IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 306 of 2023

Petitioner	:	Muhammad Salik Athar through Qazi Hifz-ur-Rehman advocate
Respondents	:	Nemo
Date of hearing	:	11.04.2023
Date of judgment:	:	11.04.2023

JUDGMENT

Salahuddin Panhwar, J: This petition assails order dated 27.02.2023 passed by learned District Judge Karachi Central in FRA No. 11 of 2022 and order dated 14.12.2021 passed by learned XII-Rent Controller Karachi Central passed in Rent Case No. 481/2019, whereby, it was inter-alia directed to the petitioner to vacate the demised premises and handover its peaceful possession to the respondent No.1.

2. Concise relevant facts are that respondent No.1/landlord being owner of shops No.6 and 7 situated on Plot No. B-115, Block-H, North Nazimabad, Karachi, filed an application before the learned Rent Controller against the petitioner and one Shamim on the ground of default and, personal bonafide need, which was allowed vide order dated 14.12.2021, hence the same was assailed in FRAs before learned District Judge, Karachi Central, but both the FRAs were dismissed vide impugned order dated 27.02.2023, hence this petition.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned orders without taking into consideration the material brought before them; that there exists no relationship of tenant/landlord between the parties; that the agreement of sale and payment receipts prove the entitlement of petitioner which could not be discarded without reference of tangible material; that the tenancy agreements were dummy in nature; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned orders. It is lastly prayed that impugned orders Rent Controller/ Appellate Court may be set aside.

4. Heard and perused the record.

5. Now, before proceeding further, it needs to be reiterated that this Court, *normally,* does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie,* appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened.* It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

> **"Point No.1**.
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> As soon as appellant/tenant was served with a notice of rent application, he started pleading that he was not tenant of respondent No.1 but claimed to have purchased the premises in question for a huge amount of sale consideration which he claimed to have paid to the respondent No.1 on different timings. Learned Rent Controller while discussing the above point of relationship between the parties as landlord and tenant focused on the suit filed by the respondent No.1 for Specific Performance of Contract in respect of the same shops, which suit/plaint was rejected U/O VII Rule 11 CPC by the then learned Senior Civil Judge of the same court. Learned Rent Controller quoted certain answers of the respondent given during course of his evidence that his suit for Specific Performance of Contract met with the fate of rejection of his plaint and that no appeal/revision was filed against such order. Thus order of rejection of the plaint attained the finality.
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> Learned Rent Controller also discussed certain other aspects of the issue in hand dealing with relationship of the parties. The appellant filed written statement in which annexed an agreement of sale through which he claimed to have purchased the shops in question at Ex.A/6 and annexed a receipt of Rs.1,00,000/- vide bank cheque of M.C.B. North Nazimabad, Karachi in which it is mentioned that such payment was being made as part payment towards the total **goodwill** sale amount in respect of Shop No.6, etc. The agreement of sale upon which the entire structure of the appellant was built, was produced as Ex. A/7 and paragraph 4 of sale agreement paints a different picture whereby following condition was mentioned:-
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> > **(4). That the Vendors and Vendee shall execute Tenancy agreement of Rs. 500/- per month at the time of final payment, also the shall charge 5% of the total goodwill amount being change of receipt"**
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> The above clause clearly suggests that whatever the amount was paid, the same was the goodwill amount.
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> The goodwill or pugree though remained in practice at some areas of Karachi but it has not been recognized by Sindh Rented Premises Ordinance, 1979, therefore, status of pugree is not more than a tenancy agreement. The receipt, sale agreement and other documents so relied by the appellant duly produced during course of his evidence clearly mentioned the word of

goodwill/pugree, which did not make transaction as a sale agreement. Learned Rent Controller has quoted portion of the order of his predecessor, who rejected the plaint, which order, as stated above, has attained the finality, therefore, the question of relationship of the parties was rightly decided by the learned Rent Controller in favour of respondent No.1.

