

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-128 of 2023

[Azhar Iqbalv..... Mst. Farah Masoom & others]

Date of Hearing : 17.02.2023
Petitioner through : Mr. Khalid Rahim, Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails an interim order dated 16.01.2023 passed by learned respondent No.2/Rent Controller on an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 (“SRPO”) in Rent Case No.172/2022.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.172 of 2023 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) SRPO beseeching therein for arrears of rent, which application was allowed vide order dated 16.01.2023 with directions to the petitioner to deposit rent at the rate of Rs.60,000/- per month alongwith arrears of rent from March, 2022, the petitioner has chosen to challenge the said interim order.

3. The petitioners’ 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, but contrary to that, the learned Rent Controller without considering submissions of the petitioner has chosen to passed the impugned order.

4. Since this is a fresh petition and fixed before the Court in the category of “Fresh Case”, I have heard learned counsel and have also

considered the record to which surveillance of this Court was solicited. As mentioned above respondent No.1 filed application under section 16(1) SRPO against petitioner asserting therein that the petitioner is in possession of tenement and defaulted in payment of monthly rent, therefore, he be directed to deposit arrears of rent in the Court. However, the petitioner stated that respondent No.1 agreed to sell the subject property to him vide agreement dated 16.08.2021 (available at page 123), he has filed a civil suit bearing No. 2652 for “Specific Performance” of the agreement in respect of the agreement of the tenement in the Court of VIII Senior Civil Judge East, Karachi 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.

5. Admittedly respondent No.1 is owner of tenement in question and petitioner is in possession of the same since August, 2021. The petitioner has taken the plea that respondent No.1 has agreed to sell suit property 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 Restriction 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.

6. 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).

7. 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.

8. Another important aspect of the case is that petitioner has chosen to challenge an interim order passed by learned Rent Controller through the instant Constitution Petition which is strictly barred¹.

9. In view of the above rationale and deliberation, the petition at hand is dismissed alongwith pending applications fixed today.

Karachi
Dated: 17.02.2023.

JUDGE

Aadil Arab

¹ Mst. Seema Begum v. Muhammad Ishaq (PLD 2009 S.C. 45)