

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No.564 of 2012

Date of hearing : 29.08.2013.
Date of decision : .09.2013.
Applicant Nooruddin through : Mr. Muhammad Arif, Advocate.
Respondent No.1 Muhammad Younus through : Mr. Abdul Rasheed Pirzada, Advocate.

ORDER

IRFAN SAADAT KHAN, J: This Constitutional Petition has been filed against the judgment passed by the IIIrd Additional District Judge, Karachi West, in FRA No.22/2010, dated 18.04.2012, whereby the appeal filed by the present Petitioner was dismissed.

2. Briefly stated the facts of the case are that respondent No.1 (hereinafter referred as to “the respondent”) is landlord of the property/shop constructed on plot No.87, Sector 11-D, Orangi Town, Karachi. On the alleged default in payment of rent, the respondent filed an ejectment application against the petitioner and the IV-Rent Controller, Karachi West, in Rent Case No.09/2007, vide her order dated 24.12.2009 decided the said matter in favour of the respondent by finding the petitioner to be a defaulter in payment of rent. The said Rent Controller directed the petitioner to hand over peaceful possession of the said shop to the respondent within 60 days from the passing of the order. Being aggrieved with this order an appeal was filed before the III-Additional District Judge, Karachi West, who also, vide her order dated 18.04.2012 dismissed the same. It is against this order that the present petition has been filed.

3. Mr. Muhammad Arif, Advocate has appeared on behalf of the petitioner and stated that the petitioner was paying rent promptly to the previous owner of the said property and the respondent did not inform the petitioner that the said property was purchased by him with the result that the petitioner paid the rent to the previous owner and hence, as per the respondent, he has failed to pay the rent to him and has committed a default. He further stated that the orders passed by the two authorities below are the result of misreading and non-reading of the evidences. He further stated that the petitioner is prompt in paying the rent and except the month of November 2005, where some confusion took place, no default whatsoever has been committed by the petitioner in paying the rent. Learned counsel stated that the allegation that petitioner is a habitual defaulter is incorrect and perusal of the record would prove it otherwise. He further stated that no service of the notice was made upon the petitioner, which according to him is evident from the bailiff’s report annexed alongwith the instant petition mentioning therein that the said notice could not be served upon the petitioner. He further stated that though it has been stated that the publication was made in a newspaper but the petitioner could not see the said newspaper of the instant date. He further stated that the pasting report furnished by the bailiff is also defective. Hence, according to the learned counsel,

since notice has not been served upon the petitioner in accordance with law, the order passed by the trial court is liable to be set aside. He further stated that malafide on the part of the trial court is evident from the fact that when the petitioner was debarred from filing the written statement vide order dated 11.03.2009, an application was furnished on 30.03.2009 and the learned Judge dismissed the same vide order dated 09.09.2009 by stating that the said application has been filed after two years. He in this regard also read out the said order. He further stated that the main case of the respondent is that the petitioner has failed to pay the rent for the month of November 2005, whereas, according to the learned counsel, the rent was sent to the respondent by way of money order, which the respondent refused to receive and thereafter the said rent was deposited in MRC No.04/2006 and since then the petitioner is depositing the rent promptly before the Rent Controller. He further stated that the Rent Controller was not justified in mentioning that the petitioner has failed to produce the rent receipts, whereas, according to him, the rent was deposited in MRC and all receipts are available. He stated that had the Rent Controller considered her own record, she would have come to the conclusion that there was no default in payment of rent. He, therefore, stated that since the orders passed by the two authorities below are the result of misreading and non-reading of the evidences hence the same are liable to be set aside.

