

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

CP No. 3- 310 of 2018

CP No. 3- 761 of 2019

Petitioner : Nizamuddin Mansoori through
Mr. Hakim Ali Siddiqi, Advocate

Respondent : Abdul Latif and others through
Mr. Mazhar Ali Leghari, Advocate

Ayaz Ali Rajpar, Asstt: A.G.

Date of hearing : 09.09.2022
Date of Order : 16.09.2022

ORDER

ADNAN-UL-KARIM MEMON, J.

By this common order, I intend to

dispose of above captioned constitutional petitions as the parties to the petitions are the same and it involves similar facts and law.

2. Through captioned constitutional petitions, petitioner-Nizamuddin Mansoori, has called in question the judgments dated 24.1.2018 and 10.8.2019 passed by learned 1st Additional District Judge, Sanghar in First Rent Appeal No. 1 of 2015 (Re- Abdul Latif and others Vs. Nizamuddin and others) and 7 of 2018, (Re-Abdul Latif and others Vs. Nizamuddin Mansoori), whereby the learned Judge, while allowing the FRAs set-aside the order dated 25.11.2014 passed by learned Senior Civil Judge / Rent Controller, Sanghar, in Rent Application No. 01 of 2012. For convenience sake, an excerpt of the appellate order is reproduced as under:-

POINT NO.2

9). In view of my findings on point No:1, the impugned order is hereby set aside. Resultantly, the appeal in hand is allowed as prayed, the case is remanded back to the learned trial Court with direction to decide the matter as per law in view of the observation/order dated 24-01-2015 passed by the appellate Court in Rent Appeal No. 01/2015. Parties are to appear before executing court on 27-08-2019."

3. Mr. Hakim Ali Siddiqi learned counsel for the petitioner has argued that the order of appellate court is against the facts and law; that learned appellate court had no jurisdiction to set aside the Judgment of another appellate court; that in fact there was no order passed by earlier appellate court i.e. 1st Additional District Judge, Sanghar for eviction of the petitioner for the reason that the petitioner had been paying rent to the landlord of the rented shop; that the order passed by learned Rent Controller and Executing Court to dismiss the Execution Application on the ground that the order of appellate court does not contain any direction for eviction of the petitioner, which was justified in the circumstances; that the order of learned

2nd Additional District Judge, in IInd Appeal filed by respondents 1 to 4 is illegal, malafide in law and without jurisdiction and of no legal effect and is liable to be set aside and the order of Rent Controller was according to law.

4. The aforesaid stance of the petitioner has been refuted by Mr. Mazhar Ali Leghari, learned counsel for the respondent on the plea that in case of eviction of the tenant by the landlord if 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 suit for specific performance of sale agreement and in the present case he has lost the civil litigation before the civil court vide judgment and decree dated 5.1.2021, as well as his earlier Constitution Petition No. D- 2904 of 2015, was also dismissed by learned Division Bench of this court vide judgment 19.10.2017, thus he has no right to take up this position in second constitutional petition as his earlier stance has already been discarded by this court, therefore no further indulgence is required in the matter. He emphasized that so far as the determination of relationship of landlord and tenant is concerned, such inquiry by the Rent Controller is of summary nature, as the premises were taken by the petitioner on rent and according to the petitioner, he, later on, purchased the same which has been denied by the respondent thus the relationship in so far as the jurisdiction of Rent Controller is concerned stood established.

5. I have heard learned counsel for the parties and perused the record with their assistance.

6. In view of the stance of the parties, it is expedient to have glance at the factual position of the case, which shows that petitioner was running a business in rented shop, however, the private respondent purchased adjoining open area of 9928 sq.ft out of 12019 sq. ft from survey No. 950 Ward-A Sanghar and the shop of petitioner was / is situated in remaining unsold area of 2091 sq.ft; however, the respondents succeeded in filling Rent Application No. 01 of 2012 against the petitioner before learned Rent Controller for eviction of the petitioner on the ground of purchasing the subject area; the petitioner filed written statement denying the relationship of landlord and tenant; the parties adduced evidence and on the basis of evidence learned Rent Controller vide order dated 25.11.2014 held that no relationship of landlord and tenant existed between the petitioner and respondents; the respondents preferred 1st Appeal whereby learned 1st Additional District Judge, Sanghar vide Judgment dated 24.1.2018 allowed the appeal setting aside the order of learned Rent Controller with only direction to respondents to recover arrears of rent in accordance with law; that subsequently respondent filed Execution Application before Senior Civil Judge and Rent Controller who dismissed the Execution Application on the ground that in appeal the respondents had been allowed to recover arrears of rent and no other relief had been granted, hence the Execution Application being not maintainable was dismissed; that against the said order of dismissal of Execution Application the respondents filed Rent Appeal No. 07

of 2018 and learned 2nd Additional District Judge, Sanghar set-aside the order of dismissal of Execution Application and remanded the matter to learned Senior Civil Judge, Sanghar for decision as per law in the light of the order dated 24.1.2015 passed by the appellate court in FRA No.1 of 2015.

