

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-154 of 2021

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

Hearing of case (Priority)

1. For orders on office objection as at "A"
 2. For hearing of CMA No.1106/2021 (Stay)
 3. For hearing of main case
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09.04.2021

Mr. Naveed Anjum, advocate for petitioner
Mr. Mian Mushtaq Ahmed, advocate for respondent No.1

Petitioner is deprived to contest matter on merits after being declared exparte. It is the case of the respondent that he has purchased property via conveyance deed available at page 71. Though he himself was a co-attorney of the previous owner but all such permissions were obtained from the principal and consequently this conveyance deed was executed in 2009. A rent case bearing No.527/2019 after 10 years was filed and it is claimed that a notice under section 18 was issued before filing eviction application on 09.05.2019. The notice claimed to have been served and vakalatnama was filed, however, it is claimed that on account of the illness of the petitioner and perhaps because of the pandemic Covid-19 issues before the lower judiciary, civil work for a number of months remained suspended vide Circular of this Court. That some work began on 03.08.2020 as stated and the matter was put on 13.08.2020. Brother of the opponent/petitioner claimed to have appeared on the said date and obtained a date of 24.08.2020, however, record shows that it was not adjourned for 24.08.2020 but it was adjourned for 20.08.2020. He was perhaps debarred from filing written statement and declared exparte on 20.08.2020. Application for setting aside of the exparte order dated 20.08.2020 was filed on 08.09.2020 which too was dismissed vide order dated 21.09.2020 with the reason that Section 19(2) of the Sindh Rented Premises Ordinance, 1979, does not

provide power and jurisdiction to rescind and recall the order passed by the Rent Controller.

Mr. Mian Mushtaq Ahmed, learned counsel for respondent, conceded being an officer of Court only to the extent that the Rent Controller was not deprived under the law from passing an order for setting aside of an ex parte order. He, however, further submits that there was a lethargic and negligent attitude shown by the petitioner in filing written statement and in pursuing the matter. Be that as it may, he submits that even the observation of the appellate court to the extent that the Rent Controller was not empowered to set aside the ex parte order was not a good law as the relevant provisions of the General Clauses Act, 1897, does permit a Rent Controller to pass appropriate orders including the one whereby he may recall his own order of ex parte.

The respondent may have proved the ownership of the property but then the relationship of landlord and tenant has to be established independently. It has to be proved through reliable evidence and documents that applicant/respondent apart from being owner of property was also the landlord of the occupant. Learned counsel for respondent submits that since an ex parte affidavit was filed therefore there was no reason for the Rent Controller and the appellate Court to disbelieve the version.

I agree to such an extent as far as statement of Mr. Mian Mushtaq Ahmed is concerned, however, we are not satisfied with the reason assigned by the Rent Controller and the appellate Court in declining the application of the petitioner for setting aside / recalling the order dated 20.08.2020 (ex parte order).

Learned counsel for the respondent submits that he has been deprived of the rent since last more than one decade. I am equally conscious of the fact that he himself demanded rent after almost 10 years vide notice under section

18 of the Sindh Rented Premises Ordinance, 1979 so his urgency in this regard has not inspired the confidence of this Court. Be that as it may, since the valuable interest of the respondent is at stake i.e. the outstanding rent, learned counsel for the respondent conceded to the extent that the Rent Controller be directed to decide the application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, after hearing the parties as well as objections of petitioner in this regard in a week's time. This goes without saying that the Rent Controller has to reach such conclusion that there is a relationship of landlord and tenant which necessitated him passing tentative rent order. In addition to this application, it is also expected that the petitioner shall file written statement also in a week's time. With this consensus view, the two orders of the lower courts impugned in these proceedings are set aside with direction to the Rent Controller to proceed with the matter expeditiously. It is expected that the tentative rent order, if required and permissible under the law be passed in a week's time after taking into consideration all the relevant law in this regard, including but not limited to deciding an issue of relationship of landlord and tenant first. It is expected that the rent matter be disposed of within six months' time as required under the law.

The petition is disposed of in the above terms.

J U D G E

Gulsher/PS