

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1362 of 2023

(Syed Huzoor Alam Zaidi v Sajid Ahmed Khan & Ors.)

Date	Order with signature(s) of Judge(s)
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Hg:/ Priority.

1. For hearing of Misc. No.9904/2023
2. For hearing of main case.

17.12.2025.

Mr. Muhammad Aqil, Advocate for the Petitioner.

M/s. Nadir Khan Burdi, Shoukat Ali and Zeeshan Asad, Advocates for Respondent.

ORDER

Nisar Ahmed Bhanbhro, J. This petition calls in question the judgment dated 04.12.2023 (**impugned judgment**) passed by the Court of IX Additional District Judge (East) Karachi (**Appellate Court**) in the First Rent Appeal (F.R.A.) No.141/2023 (re: Sajid Ahmed Khan v Syed Huzoor Alam Zaidi) whereby the appeal was allowed and the order dated 09.08.2023 passed by the XIII Rent Controller (East) Karachi (**Trial Court**) in Rent Case No.01 of 2019 (re: Syed Huzoor Alam Zaidi v Sajid Ahmed Khan) was set-aside.

2. Mr. Muhammad Aqil, learned counsel for the petitioner, submitted that the petitioner is the owner of the tenement premises, which was purchased from the original owner through a registered deed; that the landlord/respondent was residing in the subject premises as a tenant under a rent agreement with the original owner; that the petitioner was residing in a rented house and required the premises for his personal bona fide need, coupled with the fact that the landlord/respondent had defaulted in the payment of rent. He argued that an ejectment application was filed, which was allowed by the learned trial Court. He next contended that the appellate Court allowed F.R.A on the ground that the ejectment case was instituted by an unauthorized person, as no power of attorney was filed at the time of the institution of the rent case and the power of attorney filed afterwards did not ratify the acts done in past. He

argued that, after the institution of the rent case, the Petitioner as owner and landlord himself pursued the matter before this Court and the appellate Court. He further contended that the observation of the learned appellate Court that the rent case was filed by an unauthorized person was not correct, as the power of attorney filed subsequently validated and ratified all the acts performed by the attorney in past. He argued that the F.R.A was decided on technical ground, which ought to have been decided on merits. In support of his contentions he has placed reliance on the cases of **Ghulam Qaidr v Abdul Sattar** (PLD 1984 SC 12), **Toor Gul v Mst. Mumtaz Begum** (PLD 1972 SC 9), **Abdul Majid v Syed Azhar Ali Shah** (PLD 1985 SC 191), **Muhammad Rafique v M/s. Bawany Sugar Mills Ltd.** (1999 MLD 3273), **Muhammad Yousuf v Mst. Kharian Bibi** (1995 SCMR 784), **Abdul Sattar v Ibrahim** (PLD 1992 Karachi 323), **Manager, Jammu & Kashmir, State Property in Pakistan v Khuda Yar & Ors.** (PLD 1975 SC 679), **Muhammad Hayat v Muhammad Miskeen** (2018 SCMR 1441), **Pakistan Institute of International Affairs v Naveed Merchant & Ors.** (2012 SCMR 1498) and **Hameed & Ors. v Jitendra & Ors.** (2010 CLC 561).

3. Mr. Nadir Khan Burdi, learned counsel for the respondent, argued that the rent case was instituted by an unauthorized person, that such plea was taken by the respondent at the initial stage when the written statement was filed. He further argued that when the attorney appeared in the witness box, he was questioned regarding the validity of the acts performed by him as an attorney. He further contended that the rent case filed by the petitioner was incompetent; therefore, the appellate Court rightly allowed the appeal and dismissed the ejectment application. He also argued that the respondent was a tenant of the previous owner and no notice of change of ownership as mandated under section 18 of the SRPO 1979 was ever served upon him. He next contended that there was no default in the payment of rent and that the findings of the learned trial Court on this issue were incorrect. He further argued that the petitioner failed to prove his personal bona fide need. In support of his contentions he placed reliance on the cases of **Muhammad Khaliq v Abdullah Khan & Ors.** (1987 CLC 1366) and **Talat Jahan Burki v Member, Board of Revenue/Chief Settlement Commissioner Punjab, Lahore & Ors.** (2005 CLC 269).

4. Heard arguments, perused the material available on record.

5. Since the appellate Court has decided the F.r.A on a legal issue that Rent Case was filed by an unauthorized person holding that at the time of filing the rent case he was not having any power of attorney and the power of attorney was obtained latter which did not validate the acts done on past therefore the rent case was not maintainable. Since the F.R.A under challenge in the present lis was decided on the sole issue of validity of power of attorney, therefore, the Court confines itself to the said core issue only.