7. Before addressing the grounds taken by the petitioner, I have to make it very clear that in rent matters, this Court in Constitutional Petition has a narrow scope under the Constitutional jurisdiction in terms of the ratio of the judgment rendered by the Honourable Supreme Court in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (2001 **SCMR 338**), however in the present matter, the petitioner has reservation against the appellate orders as discussed supra.

8. The main theme of the arguments of learned counsel for the petitioner is that complete particulars of the subject premises and boundaries thereof were / are not particularly specified by the respondent in his rent application and his entitlement over the subject premises, thus the jurisdiction of learned rent controller was challenged on the premise that, there was no relationship of landlord and tenant between the parties; so far as the land in possession of the petitioner is concerned; besides the controversy regarding ownership could only be determined by civil court, which is a court of ultimate jurisdiction and not in the ejectment proceedings under SRPO, 1979, thus the view taken by the rent controller was quite correct when he dismissed the rent application; which was erroneously upset by the appellate courts on wrong notion; that the evidence which has come on record in favor of the petitioner has not been appreciated by the appellate courts in the impugned orders / judgments, in its true perspective which resulted in serious miscarriage of justice. He emphasized that the issue 'whether relationship of landlord and tenant exists between the parties' was one of jurisdiction and ought to have been determined first by the appellate courts, however, nothing could be done; that the Appellate Court had no jurisdiction to set aside the judgment of another Appellate Court of equal jurisdiction in FRA No.1 of 2015; that there was no order passed by the earlier Appellate Court for eviction of the petitioner from the rented premises, for the reason that the petitioner had already been paying rent to Mst. Riffat Shahnaz, the widow of deceased previous owner of the rented premises; and, subsequently the petitioner purchased the area 22x95=2090 sq. ft, out of City Survey No. 950, which was/is a big plot measuring 12019 sq. ft, however, the respondent had purchased only a portion of 9928 sq. ft. without sub-division and ground demarcation. Per learned counsel, the portion with the constructed shop in possession of the petitioner did not fall in the portion of plot admeasuring 9928 sq. ft. purchased by the respondent. He lastly submitted that the order passed by learned Rent Controller and Executing Court to dismiss the Execution Application was legal and justified in the circumstances.

9. To appreciate the aforesaid stance it is expedient to have glance at the judgment dated 24.1.2018 passed in FRA No.1 of 2015; an excerpt whereof is reproduced as under:-

“13. The file of the Case and R & P showed that the appellants acquired title in the City Survey No. 950 through a Registered Sale Deed No. 18 dated 11.1.2010 from the legal heirs of deceased Ch. Javed Iqbal and therefore they became entitled to the benefits thereof which also includes rents from its tenant. It also came on record that Respondent No.1 had been served with a Notice dated 8.6.2011 wherein it was specifically mentioned that City Survey No. 950 has been conveyed to the appellants through Registered Sale Deed thereafter the Respondent No.1 was duty bound to tender rent to the Appellants, which the record of the file showed was not tendered on the ground of altogether denying relationship of landlord and tenant and by asserting that the area 22x95=2090 sq. ft. has been purchased by the Respondent No. 1 from Mst. Riffat Shahnaz the widow of the deceased previous owner of the rented premises. Further ground agitated by the Respondent No. 1 in the rent case was that Survey No. 950 is a big plot measuring 12019 sq. ft. the Appellants have purchased only a portion of 9928 sq. ft. without sub-division and ground demarcation and the portion with the constructed shop in the possession of the Respondent No. 1 does not fall in the portion of plot admeasuring 9928 sq. ft. purchased by the Appellants. Therefore the question of payment of rent to the appellants was out of the question. Nizamuddin Mansoori (Respondent No. 1) in his Affidavit in Evidence (Exhibit 26) deposed that he has been paying rent to the previous owner by depositing the same in the bank account maintained in the joint name of Jasim Rasool and Hammad Rasool. Hammad Rasool is son and Jasim Rasool is brother of late Javed Iqbal. (The previous owner).

