

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-196of 2012

Nayab Ali.....PETITIONER

Versus

Mst. Hameeda Bano and others.....RESPONDENTS

Date of hearing: 06.07.2017

Mr. Ishrat Ghazali, Advocate for the Petitioner.
Mr. Chaman Lal, Advocate for Respondent.

ORDER

ADNAN-UL-KARIM MEMON,J:- In the captioned Petition, the Petitioner has impugned Order dated 15.3.2011 passed by the learned Rent Controller-VI, Karachi, Central, in Rent Case No. 338 of 2006 whereby rent case filed by the RespondentNo.1 to 5 was allowed. Petitioner challenged the said Order in First Rent Appeal No. 69 of 2011 which was also dismissed vide Order dated 15.12.2011 passed by learned Additional District Judge-IV, Karachi, Central.

2. Brief facts of the case are that Respondent No.1 to 5 are claiming to be landlord/owners of the building constructed on Plot No. 644-A (ground plus one) situated in Block-H, North Nazimabad, Karachi (subject premises). The Petitioner is shown to have been inducted as tenant of ground floor of subject premises at the rate of Rs. 650/- per month vide Rent Agreement dated 3.7.1980. Subsequently, with the consent of parties the rent was enhanced and the same was lastly fixed

at the rate of Rs.3000/- per month excluding utility charges. Petitioner used to pay the said rent to Mst. Haseeb Fatima, wife of Muhammad Ibrahim Chishti (late) against issuance of Rent Receipt and last Rent Receipt was issued on 12.12.2003. Petitioner has alleged that the subject premises was illegally transferred and mutated in the name of Respondent No.1 to 5 vide Mutation Order dated 14.6.2005. Thereafter, Respondent No.1 to 5 demanded rent from the Petitioner vide Notice dated 30.3.2006 under Section 18 of Sind Rented Premises Ordinance 1979. But, according to Respondent No. 1 to 5 the Petitioner avoided to pay the same with effect from December, 2003 onwards to them (legal heirs of deceased Mst. Haseeb Fatima). It is further claimed that the subject premises was required for personal use of Respondents No.1 to 5 therefore they requested the Petitioner for vacating the same. But, the Petitioner refused to vacate the same and ultimately Respondent No. 1 to 5 issued legal notice to the Petitioner which was ignored by him. Therefore, the Respondent No. 1 to 5 felt compelled to file Rent Case No. 338 of 2006 before learned Vith Rent Controller, Karachi, and Central with the prayer of vacant and peaceful possession of subject premises to Respondent No. 1 to 5. Petitioner filed written statement and denied that he was tenant of late Mst. Haseeb Fatima, wife of Ibrahim Chisti vide Tenancy Agreement executed in the month of March 1995. Petitioner further asserted that during lifetime of deceased landlady, Respondent No. 1 to 5 were never introduced as relative of the landlady and she entered into Sale Agreement with Petitioner on 4.8.2003 and also received Rs.9,00,000/ as part payment towards the sale price and Rs.2,00,000/ remained balance to be paid at the time of execution of Sale Deed. Petitioner has further stated that the Respondents are

strangers and the subject property is fraudulently mutated in their favour without Letter of Administration. Learned Rent Controller framed the following points for determination:-

- i) Whether the opponent has committed willful default towards the payment of Rent?
- ii) Whether the applicants require the premises in question in good faith for their personal bonafide use?

3. The learned VIth Rent Controller, Karachi, Central after recording evidence of the parties allowed the Rent Case as prayed with directions to the Petitioner to handover vacant and peaceful possession of subject premises to the Respondents within sixty days vide judgment dated 15.3.2011. Petitioner feeling aggrieved by and dissatisfied with the impugned judgment dated 15.3.2011 preferred First Rent Appeal No. 69 of 2011 before the IVth Additional District Judge, Karachi, Central. The learned Appellate Court vide Order dated 13.12.2011 dismissed the Appeal of the Petitioner and maintained the order of the learned Rent Controller. On 16.2.2012, Petitioner approached this Court against the decisions rendered by the learned Rent Controller and Appellate Court. During pendency of instant Petition Respondent No. 1 (Mst. Hameeda Bano) died on 3.9.2014 and this Court vide Order dated 26.8.2015 directed the Petitioner to file amended title. Subsequently, amended title was filed on 11.1.2017.