It is settled law that where the relationship of landlord and tenant has been denied and the person claiming such claim, failed to establish his claim, there is no need to prove the default. However, in this matter, learned Rent Controller at Page No.12 to 15 elaborated the quantum of rent duly paid by the appellant to the respondent No.1 and perusal of such observation which was based upon proper appreciation of evidence and the documents so produced by the parties, reflects that the appellant was persistent defaulter, who did not pay rent regularly but had been paying rent in lump sum which otherwise was enough to bring him within the definition of defaulter. The findings of learned Rent Controller are based upon proper appreciation of evidence and law, regarding the default.

The respondent No.1 had also claimed the shop in question for his personal bonafide need and in his rent application so also affidavit-in-evidence he mentioned that the same was required for the use of his family members. Such claim was made in Para-8 of his application and the appellant denied contents of Para-8 in Para-6 of his written statement in which, he has not specifically denied the requirement of respondent No.1 for personal bonafide need but kept pleading that shops in question were purchased by him from the respondent No.1 and his brother Shahzad Arif.

The respondent No.1 in his affidavit-in-evidence again reiterated requirement of the shops in question for his personal bonafide need in Para-9. However, it was not confronted nor he was put any question during his lengthy cross-examination conducted by learned counsel for the appellant that the property was not required by the respondent No.1 for his personal bonafide need for the use of his family members. Such position, brings concept of admitted position on the part of opponent/appellant as it is settled law that if any person claiming property for his personal need and remained consistent with such plea during course of his evidence he succeeds to establish such plea as the case in hand. Since he was not rebutted/confronted such claim, same deemed to have been admitted. Learned Rent Controller rightly observed the above situation and answered the point of personal need in favour of respondent No.1.

It was also the case of respondent No.1/ applicant/landlord that the appellant had sublet his property to one Shamim Akhtar and said Shamim Akhtar has also challenged the findings of learned Rent Controller and filed F.R.A No. 15/20222. When he was asked as to how he could file the appeal when there was no finding against him for subletting the property, Mr. Mubarak Ali, learned counsel contended that since the order of learned Rent Controller was to vacate the premises by the appellant Muhammad Salik Athar who had rented out the property to him, under the terms of his agreement with respondent No.1, he is to be effected by the eviction order, therefore he filed separate appeal. Here is very interesting situation with said Shamim Akhtar he claimed that he was put into possession by Muhammad Salik Athar and he had been paying the rent to him regularly for which said Muhammad Salik Athar had consent of landlord/seller of the property Muhammad Ubaid, therefore he was rightly in possession of the shops in question. But quite contrary, appellant Salik Athar leveled allegations against said Shamim Akhtar that he was running business of property with respondent No.1, who was given shops to look-after and he had also sublet his Shop No.7 to one Tariq from whom he got the premises vacated with the help of Rangers. It is pertinent to mention here that that Rangers had no such authority to interfere in civil dispute of parties.

I am afraid that such plea of Shamim Akhtar has no weight at all as despite the fact that point of subletting went against the respondent No.1, yet the appellant Muhammad Salik Athar was under his duty to pay the rent of the shops in question to the respondent No.1 for which findings of learned

Rent Controller are against him, same are based upon proper appreciation of evidence and law, therefore such findings cannot be touched.

On the basis of what has been discussed above, I am of the view that no element of misreading of evidence and pleading, non-reading of any aspect of the matter was found in the findings of learned Rent Controller which are based upon proper appreciation of law, therefore, such findings cannot be called in question in this appeal. **I, therefore answer the above point in affirmative."**

6. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:

"Furthermore, the opponent No.1 in his written statement/objections and evidence produced through his attorney has admitted that after execution of the Sale Agreements, opponent No.1 applied for license of Bar B Q restaurant and for gas meter, but the concerned departments required title documents or tenancy agreement, thereafter, dummy tenancy agreements were issued to the opponent No.1 and the opponent No.2 submitted the tenancy agreements for license of food and gas meter, on his own name (opponent No.1). Such shows that the opponent admitted that the tenancy agreements were executed between the applicant and the opponent No.1. So far the excuse taken by the opponent No.1 that such rent agreements were dummy rent agreements and were executed to enable the opponents to obtained license of food business and obtaining gas connection, is concerned, I do not see such excuse carries any weight, as at the time of presenting the rent agreements before the relevant food and gas Authorities, the opponent No.1 posed the rent agreements to be genuine. Therefore, the opponent cannot be permitted to change his stance about those rent agreements at this stage before this Court, for the reason that the opponents are estopped from doing so. Moreover, the opponent No.1, while cross examining the applicant suggested, which was agreed by the applicant that Ex.A/2 and Ex.A/3 (the rent agreements produced by the applicant in support of his claim) bear signatures of opponent No.1, as lessee. Therefore, for the reasons discussed above, I am of the considered view that there exists relationship of landlord and tenant between the applicant and the opponent No.1.

