

Muhammad Rashid deposed in his affidavit in evidence that opponent is tenant and his evidence in cross also gone unchallenged to the extent of relationship. Opponent in his cross examination admitted that he has opened MRC No. 425/2013 and deposited the rent in favour of Irfan as a landlord. Learned counsel for the opponent in his cross final arguments addressed before the court argued that there was a verbal agreement b/w the parties, even if it is believed that there is no written tenancy agreement b/w the parties but the payment of rent in MRC in the name of the applicant and the admission of the learned counsel for the opponent before the court that there was a verbal agreement is sufficient to prove that there is a relationship of landlord and tenant."

3. Here I also find it appropriate to reproduce the relevant portion of the impugned judgment passed by the appellate court, which is as under:

" But perusal of cross examination of the appellant/opponent clearly reflect his admission regarding filing MRC No.425/2013 and deposit the rent in favour of Respondent/landlord. Further more, impugned findings of learned trial court on this issue shows admission of the learned counsel for the appellant during his arguments, admits existence of verbal tenancy between the parties. So, the admission of learned counsel for the opponent before the trial court regarding verbal tenancy and depositing rent amount by the appellant/tenant in favour of landlord in MRC is clear proof that there is relationship of landlord and tenant between the parties. I have minutely examined the findings of the learned trial court on this issue and find that the impugned findings of the learned trial court on this issue are based on proper reasoning and evidence available in the file, hence the findings of learned trial court on issue No.1 are just and proper, which needs no interference by this court

The respondent/applicant has claimed ejectment of the appellant/tenant on the ground of default in payment of monthly rent. The applicant in his ejectment application, as well as in affidavit in evidence, stated that the opponent/appellant is not paying rent from July 2011. On the other hand, the opponent/appellant in his written statement as well as in affidavit in evidence, denied from the relationship of landlord and tenant between the parties and has not stated or produced in rebuttal of applicant's allegation, but in his cross examination admitted tht he has paid the rent in the name of the applicant in the MRC No.425 of 2013 as a tenant in favour of the landlord. The learned counsel for the appellant has also taken plea that opponent has purchased subject property from yasmeeen Nafees (sister of the applicant), therefore he is no more tenant, but during the trial he has miserably failed to produce sufficient evidence regarding discharge the burden of appellant from

payment of monthly rent. During the course of his arguments, the learned counsel for the appellant has pointed out before this court that Suit No. 284/2017 has been filed by the appellant, in respect of Specific Performance of subject property, which is pending for adjudication before the learned XIth Senior Civil Judge, Karachi Central, but regarding support of his contention neither he has produced copy of said suit before this court nor copy of alleged sale agreement allegedly executed between the alleged owner of subject property and appellant in respect of subject property. Further, more, for the sake of arguments, if it is presumed that the appellant/opponent filed suit for specific performance against, the real owner of the premises and the same is still pending, but mere filing suit for specific performance against alleged real owner does not absolve the appellant from payment of monthly rent. ”

4. Admittedly, petitioner was tenant and has taken stance that during pendency he has purchased subject matter property from the real owner who is sister of respondent (landlord). He has filed suit for Specific Performance of contract, which is pending for adjudication. With regard to plea of tenant that he is purchaser, the apex court held as under:

5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.

Accordingly, impugned judgments are in accordance with law; instant petition is dismissed alongwith pending applications.

JUDGE