

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-1465 TO 1470 OF 2019

Date

Order with signature of Judge

20.01.2021

Mr. Abdul Wajid Wyne advocate for petitioners.

Mr. Ghulam Abbas Pishori advocate for respondents No.1 to 4.

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ORDER

SALAHUDDIN PANHWAR, J. Heard learned counsel for respective parties and minutely examined the material available on record as well impugned judgments, recorded by both the courts below, whereby eviction applications have been allowed.

2. At the outset learned counsel for petitioner has attacked the maintainability of eviction applications on the plea that general power of attorney was executed in 2016 whereas eviction applications were filed in 2014; it is further contended that in 2016 executants were not owner, so how comes they can nominate to execute power of attorney.

3. On the other hand, the learned counsel for the respondent (s) has strongly opposed the petition while arguing that status of the petitioner as *tenant* is not disputed; legally the burden to establish timely payment of rent was upon the petitioner / tenant but he failed; there are concurrent findings of two court (s) below and petitioner has failed to point out any *material* illegality in findings hence instant petition merits dismissal.

4. Since this is a writ of *certiorari* wherein concurrent findings of the courts are challenged. It is settled principle of law that

question of facts, if not falling within the term of misreading and non-reading, cannot be questioned in writ petition, particularly in matter (s) of rent jurisdiction wherein the appellate Court is *final* authority. Reliance may be made to case of Shakeel Ahmed & another v. Muhammad Tariq Farogh & others 2010 SCMR 1925 wherein it is held as:-

“8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

Thus in such like matter (s), the burden becomes heavier upon challenger (petitioner) to *prima facie* establish a patent *illegality* in findings of two courts below which, too, should be shown to have resulted in some miscarriage of justice.

4. Here, a direct referral to findings of the appellate Court, being relevant, is made which reads as:-

“It is the stance of the appellant-tenant that he had paid the rent for the disputed period to the rent collector Kutub Abdullah but the rent receipt was not issued. The attorney of the appellant-tenant during his cross examination admitted that they did not send any notice or wrote letter to rent collector that after receiving he had not issued the rent receipt. Though it has been denied by the appellant/ tenant that the rent for the month of July 2012 was not paid but it is a matter of record that appellant-tenant filed an application dated 29.07.1015 wherein it was stated that the appellant-tenant was desirous to deposit the rent from November 2012 to July 2015. It is also apparent from the record that the application under section 16(1) SRPO was allowed on the said statement of the appellant-tenant and it was directed to deposit the rent for the disputed period. It is the contention of the learned counsel for the appellant/tenant that the rent for the

disputed period was deposited in the court under protest but this contention carries no weight for the reason that in the entire application dated 29-07-2015, it has not been mentioned that the appellant/tenant wanted to deposit the rent under protest rather the contents of the said application reveals that the appellant/tenant voluntarily sought permission to deposit the rent for the disputed period in pursuance of application u/s 16(1) SRPO filed by the respondents/landlords.

It is held in 1990 CLC 336 that *onus placed on landlord for proving the default stands sufficiently discharged when landlord deposes on oath that his tenant has not paid the rent for any given period of time, it is then for the tenant to prove affirmatively that he had tendered the rent for the disputed period.*

In the present case, the respondents/landlords categorically denied the payment of rent for the disputed period. The, evidence of the respondents/landlords can also not be shaken during the lengthy cross examination. On the other hand, the appellant/tenant failed .to produce any witness in whose presence the rent for the disputed period was paid to the respondents/landlords. It is also matter of record that the opponent has deposited the rent for the months of November 2012 to July 2015 in rent case after obtaining permission to deposit the rent in rent case vide order dated 29.07.2015. The appellant-tenant failed to bring on record any oral or documentary evidence to prove that the rent for the disputed period was paid or there was no default rather the court record itself reveals that the rent for the disputed period was paid after committing default. **It is a settled law that payment of rent after default is committed does not have effect of erasing default already made by him. It is held in 1989 CLC 673 that default in payment of rent having once been committed cannot be wiped out or erased by subsequent payment of rent.**

The above referral, *prima facie*, establishes that the petitioner / tenant failed in establishing *timely* payment of the rent as well failed to establish the *plea*, which he took, to prove payment of rent as he did not examine the person who, *allegedly*, was collecting rent from him on behalf of the respondents / landlords. There can be no denial to the fact that once the law *itself* has provided a mechanism to pay the *monthly* rent even where there exists no written agreement then then there could be no exception but proving the *timely* payment. I

am guided in such conclusion with the lights of the case of M/s Tar Muhammad Jnoo & Co. v. Taherali & others 1981 SCMR 93 wherein it is held as:-

7. In cases where there is no rent deed or written agreement, a tenant would be a defaulter if he failed to pay the rent within two months of the date when the rent became due. It is the duty of the tenant to pay or at least tender the rent to the landlord and he cannot be allowed to plead that the landlord did not make any effort to collect the rent. **The mere fact that a tenant has made it a habit not to pay the rent unless the landlord comes and collects it nor does it absolve the tenant from paying the rent every month.**

As regard plea of ownership or change of title from father to daughter, raised by the tenant in any way, cannot be an exception to allow the tenant to continue possession despite of default because *legally* such change does not cause any prejudice to obligations of the tenant to ensure payment of monthly rent within meaning of *prescribed* modes of such payment which includes deposit of rent in court. Admittedly father of respondents was landlord and subsequently property was transferred hence this *plea*, too, is of no help for the petitioner / tenant to avoid *legal* consequences of his own failure in assuring timely payment of monthly rent. The petitioner has failed to demonstrate that rent was paid by petitioner party as adjudicated, *concurrently*. Thus, captioned petitions are not maintainable and are dismissed. Since petitioner is an old tenant, therefore he shall evict the demised premises within six months from today.

J U D G E