Moreover, the opponent No.1, while cross examining the applicant suggested, which was agreed by the applicant, that the Ex.A/10 (letter dated 15.05.2013 of Shakir Athar with photostat copy of cheque dated 15.05.2013 amounting Rs.94,000/- along with letter and envelop sent by opponent No.1 to applicant) is pertaining to advance rent, property tax and water charges for the year, 2013 and that in the paragraph No.8 of affidavit in evidence, the applicant wrote that the opponent No.1 did not pay rent since April, 2011, but according to the Ex.A/10, the plaintiff has paid rent for the year 2013. Such suggestion by the opponent No.1 shows that the Letter dated 15.05.2013 produced by the applicant (Ex.A/10) is admitted between the parties, according to which, the opponent No.1 sent a Cheque of Rs.94,000/- as advanced rent, property tax, water charges for the months of January, 2013 to December, 2013 for demised shops and also requested the applicant for issuance of such receipt as soon as possible. Such shows that the parties are at agreement that the opponent No.1 paid rent to the applicant for the demised shops lastly till the month of December, 2013. Furthermore, no record/receipt has been produced by the opponent No.1 to show if he ever paid any rent to the applicant from the month of January, 2014 onwards. Therefore, I am of the considered view that the applicant remained successful in proving that the opponent No.1 defaulted in payment of monthly rent.

In support of his claim, the applicant produced his affidavit in evidence as Ex.A/1 and in its paragraph No.9 reiterated the same claim of personal need of the demised property for use of his family members, but the opponents even though cross examined the applicant at length yet not a single question was raised upon the personal bona-fide need of the applicant over the demised shops, due to which such statement of applicant went un-rebutted, hence is deemed to be admitted by the opponents, as it is settled law that the portion of

the witnesses' statement not challenged during cross-examination would be deemed to have been admitted. I find myself guided in my views from the case laws reported as Muhammad Akhtar v. Mst. Manna and 3 others (2001 SCMR 1700) and Chief Engineer Irrigation Department, N.W.F.P. Peshawar & two others v. Mazhar Hussain and 2 others (PLD 2004 SC 682). Therefore, the instant point stands answered as affirmative.

POINT NO.04

This point was formulated from the contents of the application; therefore, the onus of proving this point also lay upon the applicant. In this regard, the perusal of the record reveals that the applicant in the paragraph No.07 stated that the opponent No.1, without due permission of the applicant also illegally sub-let / handed over the possession of the demised property to the opponent No.2. But, contrarily, the applicant during his cross examination, made by the opponent No.2 admitted that the paragraph No.2 of the Tenancy Agreements authorized to sub-let the premises to anyone. Similarly, the Agreements of Tenancy produced by the applicant Muhammad Ubaid as Ex.A/02 and Ex.A/03, in their paragraphs No.2 state that the lessee (tenant) shall use the said premises for his commercial/business purposes only and the lessee (tenant) shall have rights to sub-let the said premises to any other person(s), in this respect owners shall have no objections for the same. Therefore, in view of the above discussed admitted position of record, the point stands answered as negative.

POINT NO.05

In view of the above made discussion, I am of the view that the applicant has remained successful in proving his case, therefore, the instant application under Section 15 S.R.P.O. 1979 is hereby allowed. Consequently, the opponents are directed to vacate the demised Shop No.6 and Shop No.7, situated on Plot No.B-115, Block-H, North Nazimabad, Karachi, within a period of (30) days hereof. The opponent No.1 is also directed to pay an amount of Rs.3,72,000/- as arrears, (at the rate of Rs.3,000/- per month for each shop), from the month of November, 2016 to the month of December, 2021. The opponent No.1 is also directed to pay the future rent at the same rate, till the vacant physical possession of the demised shops is handed over to the applicant. However, there is no order as to costs."

