

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitution Petition No. S-564 of 2021

[Muhammad Shareef Vs. Sallahuddin]

For orders on M.A No.2203/2022

21.11.2022

Mr. Muhammad Sohail Jamali, advocate for petitioner
Mr. Mushtaq Ahmed Arain, Advocate for respondent

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Date of hearing & order: 21.11.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the listed application being M.A No.2203 of 2022 petitioner is seeking restoration of instant petition as it was dismissed on account of non-prosecution on 13.10.2022; however, Mr.Mushtaq Ahmed Arain, Advocate appearing for respondent waives notice and raised no objection for restoration of instant petition, hence the application for restoration of instant petition is allowed.

2. Petitioner has prayed for setting aside the impugned order dated 02.10.2021 passed by learned 4th Additional District Judge/MCAC Shaheed Benazirabd whereby his application under Order IX Rule 9 C.P.C filed in Rent Application No.3 of 2017 for reopening of proceedings under Section 12(2) C.P.C was declined. He also prayed that process in respect of writ of possession in Execution Application No.01 of 2018 passed by the Trial Court may be stopped and the matter be remitted to the Trial Court for deciding his application under section 12(2) CPC on merits.

3. Brief facts of the case are that respondent filed Rent Application No.3 of 2017 against the petitioner alleging therein that he is owner and landlord of premises (upper story) constructed on plot No.24 bearing City Survey No.557-558, admeasuring 33 sq. yards situated in Bismillah Masjid Wali Gali Mahajir Colony Hussain Road Old Nawabshah as it was transferred to him by Katchi Abadi through sale deed dated 02.06.1998 after paying sale price; pursuant thereto mutation was effected on 16.04.2006; however, he rented out the upper story to petitioner Muhammad Shareef being his friend initially at the rate of Rs.1000/- per month but since 2016 rent of the suit premises was increased up to Rs. 2200/- per month but the petitioner, later on, stopped payment of utility bills hence he was served with legal notice; subsequently he filed a false suit through his wife Mst. Firdos Begum

pleading therein that she is residing in plot No.50 for last 35 years same pertains to katcha abadi hence its entitlement be transferred to her based on her possession but the fact is that there was no existence of plot No.50 instead there was plot No.24 belongs to petitioner wherein respondent with his family was residing; that said suit was rejected on 10.07.2017 by learned 3rd Senior Civil Judge Nawabshah; that the said dismissal was not challenged in appeal hence attained finality; that subsequently on account of default in payment of rent and utility bills instant proceedings for ejection had been initiated against the petitioner.

4. I have heard learned counsel for the respective parties and have also gone through the record with their assistance.

5. Learned counsel for the petitioner contends that by way of managed documents respondent No.1 filed ejection proceedings against the petitioner who purchased katchi abadi house many years ago and has been in possession thereof along with his family, whereas respondent No.1 was never in possession of the portion as claimed by him. After coming to know about the same, an application under Section 12(2) C.P.C was filed before the Trial Court which was dismissed for non-prosecution whereafter the second application under Section 12(2) C.P.C was entertained to the extent of framing of issues and leading evidence, unfortunately, the present petitioner was unable to lead evidence hence the same was also dismissed however conditional order was passed for restoration providing an opportunity against payment of cost of Rs.3000/- and the affidavit in evidence, but again unfortunately despite making payment of cost of Rs.3000/- said affidavit could not be filed as it was the last working day and link of identification branch was not available. The said order was challenged in Civil Revision which was also dismissed; the order of which has been impugned as it has not been considered that events of the day of incident/default are liable to be considered primarily. He prayed for the restoration of the instant petition and thereafter allow the instant petition as prayed.

6. On the other hand respondent No.1 has submitted that he is owner and landlord of the premises (upper story) constructed on plot No.24, bearing City Survey No.557-558 area 33 sq. yards situated in Bismillah Masjid Wali Gali Muhajir Colony Hussain Road old Nawabshah. The plot was transferred by katchi abadi to him through sale deed dated 2.6.1998 after payment of sale price, such mutation was effected in the city survey on 16.04.2006; that he rented out the subject premises to petitioner at the rate

of Rs.1000/- per month but since June 2016 the rent of premises was increased and fixed at Rs.2200/- per month; that on the ground floor one Dr. Muhammad Usman who lateron vacated the premises and now respondent No.1 owns the ground floor in the intervening period no formal rent agreement was executed due to cordial relations between the parties. However, respondent No.1 served upon the petitioner legal notice dated 20.03.2015 who avoided paying rent and other utility charges thereafter he filed Rent Application No.3 of 2017 before learned 1st Senior Civil Judge/Rent Controller Nawabshah which was allowed vide order dated 30.11.2017 with direction to the petitioner to vacate rental premises and deliver its vacant peaceful possession to the respondent No.1 within three months; however, he failed to comply the order and initiated proceedings before different forums lastly before 4th Additional District Judge Shaheed Benazirabad by filing Civil Revision Application No. 22 of 2021 which was dismissed vide order dated 02.10.2021 and now the petitioner has filed the instant petition with frivolous grounds. He prayed for dismissal of this petition.

7. I asked the learned counsel for the petitioner as to how this petition is maintainable against the orders passed by the competent forums as he has failed to produce documentary evidence to substantiate the claim of ownership of subject premises, learned counsel simply relied upon the statement dated 20.10.2021 and submitted that the petitioner has been paying utility bills, as such, she is the owner of subject property. I am not satisfied with the assertion of learned counsel for the petitioner for the simple reason that rent proceedings initiated by the Rent Controller attained finality as no statutory proceedings were initiated against the decision of the learned Rent Controller; however, the petitioner preferred various applications before the Courts below as well as Civil Revision No.22 of 2021; and failed to achieve the desired results. In view of the above as well as in absence of the title documents in favour of the petitioner this Court will not be in a position to discard the point of view of the respondent in whose favour the orders have been passed.

8. In view of the above facts and circumstances of the case, I do not see the violation of any fundamental rights of the petitioner that have been infringed to attract Article 199 of the Constitution; therefore, this petition is dismissed with no order as to costs.

JUDGE