

IN THE HIGH COURT OF SINDH KARACHI

C.P. No. S-983 of 2020

[Muhammad Iqbal Yousuf versus Zahid Hussain & others]

Plaintiff : Muhammad Iqbal Yousuf, through
Ishrat Ghazali, Advocate.

Defendant No.1 : Zahid Hussain through Atif Shujaat M.
Beg, Advocate.

Defendants 2&3 : Nemo.

Date of hearing : 30-03-2021

Date of Decision : 26-04-2021

JUDGMENT

Adnan Iqbal Chaudhry J. - The Petitioner/tenant assails concurrent findings of fact delivered against him by the VII Rent Controller Karachi (South) in Rent Case No. 681/2013 vide order dated 12-02-2020, and then by the II Additional District Judge, Karachi (South) in FRA No. 79/2020 vide judgment dated 10-12-2020, whereby the Petitioner has been ejected from shop No. 4, ground floor, Maqbool Terrace, Mansfield Street, Saddar, Karachi (demised premises) on the ground of default in payment of rent and personal need.

2. Apart from the subject Rent Case, the Respondent/landlord had also filed Rent Case No. 680/2013 and Rent Case No. 682/2013 in respect of shop No.s 3 and 5 in the same building, the tenants of which were the brothers of Petitioner. While the period of default alleged in the three rent cases is the same, the personal need asserted in each case was for each of the three sons of the Respondent/landlord; hence the three cases are being dealt with separately.

3. The rent of the demised premises was Rs.1500/- per month. Per the landlord, rent used to be paid by the Petitioner/tenant

quarterly in advance against receipt of Rs. 4500/-, but then the Petitioner defaulted in payment of rent from July 2012 to June 2013 amounting to Rs. 18,000/. The rent case was filed in July 2013. The personal need asserted was that the demised premises was required by the landlord for expanding business by opening a bakery and sweetmeat mart for his son, Rizwan Zahid.

4. The Petitioner/tenant was running a milk shop in the demised premises. It was his case that he had obtained the demised premises by paying a substantial *pugri* to the previous tenant; that he never committed default and paid rent regularly to the landlord/Respondent up till August 2013, but the landlord did not issue receipts; that when the Petitioner tendered rent for the month of September 2013, the landlord refused to accept the same, and thus rent was sent via postal money-order dated 25-09-2013 which too was refused by the landlord, and thereafter the rent was being deposited in Court. To rebut the claim of personal need, the Petitioner/tenant contended that the landlord/Respondent was in possession of other vacant shops on the ground floor which could serve the need of his son, and thus the personal need asserted was not *bonafide*.

5. Earlier, the Rent Controller had passed an order under section 16(2) SRPO, 1979 against the Petitioner/tenant on the ground that the rent deposited by him in Court was beyond the time-line stipulated in the tentative rent order. That finding was appealed by the Petitioner/tenant with success, and the constitution petition filed by the landlord against the appellate order was also dismissed by a common judgment dated 20-06-2018 passed in C.P. No. S-1486/2015 to C.P. No. S-1488/2015. However, those proceedings are not relevant to the instant petition inasmuch as those were in respect of rent for March, May and June 2014, i.e. for rent subsequent to the rent case.

6. Heard the learned counsel and perused the record.

7. Learned counsel for the Petitioner/tenant submitted that both the Courts below did not appreciate that the landlord had admitted on cross-examination that: *"It is correct to suggest that the opponent has not committed default from 1987 to 2013 till the institution/presentation of instant Rent Case"*. However, in appraising the evidence both the Courts below had in fact dealt with that statement of the landlord by observing that the same could not be read in isolation when the landlord had also stated on cross-examination that : *"It is incorrect to suggest that opponent paid me rent till August, 2013"*. Both the Courts below found the following statement of the Petitioner/tenant made on cross-examination as telling of his actual case:

"It is correct to suggest that I did not pay rent for the period of July 2012 to June 2013 to applicant in hand. Vol. says I tried my level best but the applicant refused to receive the rent on one or other pretext".

8. Given the above statement of the Petitioner, once he contended that the landlord had refused to accept rent throughout from July 2012 to June 2013, it was for the Petitioner to demonstrate that he complied with sub-section (3) of section 10 of the SRPO, 1979 by sending the rent by postal money-order or by depositing the same with the Rent Controller having territorial jurisdiction. The postal money-order was sent by the Petitioner on 25-09-2013, after the rent case had been filed, and that too was money-order only for September 2013. No evidence was brought by the Petitioner to show that he had sent rent for July 2012 to June 2013 by postal money-order, or that he deposited the same with the Rent Controller. To get around that lacunae, the Petitioner tried to set-up a different case in his FRA by filing copies of two rent receipts, one for the period July to December 2012, dated 09-12-2012; and the other again for the month of December 2012, oddly dated 10-02-2012. Since those receipts were never produced by the Petitioner/tenant in evidence, and was a stance contrary to the case set-up before the Rent Controller, the appellate Court had rightly rejected that new ground urged by the Petitioner.

9. The Petitioner/tenant had relied upon an agreement dated 18-01-2011 to contend that he had paid *pugri* of the demised

premises to the previous tenant. However, the Petitioner was not party to said agreement, rather it appears to be an agreement by his brother. Though none of the executants of said agreement were examined as witnesses, and the landlord had expressed ignorance of such transaction, but nothing turns on said agreement when that was admittedly not with the landlord/Respondent, nor was there any evidence to show that any part of the alleged *pugri* was passed on to the landlord/Respondent.

10. As regards the ground of personal need, learned counsel for the Petitioner/tenant submitted that it was admitted by the landlord that he was in possession of 8/9 shops on the ground floor, and thus it was established that the alleged personal need was not *bonafide*. In fact, what the landlord had deposed was that he was using those 8/9 shops for running his existing business of bakery and fast food. There was no evidence to show that any of those 8/9 shops were lying unused. Hence, it was plausible that the landlord/Respondent required the demised premises to expand the family business and to provide for a separate shop for his son.

11. In view of the foregoing, the Petitioner has not been able to point out any mis-reading or non-reading of evidence by the Courts below nor any perversity in the findings so given so as to give cause to interfere in writ jurisdiction. Resultantly, the petition is dismissed.

JUDGE

Karachi
Dated: 26-04-2021