7. Initially, the petitioner denied relationship of tenant/landlord between the parties and claimed that he is lawful purchaser/owner of the demised shops under the Sale Agreements and huge amount of sale consideration was paid to the respondent No.1. At this juncture, it would suffice to say that a *sale* agreement is not a title document but at the most grants a right to sue for such title as well rights arising out of such agreement. Such *right* never comes to an end even if order of *ejectment* is recorded in Rent jurisdiction nor such order could *legally* cause any prejudice to legal entitlement of the *purchaser,* if he succeeds in such *lis.* Reference may well be made to the case of *Syed Imran Ahmed v. Bilal & Ors* (PLD 2009 SC 546) wherein it is held as:

"5. It is principle too well established by now that a sale agreement did not itself create any interest even a charge on the property in dispute that unlike the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates, that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till

> *such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a license to un-scrupulous tenants* ***to defeat the interests of the landlords*** *who may be filing suits for specific performance only to* ***delay the inevitable and to throw spanners in the wheels of law and justice****."*

8. In another case of Abdul Rasheed v. Maqbool Ahmed & others (2011 SCMR 320), it has been held as :-

> *"5. … It is settled law that where in a case filed for eviction of the tenant by the landlord, 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 a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails****……. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist."*

9. Perusal of record reflects that attorney of the petitioner in the rent case admitted that petitioner filed a suit for specific performance against the respondent No.1 but the same was rejected under Order VII Rule 11 CPC by the competent Court of law. In any event, the petitioner along with his written statement annexed sale agreement, wherein it is mentioned that such payment was being made as part payment towards total goodwill sale amount in respect of said shop. The term 'goodwill' is not recognized by Sindh Rented Premises Ordinance, 1979, however, the superior Courts have equalized it with term "Pagri". The plea of tenant that he had paid goodwill for premises, in no manner could succeed as a ground of defence when eviction of tenant was being sought by the landlord as held in the case reported as **Nargis Bano v. Rehman Bhai (1993 CLC Karachi 266)**. However, at this juncture, if for the sake of arguments it is presumed that goodwill amount was paid in respect of demised shops, even then it would not debar the respondent/landlord to seek eviction of the petitioner on the ground of his personal bona fide need. Reliance is placed upon the case of **Sheikh Muhammad Yousuf vs. District Judge, Rawalpindi and 2 others (1987 SCMR 307)**. In the case **Mohammad Sharif v. Iftikhar Hussain Khan (1996 MLD 1505)** it was held that:

> "*…Nothing was in law which would bar ejectment under Sindh Rented Premises Ordinance 1979, for personal bona fide need of landlord in case which payment of pagri, he could file suit for recovery of same in civil court in accordance with law ... Mere fact that pagri had been alleged to have been paid to landlord would not debar landlord from seeking ejectment of tenant ground of personal bona fide need of his son.*"

10. Therefore, under these circumstances, mere bald denial of relationship by the petitioner without any cogent evidence could not be given any weight.

11. With regard to the ground of personal bonfide need, the evidence of respondent No.1 remained unshaken and could not be shattered during his cross-examination and even such claim of the respondent No.1 was not specifically denied by the petitioner. More so, no any documentary evidence has been brought on record to establish that the demand of the respondent No.1 is not in good faith. It is a general principle that if the statement of landlord comes on oath if consistent with application for ejectment and not shaken in cross-examination, it is sufficient to prove that requirement of landlord is bonafide. With regard to the default, the findings of the both the Courts below are cogent and well-reasoned. It is well settled that default of even a day is sufficient to entitle the applicant for ejectment of tenant from the rented premises.

12. For what has been discussed above, petitioner has failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant petition is dismissed in *limine*. However, six months' time is granted to the petitioner to vacate the demised shops, subject to deposit of rent amount, as agreed in the tenancy agreements, within one month.

J U D G E

Sajid