence, there was no default in payment of rent. In support of his above contentions the learned counsel has placed reliance on the following decisions:

1. *Messrs Journalist Publication (Pvt.) Limited Vs. Mst. Mumtaz Begum alias Mustari Begum (2004 SCMR 1773)*
2. *Haji Muhammad Hanif Vs. Mohsin Ali (1997 MLD 2754)*
3. *State Life Insurance Corporation of Pakistan, Karachi Vs. M/s. Siddique Tailors (PLD 1993 Karachi 642)*
4. *Imran Ansari Vs. Muhammad Rifatullah Alvi (PLD 1988 Karachi 619)*
5. *Haji Ahmed Zaheer Khan Vs. Anwar A. Rahim (1984 CLC 2714)*

5. Mr. Shahzad Afzal, counsel for the respondent No.3, on the other hand, opposed the present petition and at the very outset submitted that this petition is not maintainable as the petitioner has come to the Court with unclean hands. He further submitted that concurrent findings are against the petitioner and he has failed to point out any misreading and non-reading of the evidences in the orders passed by the two Court below. He stated that the property was required for the personal bonafide use of the brother of the respondent No.3 and ample evidences in this regard including engagement card etc. were produced, which have not been denied by the counsel for the petitioner. He further stated that even, for arguments sake, if it is admitted that the petitioner has deposited the rent, it could be seen from the record that he deposited the rent for three months at Rs.2100/- only, whereas the petitioner should have paid Rs.2400/- to the respondent No.3 which

also proves that the petitioner has failed to pay the correct rent to the respondent No.3, hence, the two authorities below have rightly come to the conclusion that default in payment of rent against the petitioner has been established. He, therefore, submitted that this petition, being devoid of any merit, is liable to be dismissed.

6. I have heard both the learned counsel at considerable length and have perused the record and the decisions relied upon.

7. A perusal of the record reveals that the father of the respondent No.3 gave the flat on rent to the petitioner by way of an oral agreement. Counsel for the respondent No.3 has not denied the fact that initially the rent was fixed between the parties at Rs.400/- and Rs.100/- water charges totaling to Rs.500/- per month and an amount of Rs.50,000/- was given as advance and subsequently a further sum of Rs.10,000/- was given as advance. With the passage of time the rent fixed between the parties enhanced to Rs.700/- plus Rs.100/- water charges. It is also seen from the record that the respondent No.3 has issued proper rent receipts up-till the month of August 2005, however, when the respondent No.3 refused to accept the rent, rent for the two months was paid through money order, which was received by the respondent No.3 and thereafter when the petitioner came to know that an application for ejectment has been filed against him from October 2005 onwards he started making the payment of the said rent before the Rent Controller. Now two questions arise in the instant petition, firstly whether there was any default in payment of rent and secondly whether the respondent No.3 required the said property for his personal bonafide use? Though these two aspects have been discussed at length by the two Courts below but, in my view, these points have not been considered in their true perspective, as the orders passed by the trial Court and the appellate Court appears to be that of misreading and non-reading of evidences. How I have come to the said conclusion is detailed below.

8. So far as the issue of default in making payment of rent is concerned the record clearly reveals that the rent for the month of August and September 2005

was paid by way of money order, which has duly been received by the respondent No.3. However, so far as the rent for the succeeding months is concerned the same was deposited in the MRC No.832/2005. Now where is the default? I specifically asked a question from the counsel representing the respondent No.3 that when rent has duly been paid either through money order or by depositing the same in Court, then where is the default? No plausible reply in this regard was furnished except saying that the flat is required for personal bonafide use.

9. So far as the issue of requiring the flat for personal bonafide use is concerned, it is evident from the deposition of the respondent No.3, which is available at typed page-11 of the order passed by the trial Court and page 151 of the file, wherein he has categorically admitted as under:

“It is incorrect to suggest that premises in question is required for personal need of my brother Adnan”.

10. In the deposition of Muhammad Adnan, he has categorically stated that *“I have also another property at Nazimabad, Karachi”*. He also stated that *“My brother Rehan asked the opponent to vacate the premises in question whereafter opponent stopped payment of rent”*. He further stated that *“I never went to the opponent nor I demanded vacant possession of the premises in question from the opponent”*.

This statement of Adnan, who is also a co-sharer in the property after the death of his father, is totally against the averments made by the respondent No.3 while filing the ejectment application. It is interesting to note that though the respondent No.3 claims that the said flat is required for the personal bonafide use of his brother namely Muhammad Adnan as he is to get married shortly but the said Adnan in his deposition has not said a single word about this averment made by his brother. It is also stated by the respondent No.3 that when the petitioner was asked to vacate the flat he stopped making the payment, whereas from the record it is evident that for the payment of rent of August and September 2005, the petitioner firstly tried to pay the same to the respondent and upon his refusal he paid the rent via money order, which the respondent No.3 received. So far as

the question of payment of rent of subsequent months is concerned it was paid before the Rent Controller, which aspect has not at all been denied by the counsel for the respondent No.3. In my view, the two Courts below have lost sight of this fact. From the material available on record it is evident that neither default in payment of rent appears to have been committed by the petitioner nor the flat was required for the personal bonafide use of the respondent No.3 has been proved.

11. It is a settled proposition of law that while deciding Constitutional Petition if the Court comes to the conclusion that the concurrent orders of the two courts below are based on misreading and non-reading of the evidences and the Courts below have failed to exercise jurisdiction for doing justice between the parties, this court exercising Constitutional jurisdiction for administration of justice has the authority to turn down the decisions, which are manifestly based on non-consideration. It is established on record that petitioner has neither defaulted in payment of rent nor the said flat was required by the respondent No.3 for his own personal bonafide use. The orders passed by the two Courts below are thus without lawful authority and of no legal effect, the same are hereby set aside and this Constitution Petition is allowed.

JUDGE