

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-745 of 2020

Present

Mrs. Justice Kausar Sultana Hussain

Muhammad Amir.....Petitioner

V e r s u s

Madarssah Ehsania Dar-ul-Quran Trust and another.....Respondents

Date of Hearing 16.02.2021

Mr. Mehmood Hussain, Advocate for the Petitioner.

Mr. Muhammad Arshad Tariq, Advocate for Respondent No.1.

Mr. Javed Ahmed Kalwar, A.A.G, Sindh / Respondent No.2.

J U D G M E N T

Kausar Sultana Hussain, J. :- Through this Constitution Petition under Section 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner/Opponent/Tenant has impugned a judgment dated 01.10.2020, passed by learned District Judge Karachi (East) in First Rent Appeal No. 101 of 2020, filed by the Petitioner/Tenant against the Respondent No.1/Applicant/Landlord, assailing thereof the order dated 03.09.2020 passed on an application under Section 12(2) C.P.C filed by the intervener Mohammad Anwar in Rent Case No. 152 of 2017, by the learned Xth Rent Controller, Karachi (East) and order dated 16.11.2019, whereby the main rent case was allowed.

2. I have heard the learned counsel for the parties and also have perused the entire record available before this Court.

3. Record shows that the Respondent No.1/landlord has filed ejectment application under Section 15 of Sindh Rented Premises Ordinance, 1979 against the Petitioner/Tenant for his ejectment from demised premises i.e. Shops No.5&6, on the ground of default in payment of monthly rent of Rs.2000/- from January 2015 for each Shop so also utility bills of electricity and other conservancy charges to the concerned departments. The Petitioner/tenant in his written statement claimed that he had purchased the shops in question from the Respondent/landlord through his father Muhammad Anwar on the basis of written agreements of goodwill dated 06.03.2008 and 05.09.2008 and paid him an amount of Rs.3,10,000/- for shop No.6 and Rs.3,00,000/- for shop No.5, He further denied to have executed any tenancy agreement dated 01.01.2003 as claimed by the Respondent No.1/Landlord.

4. The learned Rent Controller while proceeding of instant Rent Case had provided opportunities to the parties to lead their respective evidence but the Petitioner/Tenant remained failed to lead his evidence. The learned Rent Controller then vide order dated 16.11.2019 had decided the Rent Case No. 152 of 2017 in favour of the Respondent/Applicant/Landlord on the ground of default in payment of monthly rent of shop No.5&6 and opined as under :-

"The burden of proof was upon the applicant to establish that the opponent is his tenant in shops No.5&6 constructed on plot No.20/1, Sector-37-C, Landhi No.3 $\frac{1}{2}$, Karachi and in order to discharge such burden, the applicant files his affidavit in

evidence, lead evidence on oath and produced the documents in support of his claim. It is a matter of record that opponent/tenant has failed to challenge the evidence of applicant/landlord by not cross examining the applicant and the evidence of applicant/landlord had gone un-rebutted and un-challenged. Perusal of contents of the ejectment application in para No.1 shows that applicant has relied upon the tenancy agreement dated 01.09.2008 and he alleged that by virtue of that tenancy agreement he has rented out the shops No.5&10 to opponent at monthly rent of Rs.1000/- per month for each shop, but the applicant himself contradicted his version when he has not produced any such tenancy agreement dated 01.09.2008, but he has produced the tenancy agreement at Exh.A-1, which shows that it was executed on 01.10.2003 in respect of shop No.14, therefore, this first tenancy agreement is not relevant here, as such it is for some other shop for which the case of applicant is silent.

