

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-362 of 2023

[Muhammad Abid & othersv..... Muhammad Iqbal Qureshi & others]

Date of Hearing : 28.03.2024
Petitioners through : Mr. Sathi M. Ishaq, Advocate.
Respondents through : Mr. Abdul Qadir Mirza a/w Abdul Qadeer Naich, Advocates.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails an order dated 20.02.2023 passed by learned Appellate Court in FRA No. 170 of 2022.

2. The precise facts in *minutiae* are that the Respondents initiated ejectment proceedings under Section 15 of the Sindh Rented Premises Ordinance, 1979 alleging therein that they are owners of the Plot No.155, measuring 1800 Sq. Yrd. Jam Street, Ghulam Hussain Road, Garden West, Karachi (“subject tenement”) and the same was purchased by them from Abdul Latif and Rasheed Ahmed through registered Conveyance Deed dated 07.05.2011. It is alleged by the respondent in their ejectment proceedings that having obtained the ownership of the subject tenement, the respondents informed the petitioners about the change of ownership but never paid the rent to the respondents and in this regard committed default of 97 months in payment of rent. The learned Rent Controller dismissed the ejectment proceedings on the ground that the respondents failed to establish the relationship of landlord and tenant. Being aggrieved, the respondents filed an appeal before the learned Appellate Court which appeal bearing FRA No.170 of 2022 was allowed vide order dated 20.02.2023 and the ejectment proceedings initiated by the respondents against the petitioners were allowed. It is considered

expedient to illustrate here that the petitioners remained ex-parte before the learned lower fora despite holding service good upon them.

3. The petitioners' entire case was premised on the argument that notices as mandated under Section 18 SRPO were not issued by the respondents to the petitioners. He further contended that the petitioners were tenants of previous owners namely Abdul Latif and Abdul Rasheed whom the respondents acquired title but the prescriptions of Section 18 SRPO is mandatory which suggests that notice for change of ownership ought to be issued to the tenants, however, no notice has been brought on record. He further contended that the learned Appellate Court erred in examining the evidence, therefore, the exercise be conducted denovo. Learned counsel for the petitioner also highly agitated that the petitioner/tenant was not given ample opportunity to lead the evidence and the matter was decided ex-parte giving the reasons that the address given by the landlord in the Rent Application moved under Section 15 SRPO was wrong. He stated that wrong address of the tenant was given, so notice could not be served as well as the property was partitioned. Learned counsel for petitioner submits that since there is no further provision of appeal under the statute, hence, this writ petition.

4. Learned counsel for the respondents argued that writ is not a forum where appreciation of evidence be conducted, however, the petitioners have to establish any jurisdictional error of the learned lower Court while passing the impugned order which the counsel failed to establish, therefore, the petition be dismissed.

5. I have heard the respective learned counsel and have also considered the record to which attention of this Court was solicited. It is considered pertinent to initiate this discussion 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. The learned Appellate Court having examined the entire record and proceedings went on to hold as under:-

“Obviously, notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 was not served, however, it was averred & deposed by the Applicants/Appellants that opponents/respondents were tenants of the demised premises which statement of the appellants on oath is substantiated by the Sale Agreement & commissioner’s report dated 13.03.2006. It is floating on the surface of evidence that Opponents/ Respondents had already acknowledge Sohail ur Rehman as purchaser of the demised premises, which is depicted from the Commissioner’s report dated 13.03.2006 therefore, opponent/respondents were already in knowledge of the change of ownership.

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the petitioners were tenants in the tenement which statement of the respondents on oath was substantiated by the Sale Agreement & Commissioner’s report dated 13.03.2006. It is floating on the surface of evidence Petitioners had already acknowledge respondent No.2 is purchaser of the tenement in question, which is depicted from the Commissioner’s report dated 13.03.2006 which report surfaced in Suit No.171/2006 basis upon which the Conveyance Deed was executed by

the previous owners Abdul Latif in favour of the respondents therefore, petitioners were already in knowledge of the change of ownership and despite that fact, the petitioners committed default in payment of rent to the respondents/new owners. The contention of the petitioners' counsel hinges upon the fact that the respondents never issued notice under Section 18 SRPO to the petitioners for the charge of ownership, in my view, it is well established principle that the initiation of rent proceedings in Court become sufficient notice to the tenant with regard to the change of ownership and the tenant is liable to tender rent directly to the new landlord within 30 days of the receipt of the notice of the legal proceedings. In the case of **Muhammad Yousuf v. Mairajuddin reported in 1986 SCMR 951**, it was held that if the notice with regard to the change of ownership was not served this by itself would not amount to absence of relationship of landlord and tenant. The eviction application itself is to be treated, as notice and if rent is not tendered directly to the new landlord within the statutory 30 days of the knowledge of change in ownership then the tenant becomes liable for eviction.

7. Despite of acquiring knowledge about the change of ownership of subject tenement, the petitioners avoided/neglected/refused to pay the rent to the Respondents. In the case of Ghulam Samdani v. Abdul Hameed¹, the Hon'ble Supreme Court held that when tenant(s) after having the knowledge that the subject tenement were sold to another person continued depositing the rent in favour of previous owners and never tendered the rent to the new owners, such conduct of tenants amounts to willful default and malafide on the part of tenant(s).

