

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-166 of 2020

Date	Order with signature of Judge
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- 1.For order on office objection
- 2.For hearing of CMA No.764/2020
- 3.For hearing of main case

24.01.2024

Mr. Muhammad Arif, Advocate for petitioner.
Mr. Khawaja Muhammad Azeem, Advocate for respondents.
Mr. Hisham Mehar, AAG.

Through this petition, the petitioner impugns concurrent edicts rendered by learned trial Court dated 02.08.2019 in Rent Case No.191/2017 as well as learned First Appellate Court on 21.12.2019 in FRA No.98 of 2019 respectively.

2. The respondent No.1 being landlord of shop No.2 on plot No.421, 421A, Sheet No.4, Sector 11 ½, Street No1 Makhdoom Shah Colony, Pakistan Bazar, Orangi Town (“subject shop”), initiated ejectment proceedings under Section 15 of Sindh Rented Premises Ordinance, 1979 (“SRPO”) against the petitioner on the ground of default in payment of monthly rent. It is asserted by the respondent No.1 that she having purchased subject shop addressed a notice under the prescriptions of Section 18 SRPO for the change of ownership and instructed the petitioner to tender rent to her and in defiance thereof, the learned Rent Controller allowed the ejectment proceedings initiated by the respondent No.1 vide order dated 02.08.2019 which was impugned by the petitioner by filing

FRA No.98 of 2019 which too was dismissed vide order dated 21.12.2019, hence this petition.

3. Per learned counsel for the petitioner, the petitioner never committed any default in payment of monthly rent. He next argued that the husband of the respondent No.1 addressed a notice to the petitioner under Section 18 SRPO for the change of ownership and in compliance thereof the petitioner tendered the monthly rent to the husband of the petitioner which was refused by him and thereafter the petitioner deposited the rent in Court by filing MRC 97/2017. There is a dispute of ownership between respondent No.1 and her husband. He lastly contended that the learned lower fora committed error in examining the record and proceedings of the case and rendered the impugned concurrent findings which be set aside.

4. Conversely, learned counsel for the respondent No.1 contended that this petition is not maintainable as this petition challenges concurrent findings and that the learned lower fora having examined the niceties of the questions involved in the instant matter rendered the concurrent findings which are according to law and do not need any interference by this Court.

5. I have heard the learned counsel for the contesting parties and perused the record. It is an admitted position that the petitioner received two notices under Section 18 SRPO for the change of ownership addressed to him by the respondent No.1 as well as her husband and in compliance thereof he tendered the rent to the husband of the petitioner, therefore, the question of default alleged by the respondent No.1 does not arise. It is also an admitted fact that upon refusal of accepting the rent by the husband of the respondent No.1, the petitioner deposited the rent before the

learned Rent Controller by filing MRC No.97/2017 as mandated under Section 10 of SRPO.

6. Reverting to the first limb of arguments of learned counsel for the respondent No.1 to the effect that this petition challenges concurrent findings of the lower fora. To meet with the said contention, I may say that if the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, or based on misreading or non-reading of evidence, then they cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect¹.

7. Under Article 199 of the Constitution this Court has the power to issue such directions, orders or decrees, as may be necessary for doing justice and in doing so, the Court is also empowered to look at the just circumstances of the case as it has appeared before it and also to mould relief which is just and proper for meeting the ends of justice². I may further note here that in exercising the jurisdiction

¹Per Muhammad Ali Mazhar.J in Mst. Faheeman Begum (deceased) through Lrs. V. Islamuddin (deceased) through Lrs (2023 SCMR 1402)

² Per Gulzar Ahmed C.J. in Martin Dow Marker Ltd, Quetta, v. Asadullah Khan & others (2020 SCMR 2147) and Muhammad Zahid v. Dr. Muhammad Ali (PLD 2014 SC 488), Dossani

to do full justice and to issue directions, orders or decrees, as may be necessary, this Court is not bound by procedural technicality when a glaring fact is very much established on the record and even stand admitted³.

8. Since the learned lower fora failed to consider the aspect of complying with the prescriptions of Section 18 SRPO by the petitioner, however, the husband of the respondent No.1 opted not to receive the rent thereafter the petitioner upon refusal of accepting the rent by the husband of the respondent No.1 deposited the rent before the learned Rent Controller by filing MRC No.97/2017 as mandated under Section 10 of SRPO. It is an admitted position that the petitioner received two notices under Section 18 SRPO for the change of ownership addressed to him by the respondent No.1 as well as her husband and in compliance thereof he tendered the rent to the husband of the petitioner, therefore, the question of default alleged by the respondent No.1 does not arise, therefore, the instant petition is allowed and impugned concurrent findings of the lower fora are set aside and the ejectment proceedings bearing Rent Case No.191/2017 filed by the respondent No.1 is dismissed.

JUDGE

Aadil Arab

Travels (Pvt.) Ltd. and others v. Messrs Travels Shop (Pvt.) Ltd. and others [PLD 2014 SC 1]; Mst. Amatul Begum v. Muhammad Ibrahim. Shaikh [2004 SCMR 1934] and Imam Bakhsh and 2 others v. Allah Wasaya and 2 others [2002 SCMR 1985].

³ Reference in this regard is made to the case of Muhammad Shafi v. Muhammad Hussain [2001 SCMR 827]; Gul Usman and 2 others v. Mst. Ahmero and 11 others [2000 SCMR 866] and S.A.M. Wahidi v. Federation of Pakistan through Secretary Finance and others [1999 SCMR 1904]