Secondly the applicant has produced an agreement dated 01.09.2008 which is written in Urdu and he called it as Pagri agreement, which shows that applicant received an amount of Rs.2,00,000/- on account of Pagri for shop No.10 and in said agreement it is clearly mentioned that a separate agreement of Goodwill is also executed on stamp paper No.26877 dated 01.09.2008 for shop No.5 (said agreement on stamp paper No.26877 dated 01.09.2008 is produced by opponent with his written statement as A-5), shows that the applicant has received

an amount of Rs.3,00,000/- from opponent. However, the applicant stated that shop No.10 was changed with shop No.6, while the opponent has also admitted that he is in possession of shops No.5&6. Now the question arises as to whether the agreement of Pargi or agreement of goodwill have any value in the eyes of law, the answer is that the Pargi has no value in the eyes of law as it is not recognized by any law as held by the Hon'ble Courts in number of cases. However the amount if any paid would only be treated as an advance amount. Admittedly the opponent is in occupation of shops No.5&6 and has no title whatsoever and opponent himself admitted to have paid the monthly rent according to him the same was Hadiya till February 2017 at Rs.300/- per month for each shop and thereafter since March 2017, he has not paid the same on the account of refusal of applicant. As already discussed above the Pargi has no value, so the opponent is presumed to be tenant of applicant in shops No.5&6 and according to his own version he is in default of payment of monthly rent. As for as the contention of applicant that question of monthly rent was Rs.2000/- for each shop is concerned, he has failed to produce any proof in this regard so also failed to examine any witness in support of his claim. Though the opponent has failed to lead any evidence, but the applicant filed his affidavit in evidence, after filing of written statement of opponent and his affidavit in evidence is totally silent wherein the applicant has not denied the receipts of Rent/Hadiya annexed by opponent with his written statement, such receipts

are clearly showing that the applicant use to receive monthly rent at Rs.300/- each shop, till February 2017, hence to my view by not denying those receipts, the applicant admitted that monthly rent was Rs.300/- for each shop and he was receiving the monthly rent up to February 2017 and his contention regarding default since January 2015 is without any substance and not proved.

Now coming back to the period of default, it is alleged by applicant that opponent is defaulter in payment of monthly rent at Rs.2000/- per month for each shop since January 2015, but the applicant has neither produced any receipts or counter folio of monthly rent as alleged by him nor produced any agreement or examined any witness to support his version that monthly rent was Rs.2000/- for each shop, while on the other hand the opponent has alleged in his written statement and annexed the receipts, which shows that monthly Rent/Hadiya was Rs.300/- per month for each shop and he paid the same up to February 2017 and such receipts of opponent are neither challenged by applicant that the same are manipulated or bogus nor denied the same in his affidavit in evidence, but on the contrary the contents of his own agreement in Urdu produced by him at Ex.A-2 in its contents clearly shows that a separate agreement was held between applicant and opponent on stamp paper No. 26877 dated 01.09.2008, which is annexed by opponent with his written statement at Annexure A-5 and it shows that monthly rent of said shop shall be Rs300/- per month only. However, the opponent himself admitted to have not paid the rent/Hadiya

since March 2017, till the filing of written statement and thereafter he has also failed to bring anything on record as to have deposited the monthly rent in any Court in M.R.C or not and has also failed to lead his evidence as well as shatter the evidence of applicant. It is also a settled law that default of even a day is sufficient to entitle the applicant for ejectment of tenant from the rented premises."

5. Record shows that on 13.02.2020 the Intervener Mohammad Anwar has filed an application under Section 12(2) R/W Section 151 CPC before the learned trial Court alongwith his affidavit stated therein that he is the father of the Petitioner/Opponent/Tenant Muhammad Amir, who was inducted as tenant in shop No.5 against agreement of goodwill and paid Rs.3,10,000/- as pugree amount and Rs.300/- per month was fixed as Haddiya. The intervener has further stated in his said affidavit that the rented premises is owned by religious Trust but the Respondent/Applicant/Landlord has not filed any permission or authority letter by trustees or advocate general to file the present case as the Rent Case filed by the Respondent/Applicant/Landlord is barred by Section 92 of CPC. The intervener in his affidavit has pointed out two documents which were produced by the Respondent/Applicant/landlord while leading his evidence as annexure "A1" and annexure "A2" (i.e. agreement of goodwill dated 06.03.2008 for shop No.6 and another agreement of goodwill of shop No.5 dated 05.09.2008 through Pagri respectively). It is expedient to mention here that agreement of goodwill dated 6.3.2008 is for shop No.6 executed between the Respondent/Landlord and the Intervener.

