

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Aftab Ahmed Gorar

C.P. No.S- 203 of 2020

Syed Irshad Ali Kazi & another
Versus
Irfan Hilal Ahmed & others

Date of Hearing: 22.11.2021

Petitioner: Through Mr. Muhammad Ali Waris Lari
Advocate

Respondents No.1& 2: Through Junaid M. Siddiqui, Advocate

Respondent No.3: Through Mr. Ghulam Akbar Uqaili, AAG

J U D G M E N T.

AFTAB AHMED GORAR, J.- Through this petition, the petitioner has assailed the orders dated 02.9.2019 passed by VIth learned Additional District Judge, Karachi (Central) and 31.10.1998 passed by the IIInd learned Senior Civil Judge/Rent Controller, Karachi (Central) whereby application under section 15 of the Sindh Rented Premises Ordinance, 1979 filed by the private respondents was allowed and petitioners were directed to vacate the shops in question.

2. Learned Counsel for the petitioners submitted that after lapse of almost 21 years the rent case was filed by respondent No.1 against one S.M. Fareed Zaidi who is proforma petitioner No.2 having no possession and has no concern with the said shops therefore, the orders impugned are bad in law. He further contended that the rent case was fraudulently filed by the respondents No.1 for which the petitioner No.1 has no notice and as soon as it came to the knowledge of the petitioner No.1 he filed an application under section 12(2) CPC before the learned Rent Controller which was allowed, however the petitioner did not proceed with the matter nor contested the same ultimately the final eviction

order was passed which was assailed before the learned VIth Additional District Judge, Karachi Central. He submitted that the learned appellate Court was pleased to dismiss the said FRA of the petitioners hence this petition. Learned Counsel for the petitioner prayed for suspension of the execution proceedings as well as made several prayers seeking declarations.

3. Learned Counsel for the respondents submitted that the petitioner impugned the concurrent findings of two Courts orders which are according to law and he has failed to point out any discrepancy in both the orders. He further submitted that the scope of the petition is limited and at this juncture petitioners could only point out any illegality and infirmity, if any, in the orders impugned, however learned Counsel for the petitioner failed to argue on both the points rather in the lengthy arguments he has only discussed the facts. He also contended that though learned Counsel for petitioners took plea that the orders passed by two Courts below are null and void but did not point a single evidence in this regard to support his version. He therefore, contended that the orders passed by the two Courts below are strictly in accordance and as such do not call for any interference. He contended that this petition may be dismissed. Learned A.A.G representing respondent No.3 and adopted the arguments made by the learned Counsel for the respondents No.1 & 2.

4. I have heard the learned Counsel for the petitioners, learned Counsel for the respondent, learned A.A.G and perused the material available before and gone through the impugned orders of two Courts below.

5. Admittedly the constitutional petition only lies when there is no other efficacious alternate remedy available to the party wherein the parties are required to seek relief on the ground when prima facie their rights, if any, are badly affected. Perusal of the petition shows that the

petitioners were tenants of the respondents in respect of two shops which were later on altered and merged in one without prior permission of landlord and that the petitioners have defaulted in payment of rent as well. Record further reveals that firstly the ejectment order dated 24.5.2016 was passed against the petitioners which was recalled vide order dated 13.08.2018 on an application under section 12(2) CPC of the petitioners, however subsequently the petitioners chosen to leave the proceedings unattended and as such they were declared *ex parte* vide order dated 27.2.2016. Resultantly, following the procedural law, the learned trial Court took statement of the respondents on oath and allowed the ejectment application with directions to the petitioners to hand over the vacant physical possession of the shops in question to the respondents within forty five days.

6. During hearing, learned Counsel for the petitioners made lengthy arguments when asked to satisfy as to why the petitioners remain fugitive from the proceedings after their application under section 12(2) CPC was allowed, he did not specifically answer the query rather arguing the matter leading other aspects. However, during arguments once learned Counsel for petitioners himself has gone to admit that since the petitioners did not proceed with the matter and left case uncontested resultantly the impugned order dated 02.09.2019 for eviction of the petitioners from the shops in question was passed by the learned VIth Additional District Judge, Karachi (Central), which order is assailed in this petition. Despite such admission, learned Counsel for the petitioners has failed to give any plausible reason or justification for leaving the matter uncontested before the Court below. It is well settled principle of law that once the pending proceedings before the Court of law has come to the knowledge of a party, it would be duty of the litigant to be vigilant whereas in the case in hand admittedly the party itself first got their application under section 12(2) CPC granted with hectic efforts, go

set aside eviction order and subsequently left the proceedings unattended when impugned order for their eviction was passed.

In view of the above discussion, the impugned orders passed by the two Courts below do not require any interference hence the petition stands dismissed with directions to the petitioners to handover peaceful vacant possession of the shops in question to the respondents within thirty days.

Above are the reasons for the short order dated 22.11.2021, whereby this petition was dismissed.

Judge