14. It may be noted that though it was claimed by Respondent No.1 that the portion of City Survey No. 950 with the constructed shop in his possession does not fall in the portion of plot admeasuring 9928 sq. ft. purchased by the Appellants however, nothing was brought on record by Respondent No.1 to show that the portion of City Survey No. 950 with the constructed shop in his possession does not fall in the portion of plot admeasuring 9928 sq. ft. purchased by the Appellants though it was incumbent upon the Respondent No. 1 to prove this assertion by producing evidence, this objection of Respondent No. 1 with regard to the relationship of landlord and tenant in absence of any evidence is unjustified. The Appellants have claimed the tenancy with the Respondent No. 1 on the basis of Sale Deed dated 11.1.2010 in regards to the rented premises though the said Sale Deed execution of has not been denied by the Respondent No.1 however, he has only denied the relationship of landlord and tenant on the plea that rented premises does not fall in the portion of plot admeasuring 9928 sq. ft. purchased by the Appellants but no prima facie evidence was given in support of this assertion under the circumstances it is hard to believe that rented premises fall within the unsold portion of 2090 sq. ft. especially when Mst. Riffat Shahnaz the widow of the deceased and other legal heirs of the previous owner of the rented premises have not come forward to make such a claim. I am fortified by a judgment in the case of Ghulam Rassol v. Mian Khurshid Ahmed, 2000 SCMR 632. It is pertinent to note that Respondent No: 01 sabotaged all efforts of appellants to get the property officially demarcated which proves malafide on his part. Further, on the one hand, he claimed himself to be the purchaser of a portion of 2090 Sq: Ft: but on the other hand he is paying rent albeit, to the wrong person(s) who are not the landlord. It is a settled law that one cannot blow hot and cold in the same breath. It proves that Respondent No: 01 is adamant to keep possession of rented premises by a hook or crook if he is claiming to be purchased why is he paying rent? Maybe to keep possession without any justification.

15. Admittedly, the Respondent No.1 has not been paying the rent to the Appellants under the garb of a non-presence landlord-tenant relationship

but depositing the same in the bank account maintained in the joint name of Jasim Rasool and Hammad Rasool who are brother and nephew of late Javed Iqbal (previous owner) who are neither landlord nor the legal heirs of the previous owner of the rented premises, in such situation Respondent No. 1 would be deemed to be a defaulter since 8.6.2011 Legal Notice (Exhibit 15/E) was served on Respondent No. 1, in terms of section 18 of the Sindh Rented Premises Ordinance, 1979, receipt of which has been admitted by Respondent No.1 by reply dated 11.6.2011. In such a case of flawless proven default finding on personal bonafide need would be redundant, hence this aspect is not being discussed.

16. The above glaring aspects of the case have been ignored and/or overlooked and not considered at all by the trial Court and its decision on the landlord-tenant relationship is merely based on non-appreciation and/or misreading and non-reading of evidence and law altogether. In a given case this Court in the exercise of its appellate jurisdiction can overturn the decision of the trial Court if a wrong or illegal conclusion is drawn by the trial court and is not based on facts found as such an act would amount to an error of law which can always be corrected by this Court. Therefore, order of the trial Court is set aside and the instant appeal is allowed with no order as to costs."

10. The findings of learned appellate court explicitly show that the first appellate court in its order dated 24-01-2018 passed in Rent Application No.01/2015 had set aside the dismissal order of Rent Controller vide order dated 25-11-2014 and allowed the appeal and the appellants were left at liberty to recover the arrears of rent under law. Perhaps the petitioner has misconceived the things and presumed that no order for his eviction was passed by the first appellate court, though the setting aside of impugned order of the trial court by the appellate courts amounts to overturn of the decision of trial court, hence, filing of execution application by the respondent was justified under the circumstances; furthermore, in principle the order of trial court simply was set-aside, it means the main Rent application stood allowed which is apparently for eviction of the tenant from rented premises as prayed in rent application.

11. Besides, the ground taken by the petitioner that mere allowing an appeal without giving specific date for eviction to the tenant is illegal, hence, it was/is not executable order. Primarily this stance is untenable under the law for the simple reason once the order of rent controller is set aside and under appellate order the application stood allowed which means the tenant is liable to vacate the premises as prayed; therefore, the execution application for ejection of demise premises, was quite maintainable and the appellate court rightly set at naught the order passed by the executing court.

12. A review of the judgment passed by learned appellate Courts as discussed supra, shows that it is well reasoned, speaking, and rendered after considering all the material aspects of the case within the four corners of law and no illegality, patent error, or material irregularity apparent on the surface, which requires interference of this Court in Constitutional Petition which has narrow scope and this court could not have taken cognizance of under the constitutional

jurisdiction in terms of the ratio of judgment rendered by Honorable Supreme Court in the case of Muhammad Lehrasab Khan supra.

13. Primarily, all the pleas taken by the petitioner in the present proceedings are found to be untenable in terms of the ratio of judgments passed by learned appellate courts as this court does not have to revisit the decisions as discussed supra on the aforesaid purported stance of the petitioner.

14. In the given circumstances, where no mandate is available in the Constitution to openly interfere with the rent proceedings; consequently the Petitions are dismissed with costs, with direction to the petitioner-tenant to vacate the demised premises within next 30 days from today and handover the possession of the subject premises to the respondents/landlord.

Karar_Hussain /PS

JUDGE