

IN THE HIGH COURT OF SINDH, KARACHI
C.P No. S- 888 of 2022

Date Order with signature of Judge

Petitioner: Raees Ahmed,
Through Mr. Muhammad Ali Waris
Lari, Advocate.

Respondent No.1: Shahnawaz,
Through Mr. Ramiz Naseem,
Advocate.

Ms. Naushaba Haque Solangi, AAG.

Date of hearing: 23.10.2023

Date of Order: 23.10.2023

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner has impugned Judgement dated 13.05.2022 passed by the VIth Additional District Judge, Central at Karachi; whereby, the Appeal bearing FRA No. 138 of 2021 has been dismissed and the Order of the Rent Controller dated 07.10.2021 in Rent Case No. 440 of 2018 through which Rent Application of Respondent No.1 was allowed, has been maintained.

2. Heard Counsel for the parties and perused the record. The main contention raised by the Petitioner's Counsel is twofold. Firstly, that the bonafide personal need was never proved through cogent and admissible evidence inasmuch as it is the case of the Petitioner that Respondent No.1 has admittedly other properties in possession, which can be used for personal need. In support he has relied upon the case of ***Mst. Rashid Jehan Vs. Muhammad Ashafaq (1991 MLD 2619)***, ***Allies Book Corporation through L.Rs. Vs. Sultan Ahmad and others (2006 SCMR 152)***. However, notwithstanding reliance on any of the aforesaid judgments, it is a matter of fact that the arguments so raised by the Petitioner's Counsel is not supported by any material evidence available on record; therefore, this plea that personal need was not bonafide cannot be looked into by this Court under its Constitutional Jurisdiction against concurrent findings of two Courts below. Moreover, in its written statement the Petitioner had never raised any such specific objection and it is only in the

Affidavit in Evidence, that it was raised but; was never proved in any manner; nor any documents in support thereof were annexed with such Affidavit.

3. The main issue in hand is in respect of default on the part of the Petitioner in tendering rent as provided in law. It would be advantageous to refer to the evidence / cross-examination of the Petitioner, which reads as under: -

“I do not know whether there is a difference of contents of my WS and affidavit in evidence. One Shafqat Hussain is my employee at the tenement shop. It is correct that my said employee received notice respecting change of ownership U/S 18 SRPO dated 09.07.2018. It is correct that I have mentioned in my affidavit in evidence at paragraph no.3 that the applicant got vacated shop No.2 and rented out it again, however I have not produced any documentary proof against such disclosure. It is correct that shop No.1 & 2 are in possession of two brother Sheikh Babu Hassan and Sheikh Noor Buksh. It is correct that the ejectment application in respect of both shops was allowed in favor of applicant Shahnawaz. It is correct that the said Noor Bashar beside grant of ejectment has not vacated his shop. I do not know whether subject tenant has filed any CP. It is correct that after receiving notice U/S 18 I moved application for depositing rent in MRC in court. It is correct that at paragraph No.1 of my WS I have mentioned that I deposited rent in MRC No.550/2018 in the Court of learned III Rent Controller in favor of previous owner deceased Late Muhammad Jameel & others vide ledger No.60/2018. It is correct that even after filing of this rent case I did not tender rent to the applicant directly. It is correct that I have mentioned at paragraph No.4 of my affidavit that I am paying rent in favor of applicant vide MRC No.261/2019 vide ledger No.39/2019. It is incorrect that the applicant never refused to received rent and I voluntarily deposited the same in Court. It is correct that I have not produced proof of refusal of money order in Court or annexed with my affidavit in evidence. I do not know whether all the shops are running in a single commercial meter. It is correct that I have not paid any electricity bill further says because I do not use the electricity. I am tenant since 2004 and the tenement shop has remained with me. It is incorrect falsely today before the Court.”

4. From perusal of the aforesaid cross-examination of the Petitioner, there appears to be an admission on the part of the Petitioner that notice for change of ownership under Section 18 of the Sindh Rent Premises Ordinance, 1979, was duly received; but notwithstanding this, and even after filing of the Rent Case, the Petitioner admits that he never tendered any rent to Respondent No.1 directly; but deposited it in MRC No. 261/2019, which reflects that it was done much after the notice dated 6.7.2018 under Section 18 of the Ordinance. The law has been settled by the Apex Court in

the case of *Muhammad Yousuf¹ & Habib Bank Limited²* that even when notice sent under S.18 of Sindh Rented Premises Ordinance, 1979, is not dispatched or if dispatched is not actually received by tenant, initiation of rent proceedings in Court become sufficient notice to the tenant with regard to change of ownership and the tenant is liable to tender rent directly to new landlord within 30 days of receipt of notice of legal proceedings. In the present case despite filing of rent proceedings and contesting the same it has been admitted by the Petitioner that no rent was paid to Respondent No.1, whereas, even after 4 months it was deposited in the name of the previous owner, and thereafter much later in MRC No.261/2019 in favor of Respondent No.1. This is a clear admitted default on the part of the Petitioner; hence no case for indulgence is made out, as this Court cannot pass any order in derogation and in violation of the law. Accordingly, the petition, being misconceived and an attempt to overturn the concurrent findings of the two Courts below, fails; hence, stands dismissed with pending applications, if any.

J U D G E

Ayaz

¹ Mrs. J.C. Rahman v Mrs. Salma Ahmed (1986 SCMR 951)

² Habib Bank Limited v Sultan Ahmad (2001 SCMR 678)