

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-36 of 2023

[Abdul Rasheed Khanv..... Muhammad Rizwan Kamali & others]

Date of Hearing : 27.01.2023
Petitioner through : Mr. Abdul Latif Leghari, Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails findings of the learned trial Court dated 31.03.2022 as well as those of the first Appellate Court dated 12.12.2022 which are against the petitioners.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.188 of 2020 before learned Rent Controller, East at Karachi and pending adjudication of the said Rent Case, the respondent No.1 preferred an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 (“SRPO”) beseeching therein for arrears of rent, which application was allowed vide order dated 10.02.2022 with directions to the petitioner to deposit rent at the rate of Rs.30,000/- per month with further directions to the petitioner to deposit arrears of the rent within twenty days. Owing to the non-compliance of the order dated 10.02.2022, the respondent No.1 preferred an application under Section 16(2) SRPO in the said Rent Case praying for striking off the defence of the petitioner and eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 31.03.2022 and petitioner was directed to vacate the tenements within thirty days. The petitioner assailed the said order before the learned Appellate Court by filing FRA No.90 of 2022 and the learned Appellate Court having heard the

parties dismissed the said FRA vide order dated 12.12.2022, hence the petitioner is before this Court against such concurrent findings.

3. The petitioner's entire case was premised on the argument that he is owner of the demised property and not the tenant but both the courts below failed to appreciate such fact and order of eviction from the tenement has been rendered without going through the record and proceedings.

4. I have heard learned counsel and have also considered the record to which surveillance of this Court was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law that the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Rent Controller went on to hold as under:-

“5.Since in the above facts and circumstances of the case and dictum laid down in the cited case laws, the appellant has committed willful default in payment arrears of rent and future monthly

rent in compliance of tentative directions contained in the order dated 31.03.2022, passed by learned Rent Controller on an application under section 16(1) SRPO, 1979, hence I do not find illegality or irregularity whatsoever in the impugned order. Accordingly, the point No.1 is answered in negative.

Point No.2

For what has been discussed above, impugned order requires no interference. Accordingly, FRA being devoid of merits stands dismissed, with no order as to costs. The appellant is directed to vacate the premises within one month of this order.

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the petitioners failed to comply with the order of the learned Rent Controller passed on application under Section 16(1) SRPO whereby he was directed to pay rent, which act is in complete defiance of the order of the learned Rent Controller. Not only so, the petitioner also failed to pay the arrears of rent as directed earlier. The prescriptions of Section 16(2) SRPO are very clear that when the tenant fails to comply with the order of the learned Rent Controller passed under Section 16(1) SRPO, his defence is to be struck off and the landlord is to be put into possession of the tenement. It is considered pertinent to reproduce Section 16(2) SRPO which is delineated hereunder:-

“16. Arrears of rent.-(1).....

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.

(3).....”

7. The statutory prescriptions are very clear that where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises. The striking of defense in rent case is not mere technically as there is use of the word “shall” in Section 16(2) SRPO, 1979 that leaves no room to deny, defer or camouflage a statutory right accrued to respondent No.1 after acknowledging that the purpose of Section 16(2) SRPO, 1979 is to struck off the defence and the learned Rent Controller. The Appellate Court in my view rightly passed the impugned order against the petitioners. My lord Mr. Justice Mushir Alam, (as his lordship then was as Judge of the Hon’ble Supreme Court) in the case of Syed Asghar Hussain v. Muhammad Owais & others¹ held that *“when a tenant fails to deposit arrears of rent his defence must be struck off. Hon’ble Supreme Court held that best course for the tenant could have been to comply with the tentative rent order under S. 16(1) and to have contested the matter to its logical conclusion thereafter”*.

8. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of

¹ 2018 SCMR 1720

law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.²

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi
Dated: 27.01.2023.

JUDGE

Aadil Arab

² Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).