¹ 1992 SCMR 1170

8. With regard to the address, counsel's attention was drawn to the rent agreement available at page 145, where address of the demised property is written as 155, Garden West Jam Street Karachi. Title of the impugned order dated 20.02.2023 clearly shows that the address of the tenant is given as Plot No.155, Sheet GRW, Jam Street, off Gulam Hussain Road Gardent West, Karachi, the order which is ex-parte also reflects address of the property being Survey No.155, Sheet No.GRW therefore this contention of the learned counsel that the address was wrongly given is unfounded. With regard to service on the respondent perusal of the order of the trial Court clearly reflects that in presence of the rent case notices were issued to the respondent through Bailiff, registered post AD, TCS and by way of pasting on pointation in the presence of two witness as well as by way of publication/substitute service in daily Ummat, Karachi of 10.03.2020 and despite all such modes the opponent/respondent did not attend the Court, which gives reasons to believe that the trial Court used all possible means available to it, to serve the respondent, but he never bothered to respond to any of the notices. Counsel also stated that in fact the said piece of land has been partitioned and drew Court's attention to report filed alongwith statement to show that a copy of Commissioner's report dated 13.03.2006 furnished to this Court through an order dated 23.03.2006 passed in Civil Suit No.171 of 2006 to show that the said Commissioner visited the demised premises. Excerpts from the said report are reproduced as under:-

“After entering the Suit premises it is seen that no work/activity is noted/found in progress. Wali Muhammad says that he is hired as Chowkidar by Mr. Muhammad Shahid.

Mr. Jamal son of Gul Azam, Chowkidar says that he works for Mr. Suhail-ur-Rehman (Plaintiff No.2).

Mr. Muhammad Shahid, Tenant says that Mr. Suhail-ur-Rehman is presently in occupation of half of the suit premises as Suhail-ur-Rehman purchase of this Suit property. He further says that he is one of the Tenant since last 5 to 6 years along with his brother. Mr. Muhammad Tariq is brother of Muhammad Shahid says that he is also the Tenant. It is seen that no work is going on in the suit premises and the plaintiff along with tenants are in occupation. (photo copy of proceedings at Suit premises is also enclosed.”

8. As to the learned counsel's reference to the Commissioner Report dated 13.03.2006 that report clearly shows that the tenants were in possession of the property and occupying it however not using the property at all, as only Chowkidars were kept there, so property being wasted. The notion that the property was partitioned is also not substantiate and if so was done that would further disentitle the tenant from enjoying possession of the property having made alteration in the demised property. The other issue is that such a report was not presented to the Courts below hence of no consequence at this forum.

9. Coming back to the prescriptions of Section 18, it is a settled proposition of law that even institution of application for eviction would be deemed to be substantial compliance of the provisions of Section 18 of the SRPO, 1979. Reference in this regard may be made to the case of Syed Azhar Imam Rizvi v. Mst. Salma Khatoon², wherein it has been held that:

“The receipt of the copy of the ejectment application and knowledge gained thereby would constitute due notice and it will have to be treated

² 1985 SCMR 24

as substantial compliance of section 13-A of the Ordinance³.”

10. A recent judgment of this High Court in the case of Ali Tasleem⁴ has also deprecated the tendency to utilize the writ jurisdiction of this Court as a subsequent unsanctioned appellate forum in rent matters inter alia in the following terms:

“It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned... Insofar as the plea for de novo appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard . In cases wherein the legislature has provided only one Appeal as a remedy, like family and rent cases, it has been the consistent view of the Apex Court, that invoking of Constitutional jurisdiction in such matters as a matter of right or further appeal is not a correct approach.”

11. In so far as the plea for de novo appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard⁵.

12. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith all pending applications.

13. Before parting with this order, I have observed that the petitioners have dragged the respondents/landlords in the courts for over last 5 years, which passes for vexatious litigation; wasting the time of all courts. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of

³ Section 13-A of the West Pakistan Urban Rent Restriction Ordinance, 1959 is pari material to section 18 of the Sindh Rented Premises Ordinance, 1979.

⁴ Per Muhammad Junaid Ghaffar J in Ali Tasleem vs. Court of IXth ADJ Karachi East (CP S 985 of 2023).

⁵ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

genuine disputes. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs. The spectre of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence⁶ before the Court. These costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the court fee, process fee and lawyer's fee paid in relation to the litigation⁷. Imposition of costs in frivolous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivolous claims or defences brought to the court house but also absence of such cases allows more court time for the adjudication of genuine claims. It also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts⁸. Costs lay the foundation for expeditious justice⁹ and promote a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs encourage alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to

⁶ Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1; Province of Balochistan v. Murree Brewery Company PLD 2007 SC 386 (5-MB).

⁷ Ibid

⁸ Ibid

⁹ Article 37(d) of the Principles of Policy under the Constitution.

genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court¹⁰. I, therefore, dismiss the present petition with costs of Rs.50,000/- which shall be deposited by the petitioners in the trial court for payment to respondent No.1 within 15 days from today. In case of failure by the petitioners to deposit the said costs within the prescribed time, they shall be recovered from the petitioners as a money decree.

Karachi
Dated: 28.03.2023.

JUDGE

Aadil Arab

¹⁰ Arthur L.Godhart, 'Costs' (1929) 38 Yale Law Journal 849