

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-711 of 2022

[Muhammad Ilyas Azadv..... Aqeel Ahmed]

Date of Hearing : 06.03.2023
Petitioner through : Mr. Tariq Hussain, Advocate.
Respondents through : Mr. Jamshed Qazi, Advocate for the respondent.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 15.03.2022 as well as first Appellate Court dated 30.07.2022.

2. The facts in *minutiae* are that respondent being owner/landlord of House No.B-18, Sector-V, Block-III, gulshan-e-Maymar, Karachi (“tenement”) filed an ejectment application under Section 15 of Sindh Rented Premises Ordinance, 1979 (“SRPO”) on the ground of default was allowed by the learned Rent Controller/Trial Court vide order dated 15.03.2022 and the petitioner was directed to vacate the tenement within 30 days. The Petitioner impugned the said order of the learned trial Court before the Appellate Court by filing FRA No.83 of 2022 which was dismissed vide order dated 30.07.2022 on the ground that the said FRA is barred by limitation, hence the petitioner before this Court.

3. The petitioner’s case is premised on the argument that the petitioner is owner of the tenement and not a tenant as well as there is no relationship of landlord and tenant, therefore, such a rent case was not maintainable. He further contended that the rent/eviction proceedings initiated against the petitioner by the respondent were ex parte proceedings as the petitioner was never served to contest

the proceedings before the learned Rent Controller and during the proceedings before the learned Rent Controller, the petitioner was out of Karachi and was in Azad Kashmir being a cope and to support this contention he drew Court's attention to page 185 which is a certificate showing that the petitioner was out of Karachi.

4. Learned counsel for the respondent argued that this Court lacks jurisdiction to adjudicate the contentions of the petitioner for which the remedy is of a Civil Court and this Court is confine to see whether any misreading and nonreading of evidence has been committed by the courts below. Learned counsel concluding his submissions argued that the concurrent findings of the courts below cannot be disturbed, therefore, the petition in hand be dismissed.

5. I have heard learned counsel and have also considered the record to which surveillance of this Court was solicited. The petitioner stated that respondent agreed to sell the tenement him vide agreement dated 11.03.2020 (available at page 113), he has filed a civil suit bearing No. 1567 of 2021 for "Specific Performance" of the agreement in respect of the tenement in this Court (available at page 99) hence, relationship of landlord and tenant between the parties did not exist, therefore, he was not bound to pay rent to the petitioner and order passed by learned Rent Controller is illegal.

6. Admittedly respondent is owner of tenement in question and petitioner is in possession of the same since January, 2020. The petitioner has taken the plea that respondent has agreed to sell tenement in his favour and he is in possession as owner not as tenant. Even otherwise, mere pendency of civil suit in Court cannot defeat, prima facie, established title for purpose of rent cases under the

Rent Ordinance. The genuineness or otherwise of alleged agreement and its consequential effect would be independently determined by the civil Court. It is settled law that till the time tenant was able to establish his claim for “specific performance” on the basis of alleged sale agreement, the landlord would continue to enjoy the status of being owner or landlord of the premises and the relationship between the parties till such time would be regulated by the terms of tenancy and the tenant cannot legitimately resist the maintainability of ejectment proceedings pending against him on the ground of sale agreement. This argument is strengthened by the dictum laid down in the cases of Haji Jumma Khan v. Haji Zarin Khan (PLD 1999 SC 1101), Iqbal and 6 others v. Mst. Rabia Bibi and another (PLD 1991 SC 242), Waheed Ullah v. Rehana Nasim (2004 SCMR 1568) and Muhammad Nazir v. Saeed Subhani (2002 SCMR 1540). So in the circumstances of the case, I find that claim of petitioner is baseless.

7. The sale agreement itself does not confer any title on the tenant unless the same was determined by the Court of competent jurisdiction. Reliance in this context can be placed on the case of Mst. Bor Bibi and others v. Abdul Qadir and others (1996 SCMR 877). Such agreement (Agreement to sell) would not in my humble view permit denial of rent by tenant from the date of entering into the agreement. Reference may be made to the case of Haji Jan Muhammad v. Ghulam Ghous and 2 others (1976 SCMR 14) and Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan (PLD 1986 Karachi 74).

8. Last but not least, Article 115 of Qanun-e-Shahadat Order, 1984, reproduced hereunder also strengthens landlord’s right against

any charges in such a relationship, in fact the said Article puts an estoppel to tenant to deny the landlord/tenant relationship during the continuance of the tenancy.

115. Estoppel of tenant and of licensee of person in possession: *No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.*

9. Reverting to the petitioner's claim to the effect that he was out of Karachi and within the precincts of Azad Jammu & Kashmir, therefore, the proceedings before the learned Rent Controller remained *ex parte*. To meet with the said submission, I may say that the learned trial Court based his findings having looked into the record produced by the respondent/landlord which clearly reflects that the petitioner committed default in payment of rent and since November, 2020 the petitioner stopped paying rent to the respondent, therefore, if the petitioner even was present before the learned Rent Controller how would he satisfy such default. As to his *ex-parte* status, following text is reproduced from the Judgment of the learned Rent Controller, which suitably answers such concerns:-

“...After admission of above rent case, notices were issued for service upon the opponent through bailiff, pasting, courier and Reg. A.D. Pursuant thereof, Mr. Muhammad Arshad Khan, Advocate filed vakalatnama on behalf of opponent on 20.10.2021, whereafter, matter was adjourned for filing of written statement and counter affidavit/objections on application under section 16(1) of SRPO, 1979. Since opponent failed to file written statement, and counter affidavit/objections on said application despite opportunities, as such he was debarred from filing the same and matter was ordered to be proceeded *ex parte* against opponent vide order dated

02.11.2021. Thereafter, opponent filed an application for recalling of said order dated: 02.11.2021, which was allowed vide order dated 04.12.2021, whereby order dated: 02.11.2021 was recalled and opponent side was given last and final chance to file written statement and counter affidavit/objection on application under Section 16(1) of SRPO, 1979. However, opponent again failed to file written statement and counter affidavit/objection on application under Section 16(1) of SRPO, 1979, as such opponent was again debarred from filing the same and matter was again ordered to be proceeded ex parte against opponent vide order dated: 15.12.2021. Subsequently, opponent filed an application for recalling of order dated: 15.12.2021, but the same was dismissed vide order dated: 04.01.2022.”

10. In view of the above rationale and deliberation, the petition becomes meritless, thus dismissed alongwith pending application.

Karachi
Dated: 06.03.2023.

JUDGE

Aadil Arab