

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-550 of 2007

Muhammad Sabir
Versus
Faiz Ahmed Qureshi & others

Date of Hearing: 29.11.2017

Petitioner: Through Mr. Adnan Ahmed Advocate.

Respondents No.1: Through Mr. Yousuf Moulvi Advocate.

Respondents No.2 to 4: Nemo.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The petitioner in this petition has impugned the order dated 22.09.2007 passed by learned V-Additional District Judge Central in FRA No.233 of 2006 whereby he set aside order dated 29.04.2006 passed by V-Rent Controller Karachi Central in Rent Case No.193 of 2005.

I have heard the learned counsel for the parties at length and perused the material available on record.

Initially a question was raised as to whether a justification was provided by the appellate Court in condoning the time for filing the appeal as the order of the Rent Controller was considered to have been passed on presumption of wrong conclusion of facts and legal aspect. At the very outset I do not consider this as lawful justification to condone the delay in filing an appeal as it is required to be filed within 30 days of the order of the Rent Controller.

However, while perusing the record there appears to be a dispute as to the relationship of landlord and tenant. It appears that the Rent Controller in MRC No.4889 of 1983 has dismissed an application of

Muhammad Sabir (the original rent collector) for the withdrawal of the rent on the ground that he has not established the ownership. Furthermore, during the life time of the original landlord/ owner Muhammad Ahmed he (petitioner) claimed to have been only collecting the rent. However, that authority ceased after his demise. He (the petitioner) in such a situation should have first established his entitlement as being co-owner of the premises to enable him to file and pursue ejectment application. The original owner/landlord died issueless and survived by legal heirs of his two sisters who are also disputing against each other.

It is also an admitted position that the ejectment application was filed by the petitioner on the ground of default, personal need and addition and alteration and in response to the said application a specific denial was made by the respondent that there was/is no relationship of landlord and tenant and such question ought to have been decided by the Rent Controller first before considering the case of the parties on merit.

Whether such application filed by an unauthorized person who has not established his title in respect of the premises in question can maintain an application was answered in the case of *Muhammad Idrees Khan v. Ismatullah Khan* reported in 1999 MLD 1598 when a delay in filing of appeal was condoned on the ground that the respondent/ landlord in that case had no power to file the Rent Case and the same was held to be not maintainable. The facts of this case, in view of contentions and pleadings of the parties, is almost of similar in nature and hence the relationship between the parties as being landlord and tenant ought to have been decided before assuming the jurisdiction in the case.

Accordingly, in view of the above facts and circumstances, the case is remanded to the Rent Controller to decide afresh relationship of

landlord and tenant between the parties after framing an issue to that effect. The parties may file their respective limited affidavit-in-evidence to decide such question only. No further evidence shall be allowed to be recorded except on this issue. The Rent Controller shall decide the question within three months with periodical report to MIT-II of this Court.

The petition is allowed, the two orders of the Courts below are set side.

Dated: 29.11.2017

Judge