4. Mr. Ishrat Ghazali, learned counsel for the Petitioner has contended that on 24.12.2009 the learned IVth Additional District Judge, Karachi, Central remanded the case to the learned VIth Rent Controller, Karachi, and Central for ascertaining the relationship between the

parties and decision of the case afresh on merits. But, both the Courts failed to frame preliminary issue of relationship of landlord and tenant between the parties. Therefore, proceedings initiated against the Petitioner are nullity. He next contended that deceased landlady namely Mst. Haseeb Fatima had entered into Agreement of Sale and also received sale consideration amount of Rs.9,00,000/- from the Petitioner in presence of witnesses. He next contended that all the documents produced in evidence show that Petitioner has purchased the subject premises from deceased landlady namely Mst. Haseeb Fatima and the title of RespondentNo.1 to 5 is disputed but the said evidence was not considered. Therefore, the Petitioner filed Suit No. 265 of 2008 for Specific Performance and Injunction before this Court against the Respondents. He next contended that till decision of the said Suit the Rent Case could not have been allowed and Appeal should not have been entertained. Learned counsel for the Petitioner next contended that Respondents had no locus standi to file Rent Case against the Petitioner because they are not owners of the subject premises. Therefore, both the orders passed by the learned Courts below need to be set aside. In support of his contentions he has relied upon the case of Muhammad Lehrasab Khan Vs. Mst. Aqeel-ul-Nisa and others (2001 SCMR 338), Abdul Hafiz Khan Vs. Muhammad Anwar and others (1991 CLC 1364), ShoukatJaved Vs. Shaikh Abdul Khaliq and others(1991 SCMR 215), Abdul HameedNaz and others Vs. Mst. Razia Begum Awan and others (1991 SCMR 1376), Rehmatullah Vs. Ali Muhammad and others (1983 SCMR 1064).

5. Mr. Chaman Lal, Advocate for Respondents supported the impugned judgments passed by both the learned Courts below. He next contended that the Petitioner has defaulted in payment of rent besides the subject premises are required for personal bonafide use of Respondent No.1 to 5. He next contended that the Petitioner has submitted forged Sale Agreement with fake signature and documents to frustrate the instant rent proceedings. He next contended that Petitioner has not come to this Court with clean hands, therefore he is not entitled to any relief. Finally, he prayed for dismissal of the instant Petition. In support reliance is placed upon the case of Syed Imran Ahmed Vs. Bilal and others (PLD 2009 SC 546) and Rizwan Najmi Vs. Nusratullah Bhooray Khan (2013 YLR 2526).

6. I have heard the learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. Perusal of record and findings by the learned Rent Controller as well as learned Appellate Court do not show any illegality or irregularity in the impugned judgments.

8. I am of the view that mere denial of relationship of landlord and tenant between the parties and pendency of Suit for Specific Performance of Contract does not take away jurisdiction of Rent Controller to entertain a Rent Case.

9. I am conscious of well settled law that a Sale Agreement does not create any interest or confer any title on the person in whose favour such agreement is executed. Therefore, the Petitioner on the basis of a Sale

Agreement cannot restrain the owners of the subject premises from claiming their legal right or deprive them from benefit accruing or arising out of the said property. Hence, no proceedings before the Rent Controller can be stopped to wait for the final outcome of the suit for Specific Performance.

10. Reverting to point of personal need of the subject premises it is well settled law that sole testimony of landlord is sufficient to establish personal bonafide need. Secondly, in a case for eviction of tenant filed by the landlord, the former is no more a tenant when he takes up the plea of purchase of subject property. In such circumstances, the tenant must vacate the subject property and file a Suit for Specific Performance of the Sale Agreement. Thereafter, in case the tenant succeeds in the suit he can be given easy excess to the subject premises.

11. On the point of default in payment of rent the Respondents claim that Petitioner has not paid rent with effect from December, 2003 till date. On the other hand Petitioner is claiming that he is bonafide purchaser of the premises in question. In such a situation when the Petitioner is denying the relationship of landlord and tenant and is claiming purchase of the subject premises in the year 2003 it means he has not paid the rent.

12. So far as personal bonafide need of the Respondents is concerned, it is well settled law that when landlord makes statement of personal bonafide need of rented premises which is not rebutted in cross examination then the burden on the part of landlord stands discharged.

Even sole testimony of landlord is sufficient to establish his personal bonafide need of the rented premises if the statement of the landlord on oath is consistent with his averments made in the ejectment application.

13. I am fortified of the view that in rent matter Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the Appellate Court has flouted the statute or fail to follow the law relating thereto? In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the orders passed by both the Courts below. Besides, I do not see misreading or non-reading of evidence which could warrant interference of this Court.

14. The case law cited by the learned counsel for the Petitioner is distinguishable from the facts and circumstances of the present case.

15. In the light of facts, circumstances and law mentioned above, the instant Constitution Petition is dismissed alongwith pending applications and the judgments passed by the learned VIth Rent Controller, Karachi, Central and Appellate Court are maintained.

16. The Petitioner is directed to vacate the premises in question and handover its vacant and peaceful possession to the Respondents No.1 to 5 within thirty days from the date of this judgment. In case of failure, the Petitioner shall be evicted from the subject premises without notice.

JUDGE