4. Mr. Abdul Rasheed Pirzada, Advocate has appeared on behalf of the respondent and stated that there is a default in payment of rent by the petitioner. He, however, conceded that after December 2005 till date the petitioner is paying the rent regularly. He stated that no misreading and non-reading of evidences from the order passed by the two courts below, has been pointed out. He further stated that as a number of opportunities were given to the petitioner to appear and even publication was made in the newspaper but when the petitioner failed to appear before the Court, the Rent Controller and appellate Court were justified in deciding the matters against the petitioner. He, therefore, stated that the instant petition being devoid of any merit is liable to be dismissed.

5. I have heard both the learned counsel at some length and have also perused the record.

6. It is seen from the record that the respondent purchased the instant plot with all the structures thereon from its previous owner through sale deed registered with the office of the Sub Registrar, T-Division, Karachi, dated 24.01.2004. It is also noted that the respondent, after purchasing the said shop, issued notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as "the Ordinance") to the tenant/petitioner and requested him to pay the monthly rent and to execute the rent agreement with him but not only the said rent was not paid by the petitioner but he has also failed to pay the KESC and other conservancy charges. It is further noted that the petitioner is a habitual defaulter in payment of rent, as he has failed to pay the rent from November 2005, even after receiving notice from the respondent. As per the averments of the ejectment application the respondent approached the petitioner to sign fresh agreement to pay the rent and the KESC and other conservancy charges but the same were not paid by the petitioner and thereafter ejectment case was filed against him. It is also seen from the record that it has been stated that the notices issued by the trial Court

were not received by the petitioner, suffice to observe that a number of notices were issued by the trial Court and even pasting and publication was made but, it is evident from the record that, the petitioner has failed to appear in the matter. Though it has been stated that the petitioner has regularly paid the rent since December 2005 without committing any default but, in my view, it is a subsequent event, whereas, admittedly, the rent for the month of November 2005 was not paid. It is seen that legal notice dated 21.11.2005 under Section 18 of the Ordinance was duly served upon the petitioner and his then counsel also vide letter dated 06.12.2005 had given a reply thereafter, hence, the contention of the learned counsel for the petitioner that some confusion took place with regard to payment of rent is also misplaced and an afterthought on his part. It is also seen from the record that the trial Court, after giving ample opportunities of hearing to the petitioner, struck off his defence by debarring him from filing the written statement and his review application also was dismissed by the trial Court. Perusal of Section 15 of the Ordinance clearly reveals that if a tenant fails to pay the rent within a stipulated period, the landlord has the authority under the law to file an application before the Rent Controller against the tenant and the tenant is required to hand over the possession to him. In the instant case, it is seen that the Rent Controller as well as the appellate Court, after examining the case, have rightly come to the conclusion that the petitioner has failed to give any plausible explanation with regard to the fact of non-payment of rent for a particular month. It is also seen from the cross examination of respondent No.1 that he approached the petitioner for registering of fresh rent agreement with him, which the petitioner refused and started depositing the rent in the MRC. Perusal of the order passed by the appellate Court reveals that the learned Judge has gone through the entire record of the case minutely and thereafter affirmed the order passed by the trial Court. The order passed by the appellate Court further reveals that the learned Judge has not only considered the aspect of service of notice but has also considered the fact of non-payment of rent and thereafter came to the conclusion that the respondent has made out a case of ejectment and then, after agreeing with the conclusion of the trial Court, has affirmed the said order. The appellate Court has also relied upon certain decisions of the Apex Courts and thereafter came to the conclusion that soon after receiving the notice under Section 18 of the Ordinance the petitioner started depositing the rent, without any justification, in the MRC, after committing default. It is a well settled proposition of law that once the default is established, the same could not be cured by subsequent payment of rent. Since in the instant petition default on the part of the petitioner has been established and both the Courts below, after examining each and every aspect of the case, have come to the conclusion that the petitioner is liable to be ejected from the said property, I do not find any reason to interfere in the orders passed by the two authorities below, as I have not come across any misreading and non-reading of the evidences in the said orders.

7. In view of the above facts, the instant petition is found to be devoid of any merit and the same is hereby dismissed alongwith the pending application.

JUDGE