6. The appellate Court in para-10 of the impugned judgment discussed the clause-14 of the power of attorney. For the sake of convenience para-10 is reproduced here under:-

“10- In the light of above cases, when I peruse record I see that ejectment application was filed by a son on behalf of his father/landlord of the tenement without any supporting power of attorney authorizing him to file such petition. Subsequently, power of attorney of alleged landlord dated 17-04-2021 was filed before the Rent Controller wherein clause No.14 recited as under;

'AND I hereby agree that all acts, deeds and things lawfully done by my said attorney shall be construed as acts, deeds and things done by me and I undertake to ratify and confirm all and whatever my said attorney shall lawfully do or cause to be done for me by virtue of this power of attorney.'

7. It further evinced from Appellate Court's findings in Paragraph 11 of the impugned judgment, that the word “shall” was used twice in the clause 14 of the power of attorney, which manifested the intention of executant to ratify the future acts only without any reference to past and omission to ratify the acts done in past was fatal to the case of Landlord/ Petitioner, thus the impugned order was not sustainable under the law.

8. From the scanning of the record it revealed that the petitioner has annexed two copies of powers of attorney, one dated 26.11.2018 and the other dated 17.04.2021, both available at pages 271 to 283 of the Court file. From the evidence recorded before Trial Court, it transpired that the

petitioner's witness, Muhammad Ali, produced only one power of attorney dated 17.04.2021, whereas the other power of attorney dated 26.11.2018 was not made part of the evidence; therefore, the said power of attorney cannot be considered in these proceedings too. From a perusal of the power of attorney dated 17.04.2021, it is established that the same was executed to conduct proceedings relating to the demised premises, empowering the attorney to adduce evidence on behalf of the executant and to perform all other acts necessary for the filing and prosecution of the rent case. Since the power of attorney was executed for the purposes of proceedings in the rent case, for all intents and purposes, the intention of the executant was to authorize his attorney to proceed with and pursue the rent case subject matter of the instant proceedings that was filed in the year 2019.

9. The learned Appellate Court misconstrued the clause-14 of the power of attorney. In *stricto sensu* Petitioner through the power of attorney had ratified all the acts done in the past, so also agreed to ratify all the acts which were purportedly to be done in future by the attorney. The clause 14 of the power of attorney consisted upon two parts, First part ratifying the acts already done and Second part ratifying the acts that were to be done in future. First part of Clause 14 of the read that *Executant hereby agrees that all acts, deeds and things lawfully done by my said attorney shall be construed as acts, deeds and things done by me*, this part ratified the acts done. The Second part of clause 14 read that the *Executant undertakes to ratify and confirm all and whatever the said attorney shall lawfully do or cause to be done for him by virtue of this power of attorney*, this part ratified the acts likely to be done in future. Thus it can be safely held that the observation of the appellate Court regarding non-validation of acts done in past were not borne out from bare reading of Clause-14 of the power of attorney, which provides that the executant agreed that all acts, deeds, and things done by the attorney shall be deemed to have been done by him, and undertook to ratify and confirm the same, as well as acts to be done in future.

10. No doubt, at the inception of proceedings the respondent had raised this objection as to the competence of attorney to institute the rent case; however, no application seeking dismissal of the rent case on that ground was ever filed. Even otherwise, after the order passed by the

learned trial Court, the appeal was filed directly in the name of the petitioner and not against the attorney. The Petitioner himself appeared before the Appellate Court and ratified all the acts performed by the attorney on his behalf. As such, the ground taken before the appellate Court for non-suiting of the petitioner was not available, as the attorney was duly empowered to perform certain acts on behalf of the executant, and those acts were validly performed. Now, since the landlord, who is the owner of the demised premises, is himself pursuing the matter, it cannot be said that the suit was filed without the consent of the landlord.

.11. Furthermore, the fact that the Respondent was a tenant and controversy highlighted regarding power of attorney will not improve his case, since it will not alter his status as tenant.

12. The case laws relied upon by the parties were though relevant and laid down principles regarding the acts likely to be done by the Attorney on behalf of the Executant, however, were not attracted to the facts of the present case as the appellate court had failed to comprehend the language contained in the power of attorney, thus with due reverence it was not essential to discuss the ratio laid down by the Superior Courts in the judgements referred and relied upon by the parties .

13. Since learned Appellate Court had not decided the case on merits, and non-suited the Petitioner on the sole ground of defective power of attorney, therefore, in the fitness of things it would be appropriate that the matter be remanded back to the appellate Court to render findings on merits of the case afresh, including but not limited to the issue of default and bona fide personal need. Consequently, this petition is allowed. Impugned Judgment dated 04.12.2023 passed by the Appellate Court is set-aside. The F.R.A. No.141/2023 (re: Sajid Ahmed Khan v Syed Huzoor Alam Zaidi) shall be deemed to be pending before the Appellate Court and shall be decided on merits within a period of two months from the date of the receipt of this order. It is expected that on receipt of this order learned trial Court shall issue court motion notice to the parties for appearance for a date to be fixed by the Court.

JUDGE