

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. S- 932 of 2019

Date of hearing
& decision: 16.12.2019

Petitioner: Sharafat Ali through Mr. Ayatullah Khowaja,
Advocate.

Respondents : Nemo

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner is praying for setting aside the impugned judgment dated 11.11.2019 passed by learned Model Civil Appellate Court / VIth Additional District Judge, Hyderabad in First Rent Appeal (FRA) No. 51 of 2019 whereby the learned Judge while dismissing the appeal maintained the order dated 4.9.2019 passed by learned Vth Senior Civil Judge / Rent Controller, Hyderabad in Rent Application No. 87 of 2018. The petitioner being aggrieved by the aforesaid decisions has filed the instant petition.

2. Brief facts of the case as per pleadings of the parties are that respondent No.1 being owner of shop constructed on Plot No.4, Block 236 situated at Deh Hotki Rustam Shaheed Road Tando Jam District Hyderabad (subject shop) rented out to the petitioner vide rent agreement dated 1.6.2006 for a period of 11 months and per clause 6 of the said Rent Agreement the tenancy will continue with mutual consent but subject to enhancement of rent at 10% per annum. The tenancy between the parties existed from 1.6.2006 to April 2018. During the period of tenancy from 1.6.2006 the petitioner paid rent till November, 2017 and from December, 2017 he failed to pay rent to respondent No.1; subsequently Kashif Ali being attorney of petitioner filed Suit against brother of respondent No.1 namely Rao Inam for declaration and permanent injunction, apart from above suit said Kashif Ali also filed Cr. Misc. Application against Inam Ali which was disposed of; hence the respondent No.1 filed ejectment application under Section 15 of Sindh Rented Premises Ordinance, 1979 for handing over vacant and peaceful possession of subject shop with cost of the suit; Kashif Ali attorney of petitioner filed written objections to the above application denying ownership of respondent No.1 as he had not produced the title

documents in respect of the subject premises. It was further asserted that the petitioner entered into tenancy with father of respondent No.1 in 1994 in which his son and attorney namely Kashif Ali was running a medical store; the rent was being received by Rao Inam Ali brother of respondent No.1, he paid rent up to July 2018 and thereafter he refused to receive the rent as he wanted the vacant possession of the shop without any reason; it was further asserted that son of respondent No.1 was also doing business with him and managing the suit premises and he never committed default in payment of rent but the brother of respondent No.1 refused to receive the rent from August 2018, hence he sent the same through money order but the same was returned and subsequently he threatened the petitioner for illegal dispossession, hence he filed suit for injunction. In the said suit respondent No.1 filed an application showing himself as landlord for the first time as such he tendered rent to him but he also refused to receive the same hence he filed application under Section 10(2) of Sindh Rented Premises Ordinance, 1979 and started depositing rent in court; learned Rent Controller after hearing the parties allowed the ejectment application vide judgment dated 4.9.2019 directing the petitioner to vacate the rented premises and handover its peaceful possession to respondent No.1 within sixty (60) days of passing of the judgment; with regard to arrears of rent, respondent No.1 was directed to approach the civil court by filing suit for recovery. Being aggrieved by and dissatisfied with the aforesaid judgment, the petitioner filed First Rent Appeal No. 51 of 2019 which was also dismissed by Model Civil Appellate Court-II / VIth Additional District Judge, Hyderabad vide judgment dated 11.11.2019, hence the petitioner has filed the instant petition.

3. Learned counsel for the petitioner submits that the judgments passed by both the courts below are opposed to law, facts and equity and the same are not speaking one, hence are not sustainable in the eyes of law; that the petitioner is lawful tenant of respondent No.1 but learned trial court has deprived him from his right of enjoying the subject premises; that learned trial court failed to appreciate the evidence and cross examination in which respondent No.1 failed to prove the default; that learned trial court failed to appreciate that the petitioner duly paid the rent to earlier landlord through Rao Inam (brother of respondent No.1) and when the petitioner came to know about the respondent No.1 being landlord he started tendering rent to him and on his refusal to receive, petitioner deposited the same in court, hence the petitioner has not committed any default and further respondent No.1 has not shown any personal need, therefore, this petition may be allowed and the judgments of both the courts below may be set-aside.

4. In the present proceedings pivotal questions are whether relationship of landlord and tenant is established between the parties? And whether the petitioner has failed to make payment of rent of the demised premises to the respondent No.1 since December, 2017?

5. In his deposition he has admitted that he is tenant of the subject premises since, 1994. He also admitted that he did not produce any rent receipts in order to avoid default.

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

7. I am of the view that default in payment of rent has been proved in evidence with effect from December, 2017 till date, therefore the learned trial Court has rightly observed that the petitioner has committed willful default in payment of rent.

8. I am 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 failed to follow the law relating thereto?

9. In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the orders passed by both court below. Besides, I do not see any misreading or non-reading of evidence which could warrant interference of this Court.

10. In the light of facts, circumstances and the law mentioned above, the instant Constitution Petition is dismissed alongwith pending application(s) and the judgment dated 11.11.2019 passed by learned Model Civil Appellate Court / VIth Additional District Judge, Hyderabad in First Rent Appeal (FRA) No. 51 of 2019 and the order dated 4.9.2019 passed by learned Vth Senior Civil Judge / Rent Controller, Hyderabad in Rent Application No. 87 of 2018 are maintained. The Petitioner is directed to vacate the premises in question and handover its vacant and peaceful possession to the Respondent No.1 within thirty (30) days from the date of this Order. In case of failure, the Petitioner shall be evicted from the subject premises without notice.

11. These are the reasons of my short order dated 16.12.2019, whereby I have dismissed the captioned petition.

JUDGE