

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1992 of 2015
Mujeeb-ur-Rehman & others
Versus
S.M. Javaid Ahmed & other

Date of Hearing: 19.10.2017

Appellant: Through Mr. Junaid M. Siddiqui Advocate

Respondent No.1: Through Mr. Mahmood Habibullah along with
Mr. M. Fahim Zia Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Being aggrieved of and dissatisfied with the concurrent findings of two Courts below the petitioners/tenants have filed this Constitution Petition. The Rent Controller had allowed the ejectment application on 22.11.2014 whereafter an appeal was preferred by the petitioners as First Rent Appeal No.162 of 2014 which was dismissed vide impugned judgment dated 18.11.2015. The ejectment application was filed on the grounds of personal need, default and subletting of the demised premises and the issues were framed accordingly. The ejectment application was however allowed on two grounds i.e. personal requirement and default whereas it was declined on the ground of subletting. The appellate Court maintained the order of the Rent Controller.

Learned counsel for the petitioners has raised additional points that he was condemned unheard as his adjournment application was dismissed on 22.11.2014 by Rent Controller when the final order was also passed and that the application of adjournment was dismissed without assigning any reasons.

I have heard the learned counsels for the parties and perused the material available on record.

Dealing with the issue of personal requirement first, no case of misreading or non-reading is made out. No question in respect of personal requirement of respondent/landlord was raised during the cross-examination. Being one of the legal heirs the ejection application can be maintained unless otherwise opposed by other legal heirs, which is not the case here.

The alleged letter of respondent on the basis of which amount of Rs.90,000/- was claimed to have been received by the landlord cannot absolve the petitioners from the consequence of default, as claimed in the application. At the most a sum of Rs.90,000/- could be stretched down to 90 months whereas the petitioners have no answer as to the payment of rent thereafter. There is no evidence that before the rent became due after alleged consumption of Rs.90,000/- petitioners either tendered the rent to the landlord/respondent or deposited the same in Misc. Rent Case. The Court challans available on record show that the rent for the month of January 2013 was deposited on 09.01.2013 without any explanation as to the payment of earlier rent. The rent was due since 2000. There is no acknowledgment or proof in respect of alleged payment of Rs.65,000/-, which is claimed to be outstanding towards electricity dues prior to petitioners being inducted as tenants.

Insofar as two additional grounds as raised are concerned, the petitioners filed their written statement after service and they cross examined the landlord/respondent. Petitioner's attorney filed affidavit-in-evidence and was also subjected to cross-examination and ultimately the matter was fixed for final arguments on which he remained absent. This shall not be treated as if petitioner was condemned unheard and hence there is no violation of Article 10-A of the Constitution. On the basis of material available on record and evidence a lawful order was

passed by the Rent Controller which was upheld by the appellate Court. Petitioners chose to remain absent on the day when the matter was fixed for final arguments/hearing and it does not amount to condemn them unheard in view of the fact that they were allowed to contest the matter by filing written statement, to cross examine the landlord/respondent and by filing their own affidavit-in-evidence on which they were also cross-examined. Dismissal of adjournment or urgent application on the same day when the judgment was announced does not hit by the rigors of Article 24-A of General Clauses Act. It is only when a substantial issue that require judicial determination that Article 24-A of the General Clauses Act would come into play when any of his substantial right being taken away. So far as substantial right is concerned the judgments of the two Courts are well reasoned and based on evidence and law.

Upshot of the above discussion is that the petitioners have failed to make out any case to interfere with the concurrent findings of two Courts below hence the petition was dismissed along with pending applications vide short order dated 19.10.2017 of which above are the reasons.

Dated:

Judge