

IN THE HIGH COURT OF SINDH KARACHI

C.P. No. S-984 of 2020

[Muhammad Saleem Nagori versus Zahid Hussain & others]

Plaintiff : Muhammad Saleem Nagori, 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. 680/2013 vide order dated 12-02-2020, and then by the II Additional District Judge, Karachi (South) in FRA No. 80/2020 vide judgment dated 10-12-2020, whereby the Petitioner has been ejected from shop No. 3, ground floor, Maqbool Terrace, Mansfield Street, Saddar, Karachi (demised premises) on the ground of default in payment of rent and personal need.

2. The rent of the demised premises was Rs.2000/- per month. Per the landlord/Respondent, rent used to be paid by the Petitioner quarterly in advance against receipt, but then the Petitioner defaulted in payment of rent from July 2012 to June 2013 amounting to Rs. 24,000/-. The rent case was filed in July 2013. The personal need asserted was that the demised premises was required by the landlord/Respondent for expanding business by opening a bakery and confectionary for his son, Imran Zahid.

3. The Petitioner/tenant was running a milk shop at the demised premises. It was his case that he had obtained the demised premises

by paying a substantial *pugri* to the previous owner of the building; 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 he tendered rent for 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 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*.

4. 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 with success, and the constitution petition filed by the landlord/Respondent 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. rent subsequent to the rent case.

5. Heard the learned counsel and perused the record.

6. Learned counsel for the Petitioner/tenant submitted that both the Courts below did not appreciate that the landlord/Respondent 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"*.

7. To demonstrate that rent receipts were always issued, the landlord/Respondent had produced copies of rent receipts issued over the years prior to default. No objection was raised to the production of such receipts. There was also no suggestion by the Petitioner that the rent receipts were fabricated. In fact, while cross-examining the landlord, learned counsel for the tenant had suggested as follows:

"It is incorrect to suggest that I have not produced receipts of the year 2013 as same were issued in the name of opponent and would be attached with the receipt book."

Therefore, there was sufficient evidence to show that rent receipts were duly issued by the landlord/Respondent to the Petitioner. In filing FRA, the Petitioner tried to set-up a different case by contending that though rent receipts were issued by the landlord, those were issued at his convenience. The Petitioner then relied on a receipt for the month of December 2012, oddly dated 10-02-2012. Since that receipt was never produced in evidence and was contrary to the case set-up before the Rent Controller, the appellate Court had rightly rejected that new ground urged by the Petitioner.

8. Apart from a bald statement that he did not commit default, no evidence was brought by the Petitioner to demonstrate payment of rent for July 2012 to June 2013. The postal money-order sent by the Petitioner on 25-09-2013 was admittedly rent only for September 2013, and was sent after the rent case had been filed.

9. The Petitioner/tenant had alleged that he had paid *pugri* of the demised premises to the previous owner of the building. Though there was no evidence to that effect, nothing turns on it inasmuch as such *pugri*, if any, was admittedly not paid to the Respondent/landlord.

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 required the demised premises to expand the family business 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