

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-914 of 2010

Sardar & others
Versus
Masood Hussain Antria

Date of Hearing: 15.11.2017

Petitioners: Through Mr. Raja Aftab Ahmed Khan
Advocate

Respondent No.1: Through Mr. Badrudduja Khan along with Mr.
Bilal Ahmed Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Briefly stated the facts are that the respondent No.1 filed ejectment application on the ground of default. It is claimed in the application that the petitioner defaulted in payment of rent w.e.f. 01.01.1996 to 31.10.2004.

In defence the petitioner's counsel submitted that petitioners started depositing rent in Misc. Rent Case No.438 of 1996 however the Rent Controller and the Appellate Court held that such deposit was not a valid tender since there was no refusal on the part of the respondent.

I have heard the learned counsel and perused the material available on record.

It appears that an attempt was made to place on record a money order coupon as Annexure F/3 which is dated 27.02.1996 however along with this coupon the endorsement of the postman as to refusal or otherwise is not available hence it cannot be presumed or assumed that deposit of rent in MRC was after the refusal of the landlord/respondent to receive the same. In terms of section 10(3) of Sindh Rented Premises Ordinance, 1979 the tenant is allowed to deposit the rent in Court either

on account of refusal or avoidance of the landlord/respondent to receive the rent. The burden of such refusal is always upon tenant/petitioner to discharge. An attempt was made to rely on the evidence of another Rent Case in respect of another tenant which I am afraid cannot be read as part and parcel of this case.

The petitioners claimed to have filed the application for leading additional evidence by producing the witness from the Pakistan Post Office. The reply from the Pakistan Post Office to that effect that was received by the petitioner in response to a notice after eight years is also available on record as Annexure F/4 at page 59 in which it is stated that the record of 1996 is not available and it would hence be a futile effort to examine the postman. It was the burden and duty of the petitioner to establish that the rent was refused by the landlord/respondent, which he failed. It was thus not a valid tender in terms of Section 10(3) of Sindh Rented Premises Ordinance, 1979. The principle laid down by the Superior Courts in that regard is clearly stipulated in several cases which the petitioner's counsel relied however the factum that the petitioner's counsel fail to establish is to prove such refusal. There is nothing available on record to show that the respondent/landlord refused to receive the rent.

Furthermore, it is also a well settled that Constitution Petition cannot be considered as a regular appeal and hence question of facts cannot be appreciated the way they could be appreciated in appeal. The scope of the petition is limited to the extent as if any piece of evidence was misread or that the jurisdiction was not exercised in accordance with law. No such case is made out by the petitioner herein hence the concurrent findings of the Courts below need do no interference on the facts.

In view of the above the petition is dismissed however since the petitioners are occupying premises as tenant for the last 35 years, they are given one year to vacate the same.

Above are reasons of my short order dated 14.11.2017.

Dated:

Judge