

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-881 of 2002

Abdur Rahim & others...v... ...Jamaluddin & others

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

For hearing of main case.

Date of hearing and order 20-08-2026

Petitioners: Through Mr. Mr.Anwar Hussain, Advocate

Abdul Rahim and others

Respondents:

Jamaluddin

Nemo

ORDER

NISAR AHMED BHANBHRO, J: This petition is directed against the concurrent findings of fact rendered by the Courts below wherein the rent case No 1400 of 1989 (Re Jamaluddin and others V. Abdul Rahim and others) was allowed vide order dated 29.09.2000 (**impugned order**) by the learned 1st Rent Controller Karachi South and the First Rent Appeal No.346 of 2001 (Re- Abdul Rahim & others V. Jamaluddin & others) was dismissed vide judgment dated 8.7.2002 (**impugned judgment**) The Rent case was allowed on the ground of breach of tenancy agreement viz. sub-letting of the demised premises.

2. The notices of Petition were issued to the respondents No 1 to 6, they made appearance through Learned Counsels M/s Fariduddin & Company. Mr. Yousuf Kamal Advocate appeared and filed Vakalatnama on behalf on M/s Fariduddin & Company on 17.02.2003. It transpired from the case diaries that Counsel from both the sides appeared lastly on 20.01.2020, when it was informed that Respondent No 1 had expired therefore, his legal heirs shall be impleaded as party. The case was thereafter fixed on 27.04.2023, when it was informed that learned Counsel for the Respondents had also passed away. On passing away of learned Counsel for Respondents, the Respondents neither appeared in person nor engaged another Counsel, therefore, vide order dated 27.03.2024 service through all modes including publication was ordered. Despite service through publication, Respondents failed to appear and vide order dated 15.08.2024 the service against them held good, the Court issued notice to Mr. Shehryar Qazi Learned Additional Advocate General to assist the Court. Since it was a rent case and Government interest was not involved, therefore, despite of Court's direction no assistance came from Advocate General Office. This petition is pending since 2002, and was adjourned for lack of serious efforts to proceed with the matter by either sides and case was adjourned. The petition is therefore proposed to be decided with the assistance of Learned counsel for Petitioners.

3. Learned Counsel for the petitioners contended that the rent case for ejectment was instituted on three grounds viz; default in payment of rent, personal bonafide need and sub-letting the demised premises; that the Landlord failed to establish personal bonafide need and default in payment of rent, however, the rent case was allowed on the ground of breach of tenancy agreement viz. sub-letting to one Mushtaq Ahmed, the Petitioner

No 4 in the instant Petition. He contended that Petitioner No.4 was arrayed as an opponent in the rent case and he was alleged to be the sub-lettee, but no evidence worth credence was led to establish that demised premises were sub-let to Petitioner No 4. He next contended that Petitioner No 4 was maternal grandson and one of the legal heirs of Original tenant, therefore, fell within the definition of Tenant. He next submitted that petitioner No.4 looked after the business of his maternal grandfather during his life time. He contended that business was run in the demised premises jointly and the same remains an undisputed fact and evidence of the petitioners side to that extent remained un-shattered. He contended that there was serious defect of non-reading and misreading of evidence in the concurrent findings of the fact. He placed reliance on the case reported as 2000 SCMR 99 (Ms.Hajran Begumv...Inayatpur Rehman & another). He lastly prayed to allow this petition.

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

5. A cursory glance at the controversy between the party, inferred that the predecessor in interest of the petitioners late Abubakar and the respondents late Naseeruddin had entered into an agreement to let out the tenement premises viz. Shop No 11-C-88/G-1 Survey No W.C. 3/28 Wadhoomal Quarters, Princess Street Naanakwara, Karachi. The property was purchased by the Respondents in year 1960 in an open auction. Relationship of tenant and landlord and on the death of landlord and tenant devolved upon their legal heirs. Late Naseeruddin (Landlord) was survived by sons Jamaluddin, Kamaluddin, Shahabuddin, daughters Mst. Shahnaz, Mst. Sitara Begum and Munwari Begum. Late Abubakar (Tenant) was survived by sons Abdul Rahim, Muhammad Saleem, daughters

Mst.Roshan Bano, Kulsoom Bano and widow Mst. Amina Bai. It further transpired from the record that demised premises were let out to late Abubakar, where he established business in the name and style of "*Kohinoor Spray Painting Works*" and after his death the said business was continued by his legal heirs.

