

HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1759 of 2014

ORDER

Date of hearing: 10.11.2015.

Petitioner: Abdul Ghani through Mr. Khalid Latif, Advocate.

Res. No.1&2: IVth ADJ Karachi (East) & VIth Rent Controller Karachi (East), respectively. Nemo.

Res. No.3: Sh. Sirajul Haq through Ms. Uzma Farooq, Advocate.

IRFAN SAADAT KHAN, J. The instant petition has been filed with the following prayers:-

- "a) Judgment dated 13-11-2014 passed by learned IV ADJ Karachi East and the order dated 27-02-2014 passed by the learned Rent Controller are illegal, ultravires, without lawful jurisdiction and of no legal effect.
- b) That the respondent No.1 be restrained from eviction of the petitioner on basis of above stated impugned orders.
- c) Any other relief or relief's which the petitioner is entitled may be granted.
- d) Cost of the present petition may be awarded.

2. Briefly stated, the facts of the case are that the petitioner is a tenant of Flat No.2 in building known as "Gaba Mension", Plot No.672, GRE Ward No.VII, AE-633, situated at New Town, Grumandir, Karachi at a monthly rent of Rs.150/- since 1981 with an annual increase of 10%. Some dispute arose between the late father of the respondent No.3 and the petitioner in the year 1979 and thereafter the petitioner started depositing rent in MRC No.210/2000 before the Rent Controller, Karachi East. It is averred that no default in payment of rent has ever been made by the petitioner. It is also averred that the late father of the respondent

filed a Rent Case bearing No.569/1990 against the petitioner which was dismissed on 18.08.1993 and then another Rent Case bearing No.964/1999 was filed by the late father of the petitioner which was also dismissed on 29.05.2000 against which FRA bearing No.303/2001 was filed by the late father of the respondent which too was dismissed on 16.03.2004. However, the present respondent filed a Rent Case bearing No.288/2012 against the present petitioner on the grounds of default in payment of rent, utility charges and personal bona fide need. While the matter was pending, the respondent moved an application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 **(hereinafter referred to as "the SRPO")** and the Rent Controller, vide interim order dated 30.10.2013, directed the petitioner to deposit arrears of rent at the rate of Rs.150/- p.m. with proportionate increase at the rate of 10% per annum w.e.f. October-2011 to October-2013 and to clear all utility bills within 15 days. The petitioner was also required to deposit future monthly rent at the said rate in advance by 10th of each calendar month in addition to payment of electricity charges. It is noted that the said order was passed after hearing the learned counsel for the parties. Thereafter the petitioner committed a default in making compliance of the tentative rent order. The respondent then moved an application under Section 16(2) of the SRPO and the Rent Controller after finding that non-compliance of the order under Section 16(1) has been made, vide order dated 27.02.2014, struck off the defence of the petitioner and required him to vacate the premises within 30 days from the date of the order. Being aggrieved with the said order an appeal was preferred before the IVth Additional District Judge, Karachi East, in FRA No.52/2014, who after hearing the arguments of the respective parties, dismissed the said appeal and directed the petitioner to vacate the premises within 60 days of the said order. It is against this order that the present petition has been filed.

3. Mr. Khalid Latif Advocate has appeared on behalf of the petitioner and submits that there is no default in making payment of the rent as the payment even today is being made by the petitioner in the name of late father of the respondent in whose name he previously was depositing the rent hence there is no default and the order passed by the two authorities below may be set aside. He submitted that this is not a case of non-compliance of

the tentative rent order, however, concedes that the rent is not being deposited in the name of the respondent rather the same is being deposited in the name of the late father of the respondent. He submits that at worst this could be considered as a technical error and the Rent Controller on an application could have transferred the said rent amount deposited by the petitioner in his Court, which was not done. Hence, according to the learned counsel, there is no willful default committed by the petitioner hence the Rent Controller was not justified in striking off the defence of the petitioner. The learned counsel further submitted that since the orders passed by the lower authorities are not in accordance law, hence the same may be set aside.

4. Ms. Uzma Farooq Advocate has appeared on behalf of the respondent and stated that admittedly a default has been committed by the petitioner in complying with the order of the Rent Controller as the petitioner was specifically required to pay the rent in the name of the respondent but the petitioner with mala fide intention continued to deposit the same in the name of late father of the respondent, hence, the petitioner has committed a default in complying with the tentative rent order and the Rent Controller was justified in striking off the defence of the petitioner. In support of her contention, the learned counsel has placed reliance on the decision given in the case of Muhammad Saeed Vs. Akhtar Ahmed (1999 MLD 1945).

