

IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-476 of 2013

Amjad Hussain & others
versus
Vth Rent Controller Karachi (South) & others

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 21.09.2016
Date of Announcement : 02.12.2016
Petitioners : Through Mr. Mustafa Lakhani,
Advocate
Respondent : Mr. Muhammad Amin, Advocate

JUDGMENT

Zulfiqar Ahmad Khan, J.:- Brief facts of the case are that Muhammad Nadeem S/o Haji Qasim (Owner/Landlord) filed 17 rent cases under Section 8 of the Sindh Rented Premises Ordinance, 1979 for determination of fair rent in respect of similar number of shops rented out by him to various tenants. A counsel on behalf of opponents (the tenants) filed a Vakalatnama on 15.10.2012 and while the matter was fixed on number of occasions for filing Written Statement between 22.10.2012 to 26.11.2012, for one reasons or the other, the counsel failed to file the Written Statement and vide Rent Controller's order dated 26.11.2012 the opponents were debarred from filing Written Statement. Counsel for the tenants moved an application on 28.11.2012 for the recall of the order dated 26.11.2012, on which the order dated 06.02.2013 was passed, wherein by placing reliance on the apex Court's judgment reported as 2008 SCMR 79 and on the basis of an unreported case being C.P No.800-K of 2009, the applications for recall of order were dismissed.

2. Such dismissal was challenged through F.R.A, where the appellate Court after fully comprehending the facts and placing reliance on appropriate case law, reached to the conclusion that

the order of the trial Court was based upon sound reasoning, therefore, required no interference, and vide order dated 17.04.2013 the appeals were dismissed. Against such dismissal, the instant constitutional petition has been filed.

3. In support of his contention, learned counsel appearing for the petitioners contended that the case of the tenants was dismissed on technical grounds only, and while placing reliance on PLJ 2011 SC 335, 1988 CLC 654, 1994 CLC 1872, 1995 MLD 470 and 2004 MLD 328 he submitted that it is the duty of the Court to do justice between the parties and Court should not hesitate to give proper relief at all times. He further submitted that the matter ought to have been disposed of on merits rather than on technicalities. Learned counsel pleaded that the delay occasioned in filing Written Statement was unintentional and the reasons were beyond the control of the counsel, therefore, both the courts below failed to appreciate this fact and orders passed by them have to be set-aside.

4. Rebutting to such assertions, the preliminary objection raised by the counsel for Respondent No.3 was that the petitioners have only filed one constitutional petition while there were 17 orders meaning thereby, the conduct is still not free from slackness.

5. To me, there is only one legal question that whether failure to file Written Statement was fatal and as contended by the learned counsel for Respondent No.3, the answer lies in the Apex Court's judgment referred hereinabove. In particular, the order passed in C.P No. 800-K of 2009, where the Apex Court upon having taken into consideration that the tenant engaged a counsel, which duly appeared before the Court of the Rent Controller, however, failed to

file Written Statement, the Apex Court accordingly upheld that the application filed under Order IX Rule 13 C.P.C was rightly dismissed.

6. In the given circumstances, while the scope of this Court sitting in constitutional jurisdiction is already limited in the light of the Apex Court's judgment reported as 2001 SCMR 338 and the similar judgments of this Court reported as 2014 YLR 2331 and 2016 PLC (C.S) 1069, I do not see any constitutional possibility to intervene in the consistent findings given by two courts below and therefore, dismiss the instant constitutional petition, which is devoid of any merits with cost of Rs.5,000/-

JUDGE

Barkat Ali/PA