6. While going through the impugned order of learned Rent Controller dated 16.11.2019 it reveals that the Respondent's President namely Abdul Aziz while leading his evidence has produced agreement of goodwill dated 05.09.2008 as Exh.A/3 and receipt of payment at Exh.A/4, and the Petitioner/Opponent/Tenant Muhammad Amir in his written statement has stated about two shops No. 5&6 which were purchased by the Petitioner/Tenant and his father Muhammad Anwar through two agreements of goodwill dated 06.03.2008 & 05.09.2008 and total sale consideration of Rs.3,10,000/- for shop No.6 and Rs.3,00,000/- for shop No.5 was paid. I have gone through the Ex.A/3 i.e. agreement of goodwill dated 05.09.2008 executed for shop No.5 between the Respondent/Landlord and the Petitioner/Tenant and receipt Exh. A/4 shows that Rs.3,00,000/- was paid to the Respondent/Applicant/Landlord. The Petitioner/Respondent/Tenant has enclosed another agreement of goodwill dated 06.03.2008 for shop No.6 (demised premises) executed between the Respondent/landlord father of the Petitioner/Tenant and its receipts for payment of goodwill at Rs.3,10,000/-. The contents of Rent Application filed by the Respondent/landlord under Section 15 of Sindh Rented Premises Ordinance, 1979 do show that he had filed ejectment application for both the shops i.e. 5&6 against the Petitioner/Tenant Muhammad Amir while the shop No.6 was rented out to the father of the Petitioner/Tenant. The learned counsel for the Respondent/landlord has not denied the agreement of goodwill dated 06.03.2008 execute between the Respondent/Landlord and the father of the Petitioner/Tenant for shop No.6 in spite of that Rent Case No.152 of 2017 was filed by the

Respondent/Landlord for both the shops against Muhammad Amir alone, who is the tenant of shop No.5 only and his father is the tenant of shop No.6 (the demised shop of the instant Rent Case) was not impleaded as opponent either in the same Rent Case or by filing separate Rent Case against him although the Petitioner/Tenant has pointed out this fact in his written statement. It is also noted by this Court that in Exh. A/3 (agreement of goodwill) and A/4 (Payment receipt) are containing for shop number 5 in the name of Muhammad Amir/Petitioner/Tenant but the learned trial Court has not considered it while passing the impugned judgment so also did not consider it while rejecting an application of the tenant of shop No.6 filed by him under Section 12(2) C.P.C, who is the father of the Petitioner/Tenant of shop No.5 and has occupied shop No.6 as its tenant. Since the tenant of shop No.6 was neither the party of rent proceedings initiated by the Respondent/Landlord against shop No.6 in same Rent Case No. 152 of 2017 by impleading son of Intervener alone. The learned trial Court/Rent Controller in spite of availability of record of shop No.6 belong to the intervener as tenant did not consider his application filed by him under Section 12(2) C.P.C although admitted document (agreement of goodwill dated 06.03.2008) disclosed that the Respondent/Landlord had obtained impugned order dated 16.11.2019 for ejectment of the tenants from both the shops No.5&6, while the concerned tenant /intervener was remained unaware about filing Rent proceedings initiated by the landlord against his shop No.6. I, therefore, found the judgments passed by both the Courts below as incorrect; erroneous and void ab-initio, hence I set aside both the

Orders/Judgments dated 16.11.2019 and 01.10.2020 and remanded the matter to the learned trial Court with direction to implead the father of the Applicant/Tenant as Opponent No.2/tenant of shop No.6 and provide them fair opportunity to contest the matter and then to pass afresh judgment on the legal issues invalid in this matter including legal repercussions of non-compliance of Section 92 of CPC and on merits. Appeal allowed.

7. These are the reasons of my short order dated 16.02.2021.

Faheem/PA

J U D G E