5. I have heard both the learned counsel at considerable length and have also perused the record and the decision relied upon by the learned counsel for the respondent.

6. Perusal of the record reveals that MRC bearing No.210/2000 was in the name of the respondent's father, whereas the application under Section 15 of the SRPO was filed by the present respondent against the petitioner bearing Rent Case No.288/2012 on the ground of personal bona fide need and other grounds. It is also an admitted position that the petitioner has not paid any rent in the name of the respondent rather, as per his averments; he was paying the rent in the name of the late father of the respondent. Since no rent was deposited in the name of the present respondent, the respondent moved an application under Section 16(1) of the SPRO before the Rent Controller on the ground

that as the petitioner has not paid any rent since August 1981 and has not cleared the utility bills hence he may be asked to deposit the rent and clear the utility bills till such time the matter is finally decided in the Rent Case No.288/2012. It is seen from the record that the petitioner was in full knowledge of the fact that father of the respondent has expired. From the record it is evident that the petitioner has never denied that the respondent is not the owner of the property. It is also seen from the order passed under Section 16(1) that the Rent Controller has categorically required the petitioner to pay the arrears of rent at the rate of Rs.150/- per month with proportionate increase at the rate of 10% per annum and electricity charges, under intimation to the Court of Rent Controller without fail, meaning thereby that the Rent Controller has categorically given directions to the petitioner to deposit the said rent and intimate the Court accordingly, which aspect is totally missing in the instant case and the petitioner instead of depositing the rent with the Rent Controller even after those specific directions continued to pay the rent in the name of late father of the respondent.

7. Now here a question would arise whether payment of rent being deposited in the name of the respondent's father, since deceased, could absolve him from the responsibility in view of the directions of the Rent Controller? In my view, the answer to this question is in emphatic "NO". If for the sake of arguments it is presumed that the petitioner was paying rent in the name of late father of the respondent, in my view, after the death of the respondent's father, when the petitioner admits that the respondent is the owner of the property, he should have started making the payment of the rent in the name of the petitioner and not in the name of his late father. I, therefore, agree with the findings of the Rent Controller and the appellate authority that since the petitioner has failed to comply with the order passed by the Court under Section 16(1) of the SRPO hence he has rendered his defence to be struck off under Section 16(2) of the SRPO.

8. It is a settled proposition of law that once a tenant accepts that the other person is his landlord, he cannot dispute rights of the said landlord so created in this behalf. Record reveals that there was a conflict between the parties as to in whose account the

amount of rent would be deposited and the Rent Controller as an interim arrangement only directed the petitioner to deposit the arrears of rent and the future rent till the matter is finally decided. It is also a settled proposition of law that orders under Section 16(1) are always to be treated as tentative and if the tenant fails to abide by the said tentative order his defence is liable to be struck off. It is an admitted position that even after passing of the tentative rent order the petitioner kept on paying rent in the name of the late father of the respondent, which fact is proved from the fact that the petitioner subsequently moved an application under Section 151 CPC for transfer of rent, meaning thereby that a default in making the payment of rent in a proper name has duly been admitted by him.

9. In my view, the decision relied upon by the learned counsel for the respondent is applicable to the instant case, wherein also after the death of respondent's father the appellant was asked to vacate the shop which the appellant refused and thereafter an application under Section 15 of the SRPO was filed and the learned Single Judge observed that "depositing of the rent in the name of the deceased landlord would not exonerate the liability to make payment of the rent to the respondent". In the instant case also admittedly the rents were deposited by the petitioner in the name of the late father of the petitioner which would not absolve the petitioner from making the payment of rent in the name of the respondent. Hence it has become evident that the petitioner has committed a default in complying with the tentative rent order passed by the Rent Controller under Section 16(1) of the SRPO and the non-compliance of the said order has rendered him liable for an action under Section 16(2) of the SRPO. I therefore do not find any reason to interfere in the orders passed by the two authorities below and dismiss this petition accordingly. The petitioner is directed to vacate the said premises within 60 days from today. Petition along with the listed application stands dismissed in the above terms.

Above are the reasons of my short order dated 10.11.2015.

JUDGE