

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.S-314 of 2021

Syed Mazhar Jalil Petitioner
Vs.
District Judge Karachi East & others..... Respondents

Mr. Shahzad Bashir, advocate for petitioner.
None present for respondent No.3 & 4.

02.09.2024.

ORDER

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MUHAMMAD IQBAL KALHORO J: Appellant filed a rent case U/s 15 of Sindh Rented Premises Ordinance, 1979 (SRPO) against respondents No.3 & 4 for eviction. The respondent No.3 was main tenant and respondent No.4 was sublettee in respect of premises viz. Shop No.2 situated at Plot No.Z-142, Amir Khusro Road, CP and Berar Cooperative Housing Society, Block 7 & 8 near Farooqui Masjid, Karachi. During pendency of the rent case, the petitioner filed an application u/s 16(1) SRPO which was allowed but respondents did not pay the arrears of rent fixed by the court hence, an order u/s 16(2) SRPO was passed directing the respondent to vacate the demised premises, which order was challenged by respondent No.4, sublettee not by the original tenant in FRA No.178/2020.

2. The appellate court allowed the appeal in the terms whereby the matter has been remanded back to the Rent Controller for recording evidence and then deciding the case on merits, on the ground, in the main, that landlord had died in the year 2014, whereas the Special Power of Attorney in favour of petitioner was executed in 2017, which point being controversial could not be resolved without recording of evidence.

3. Learned counsel for petitioner has pointed out at page 95 of the file which is a death certificate of the landlord, it shows that the landlord died on 07.01.2021 and not in the year 2014 as recorded by the appellate court. Further the said landlord had appeared before Rent Controller and had sworn an affidavit which is available at page 93, dated 06.05.2019. Learned counsel submits that the appellate court has completely ignored the relevant record and on the basis of assumption has concluded that the landlord had died in 2014. Further learned appellate court has overlooked the fact that original tenant had

not challenged the orders passed U/s 16(1) and 16(2) of SRPO but the sublettee, who had no legal right to do so in law.

4. Respondents and their counsel have chosen to remain absent. The documentary record prima facie shows that observation of appellate court that the landlord had died in the year 2014 is not correct. Learned appellate court has not referred to any documentary evidence influencing its mind to come to such a conclusion. Learned appellate court has not dealt with the fact either as to whether sublettee has any right in law to challenge the order passed against the original tenant.

5. Therefore, the impugned order passed by the learned appellate court is not sustainable in law being an outcome of a mis-appreciation of facts and law, hence the same is set-aside and matter is remanded back to the appellate court to decide the appeal on merits by looking at the record deeply in accordance with law within one month.

The petition stands disposed of in the above terms alongwith pending application.

Judge

A.K.