

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No.S-377 of 2013

Date of hearing : 24.04.2013.

Petitioner Mst. Husn Ara through : Mr. Qaim Ali Memon, Advocate.

ORDER

IRFAN SAADAT KHAN, J: This Constitutional Petition has been filed challenging the judgment dated 21.03.2013 passed by the IVth Additional District Judge, Karachi Central, with the following prayers:

It is therefore, prayed that this Hon'ble Court may be pleased to set-aside the impugned judgment dated 21.03.2013 passed by learned IVTH A.D.J Karachi Central in F.R.A No.192/2012 whereby dismissed the First Rent Appeal of the petitioner and order dated 27.07.2012 passed by VTH Sr. Civil Judge & Rent Controller Karachi Central in Rent Case No.472/2011 and further cancel the writ of possession issued by the Executing Court. It is further requested that the case may be remanded to trial Court with direction to decide the matter after recording evidence of both parties on merits.

2. Briefly stated the facts of the case are that flat bearing No.A-80, Nagina Square, Hydri, North Nazimabad, Karachi was taken on rent by the petitioner vide rent agreement dated 10.01.2008 according to which the petitioner was to pay monthly rent of Rs.5000/- payable by 5th of every month, excluding electricity and other charges. An amount of Rs.1,50,000/- was deposited as security, which is to be refundable at the time of vacating/handing over the said property. Since from the inception the petitioner was irregular in payment of rent, which is evident from the fact that the entire security furnished by her was adjusted towards the monthly rent. The respondent No.3 served various legal notices upon the petitioner to vacate the premises, who failed to reply the same. As per the record on 16.05.2011 the petitioner gave affidavit/undertaking to the respondent No.3 that she will vacate the flat up-till 28.05.2011 and would clear all outstanding dues, however, she failed to pay the monthly rent from January 2011 onwards. Being aggrieved with the situation the respondent No.3 filed application

under Section 15 of the Sindh Rented Premises Ordinance, 1979, before the Vth Rent Controller, Karachi Central, who vide his order dated 27.07.2012 allowed the said application, after finding contentions raised by the respondent No.3 to be correct. Learned Rent Controller directed the petitioner to vacate the premises within 60 days from the date of the order. Being aggrieved with the said order an appeal was preferred before the IVth Additional District Judge, Karachi Central, in FRA No.192/2012, who also vide her order dated 21.03.2013 dismissed the appeal, against which the present petition has been filed.

3. Mr. Qaim Ali Memon, Advocate has appeared on behalf of the petitioner and submitted that the orders passed by the two authorities below are not correct, since the trial Court as well as appellate Court have miserably failed to apply their judicial mind and have decided the matter in a mechanical manner. While elaborating his viewpoint the learned submitted that the petitioner was not aware about the technicalities of law and has acted as per the directions of her counsel and hence due to such technicalities she could not be expelled out from the said flat. He further submitted that the respondent No.3 did not require the said flat for his personal bonafide need and thus the Courts below were not justified in deciding the ejectment application in favour of the landlord. He stated that even the respondent No.3 has also failed to prove his ownership regarding the said property and no such document regarding ownership was produced by him before the trial Court as well as the appellate Court. He further stated that, in view of the above facts, the order passed by the two authorities below are liable to be set aside and the ejectment application allowed in this regard may be dismissed.

4. I have heard the learned counsel at considerable length and have perused the record.

5. There is no denial of the fact that the petitioner is a defaulter of rent, which is evident from the fact that the entire security furnished by her has been exhausted. There is also no denial to the fact that the petitioner is also defaulter so far as payment of utility bills are concerned. Learned counsel appeared before me has not controverted the fact that the petitioner is not only irregular in payment of

rent but also with regard to payment of utility charges. It is also seen from the record that an affidavit/undertaking was filed by the petitioner that she would vacate the premises by 28.05.2011 but subsequently she took a summons and totally ignored the said commitment. It is also seen from the record that even before the trial Court and the appellate Court a number of opportunities were furnished to the petitioner for making appearance but those opportunities were also not properly availed. Counsel for the petitioner was also asked as to why no written statement and other documents required from time to time by the Court have been furnished, no plausible reply in this regard was given by him except by saying that these were technical aspects and petitioner was not properly briefed by the counsel representing her before the trial Court, hence, her defence before the trial Court was incorrectly struck off. This assertion of the learned counsel, in my view, belies from the fact firstly that ignorance of law is no excuse and secondly it is the present counsel himself who has appeared in a number of hearings before the trial Court and before the appellate Court as well. Hence, this assertion is totally devoid of any merit and is hereby repelled. It is also seen from the record that on 01.03.2012 the petitioner was debarred from filing the written statement, however, on a subsequent application the petitioner was allowed to file the same. On 16.05.2012, inspite of giving the chance, the petitioner failed to file the said written statement as such she was again debarred from filing the same. Again an application was filed by the petitioner for setting aside/recalling the said order, which, however, vide order dated 24.07.2012 was dismissed by specifically observing that inspite of giving sufficient opportunities the petitioner has failed to file the written statement. Thereafter vide order dated 27.07.2012 the trial Court after dealing with the case in an exhaustive manner came to the conclusion that since the version of the respondent No.3, who was applicant in that case, had remained unchallenged and un rebutted, therefore, rent application was allowed. The trial Court while deciding the appeal in an exhaustive manner by discussing each and every aspect of the case observed that inspite of providing a number of opportunities of hearing to the petitioner no written statement was furnished and the attitude of the petitioner remained lethargic. The learned counsel was

specifically asked to pin point the deficiencies, illegalities, irregularities, misreading and non-reading in the orders passed by the two Court below, which he could not.

6. Keeping in view the factual aspects recorded above, I have come to the conclusion that the petitioner has failed to make out any case of interference by this Court, since the order passed by the two Courts below do not seem to be suffering with either any irregularity, illegality or are a result of misreading and non-reading of the evidence rather both the orders have been passed after providing ample opportunities of hearing to the petitioner and going through the record in an erudite manner, and have rightly allowed the ejectment application filed by the respondent No.3 and dismissed the appeal filed by the petitioner. The present petition is, thus, found to be devoid of any merit and is hereby dismissed in limine alongwith the listed applications.

7. Above are the reasons of my short order dated 24.04.2013, whereby this petition was dismissed in limine.