

# HIGH COURT OF SINDH KARACHI

## C.P No.S-669 of 2020

[Mst. Razia versus VII<sup>th</sup> Additional District Judge & Ors.]

Petitioner : Through Ms. Amna Usman advocate  
Respondent No.3 : Through Mr. Murtaza Hussain advocate  
Mr. Jan Muhammad Khuhro Additional A.G  
Date of hearing : 08.12.2023  
Date of decision : 02.05.2024

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### ORDER

**KAUSAR SULTANA HUSSAIN J.-** This constitutional petition is outcome of conflicting findings recorded in rent proceedings by the Courts below. Respondent Mst. Mustajab Zehra filed ejectment application bearing Rent Case No.84 of 2016 before learned IX<sup>th</sup> Rent Controller Karachi South (**Rent Controller**) against petitioner/tenant and her husband, the respondent No.4, for their eviction from Flat bearing No.4/5, 5<sup>th</sup> Floor, Noor Centre Block-D, Gali No.1 Madina Masjid Khadda Karachi (**rented premises**), which was dismissed vide Order dated 27.11.2018, however, in appeal bearing No.12 of 2019 filed by respondent No.3/landlady before learned VII<sup>th</sup> Additional District Judge Karachi South (**Appellate Court**) vide Order dated 18.08.2020 (**Impugned Order**) the appeal was allowed and the Order passed by Rent Controller on 27.11.2018 has been set aside.

2. Facts of the matter are that respondent No.3/landlady filed the aforesaid rent case before learned Rent Controller against respondent No.4 only on the ground of default wherein she alleged that respondent No.4 was inducted as tenant in rented premises by her deceased husband, however after the death of her husband the respondent No.4 neither paid rent since August 2012 nor vacated the rented premises. The said rent case was allowed vide ex-parte Order dated 28.10.2016, however petitioner, who is wife of respondent No.4, preferred an application before learned Rent Controller under Section 12(2) CPC on the ground that she is actual tenant but she was not impleaded as party in rent proceedings; said application was allowed vide Order dated 27.07.2017 and ex-parte Order dated 28.10.2016 was set aside and she was also joined as party/opponent in rent proceedings. Finally learned Rent Controller after completion of entire rent proceedings and hearing all the parties dismissed the eviction application, however, in First Rent Appeal bearing No.12 of 2019 the eviction application has been allowed through impugned Order dated 18.08.2020, hence this petition.

3. Learned counsel for the petitioner/tenant contended that impugned Order passed by learned Appellate Court is perverse, illogical and ultra vires of Sindh Rented Premises Ordinance 1979 (**SRPO 1979**); that appeal filed by respondent No.3/landlady was hopelessly time barred; that eviction application was filed by respondent No.3/landlady on the ground of default but she was failed to prove said ground before the learned Rent Controller and the learned Appellate Court at the time of passing impugned Order dated 18.08.2020 failed to apply judicious mind and did not even bother to go through the entire record. She lastly prayed that instant petition may be allowed and impugned Order may be set aside.

4. On the other hand learned counsel for respondent No.3/landlady supported the impugned Order and argued that petition is not maintainable as petitioner/tenant has failed to point out any jurisdictional defect in the impugned Order; that petitioner/tenant is habitual defaulter, as such she is liable to be evicted from the rented premises. He prayed for dismissal of petition.

5. Arguments heard and record perused.

6. It appears that petitioner and respondent No.4 are husband and wife and the rent agreement was executed by petitioner/tenant with deceased husband of respondent No.3/landlady, however it is alleged by the respondent No.3/landlady that after the death of her husband in the month of August 2012 she was not paid rent by the petitioner/tenant, whereas petitioner/tenant in support of her case claimed that husband of respondent No.3/landlady namely Ali Abbas was paid advance rent for three years on his own request and after the death of original landlord the respondent No.3/landlady herself could not come to collect the rent and when she (tenant) visited landlady's house for payment of rent, it was transpired that she (landlady) shifted to some other place.

7. Though it is claimed by the petitioner/tenant that original landlord was paid advance rent for three years at his own request, but no such written proof has been placed on record. Even otherwise the Supreme Court in the case reported in 1989 SC 489 held that acceptance of the accumulated rent by the landlord/landlady does not absolve the tenant of his/her statutory duty to pay rent according to law. Admittedly for the first time the petitioner/tenant sent the rent to respondent No.3/landlady through money order for the months of January 2014 to December 2017 and on her (landlady's) alleged refusal she (tenant) started depositing rent in MRC No.1199 of 2017. Now if only this ground is taken into consideration, same would be sufficient to establish the default on part of petitioner/tenant as this effort of payment of rent even was taken after four years. In the case reported in 1987 CLC 496 it was held by the Supreme Court that subsequent payment does not entitle the tenant to get eviction application

dismissed on the ground that rent has been paid as such tender of rent cannot erase effect of consequences of default already committed.

8. Perusal of record shows that in order to prove her case respondent No.3/landlady filed her affidavit-in-evidence on Oath in support of her claim and though she was subjected to a lengthy cross-examination but remained consistent with her claim. The Supreme Court in other cases reported in 1997 SCMR 1020 and 2001 SCMR 1197 held that “*where the statement on oath was quite consistent with his/her averments made in the ejectment application and the same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on Oath would be considered sufficient for acceptance of the ejectment application*”.

9. Further it is observed that legislature intended to place full stop in rent matters after their decision by the appellate Court, therefore, the constitutional jurisdiction of this Court cannot be substituted as appeal unless there is jurisdictional defect in the finding of Courts below. Reliance in this regard is placed on the case reported in **2023 SCMR 413**.

10. In view of the above landlady has successfully proved her case while petitioner/tenant has failed to point out any jurisdictional defect in the impugned Order passed by the Appellate Court, hence same call for no interference by this Court while exercising its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Accordingly instant constitutional petition stands dismissed being not maintainable.

JUDGE

Faheem/PA