

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.832-K of 2024

Against the order dated 05.08.2021 of the Sindh High Court, Karachi passed in C.P. No. S-1363 of 2011

Sadaqat Ali and another

...Petitioner(s)

Versus

Mst. Nasreen Akhtar

...Respondent

For the Petitioner(s): Mr. Ghulam Rasool Mangi, ASC

For Respondent: N.R.

Date of Hearing: 19.12.2024

JUDGMENT

Irfan Saadat Khan, J.- This Petition has been filed by the petitioners challenging the order of the Sindh High Court, Karachi, dated 05.08.2024, ("**Impugned Order**"), passed in Constitutional Petition No.S-1363 of 2011, wherein the High Court has confirmed the decisions of both the learned Courts below by holding that the Rent Controller, *vide* its judgment dated 15.05.2010 and the District Court, *vide* its judgment date 24.11.2011, had correctly decided that the petitioners have defaulted in payment of monthly rent and have also been illegally inducted as a sublessees in the subject property bearing No.149, 150, Ali Muhammad Goth, Sector 11-E, North Karachi and, that the order dated 18.07.2006 passed by the Rent Controller was not obtained by way of fraud or misrepresentation, as claimed by the present petitioners by filing an application under section 12(2) of the Code of Civil Procedure, 1908 ("**CPC**").

2. Briefly, the facts necessary to decide the matter before us, are that Mst. Nasreen Akhtar ("**Respondent**") filed a rent/eviction application against one Maqsood Ahmed Khan (late) ("**Lessee**") and the petitioners before the learned Rent Controller on account of default in the payment monthly rent and the unauthorized subletting of the property to the Petitioners, without the Respondent's permission. She sought an ejectment order directing the Petitioners to vacate her property and that vacant possession of the same be delivered to her alongside the arrears of the rent. The learned Rent Controller attempted to serve notices upon the respondents in the rent/eviction application i.e. the Lessee and Petitioners, through various modes, including by way of Bailiff, Registered Post A/D, T.C.S, pasting notice on the wall and gate of the property and finally through publication. Despite these efforts, the respondents in the matter failed to appear. In view of the same, the learned Rent Controller decided that service was valid/good against the Lessee and Petitioners, *vide* order dated 10.03.2006, and after being afforded several chances to contest the case, the Lessee and Petitioners were ordered to be proceeded against *ex parte*, *vide* order dated 18.04.2006, which was followed by an *ex parte* judgment on 18.07.2006, allowing the Respondent's rent/eviction application.

3. Subsequently, on 02.02.2007, the Petitioners filed an application under Section 12(2) CPC seeking to set aside the learned Rent Controller's *ex parte* judgment and decree, dated 18.07.2006, in Rent Case bearing No. 541 of 2005 and Execution Application No. 14 of 2006. This application was however dismissed on the grounds that the petitioners have failed to point out any fraud or misrepresentation played by the

Respondent, *vide* order dated 15.05.2010. Being aggrieved with the same, the petitioners preferred an appeal, which also was dismissed in RFA No.109 of 2010, *vide* order dated 24.11.2011. Aggrieved again, the Petitioners filed a Constitutional Petition before the Sindh High Court, which confirmed the concurrent findings of two the Courts below hence the instant Civil Petition for Leave to Appeal.

4. Mr. Ghulam Rasool Mangi has appeared on behalf of the Petitioners and repeated the assertion that notices had not been served and it was only when the petitioners received the notices of execution that they came to know of the rent/eviction proceedings. He claimed that the Respondent had committed fraud and misrepresentation by mentioning incomplete addresses for the purpose of summons and also concealed the fact about the earlier litigation concerning the property. The learned counsel stated that the earlier case was filed by the Respondent's attorney when he had claimed to be the owner of the property; whereas in the eviction application he has claimed that the Respondent is the owner of the property and he was simply her attorney. The learned counsel further stressed that the petitioners in fact are the owners of the property.

5. We have heard the learned counsel and have perused the record. At this juncture, we find it pertinent to mention that the learned Rent Controller had attempted to issue notices to the Petitioners through numerous modes, including by way of the Court Bailiff, Registered Post A/D, T.C.S, pasting notice on the wall and gate of the property and finally through publication. It was only after exhausting all the modes of service that the learned Rent Controller held service to be good against the

Petitioners. Despite notice, through all its modes and at the correct address, the Petitioners have failed to enter appearance and absented themselves from proceedings in the eviction application. The order for *ex parte* proceedings and *ex parte* judgment that followed cannot, therefore, be considered as a result of fraud or misrepresentation but of the willful absence of the Petitioners. Furthermore, the fact that there had earlier been litigation concerning the property is not a valid ground for interference with the findings of the three Courts below. Moreover, the controversy highlighted by the Petitioners that in an earlier rent/eviction application, the Respondent's attorney had claimed to be owner whereas in the instant application he claimed to be the Respondent's attorney will not improve their case since it would not change their status as unauthorized sub-lessees of the original lessee.

6. In view of these uncontroverted facts, we find no valid ground for interference with the orders of the three learned Courts below. Therefore, the instant Petition, being devoid of any merits, is dismissed and leave to appeal is refused.

Judge

Judge

KARACHI

19.12.2024

Arshed/Mustafa Kundi, L.C

Approved for Reporting