6. Respondents to 1 to 6 on death of their father became Landlords and Petitioners No 1 to 3 on death of Abubakar became tenants, being legal heirs of original owner / landlord and tenant. Respondents No 1 to 6 instituted rent case in September 1989 seeking ejectment of tenants on three grounds viz-a-viz, default in payment of rent since October 1980, personal bona fide need and sub-letting the premises to Petitioner No 4 without the permission of Landlords. On notices Petitioners filed written statement, denied all the assertion of Respondents. It was averred by the Petitioners that they deposited rents in courts regularly through case No 10 of 1969, personal bonafide need was tainted with malice to seek eviction and accusation of sub-letting was also baseless as Mushtaq Ahmed alleged sub-lettee was grand son of original tenant and was associated with the same business during the life time of his grand father.

7. Learned Trial Court, out of the pleading of parties framed three points for determination regarding default, personal bonafide need and sub-letting of tenement premises. Parties led evidence by filing affidavit in evidence. Learned Trial Court after appraising the evidence of parties dismissed the rent case to the extent of bonafide need and default in payment of rent, however granted ejectment application on the ground of breach of terms and conditions of tenancy agreement by sub-letting the demised premises to Petitioner No 4. Learned Trial Court held that the

petitioners were regularly depositing the rent in the MRC proceedings and later in the rent case pursuant to an order passed on application under Section 16(1) of SRPO, 1979, as such default in payment of rent was not established and for personal need no evidence surfaced on record.

8. Petitioners challenged Trial Court's order through First Rent Appeal No 346 of 2001. Respondents No 1 to 6 did not assail the order of Trial Court, as such findings of Trial Court on issues of Default and Personal Bonafide need attained finality. Learned Appellate Court after hearing the parties dismissed the appeal.

9. It transpired from the record that late Abubakar was survived by two sons, two daughters and one widow. It was alleged by the landlords/Respondents No 1 to 6 that legal heirs of Abubakar had subletted the tenement shop to one Mushtaque Ahmed. From the record it evidenced that Mushtaque Ahmed was maternal grandson of late Abubakar being son of his daughter Mst.Roshan Bano. Although an application under Order 1 Rule 10 CPC was filed to implead left out legal heirs as party to the proceedings. The said application was declined on the ground that the proposed opponents were daughters and they were not occupants and not in possession of the demised premises, therefore, their presence in the proceedings was not mandatory. Mushtaque Ahmed in his affidavit in evidence stated that he was running the business jointly with his grandfather under the same name and style, which was opened by late Abubakar. There is no evidence on record to say that the Mushtaque Ahmed had opened his separate business in the demised premises, on the contrary sufficient material was available on record to say that M/s.Kohinoor Spray Painting Works was established by late Abubakar and

was being looked after by Mushtaque Ahmed being his maternal grandson. Landlord may seek eviction of tenant otherwise then section 14 by making an application to the Rent Controller under section 15. The Rent Controller shall make an order directing the tenant to put landlord in possession of the premises within such period as may be specified in the order, when Rent Controller is satisfied that the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment, the tenant has, without the written consent of the landlord handed-over the possession of the premises to some other person; used the premises for the purpose other than that for which it was let out; infringed the conditions on which the premises was let out; the tenant has committed such acts as are likely to impair the material value or utility of the premises; the tenant has indulged in such activities as are causing nuisance to the neighbors; the premises is required by the landlord for reconstruction or erection of a new building at the site and the landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction; the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children. Since only ground that weighed the Courts below to grant ejectment application was subletting of premises that too from cursory glance at the material on record appeared to be flawed, as Mushtaq Ahmed being son of Roshan Bano, the daughter of late Abubakar, also became statutory tenant on demise of his grand father, in terms of the definition of tenant contained under Section 2(j) of the SRPO, 1979, which is reproduced below:-

“tenant” means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes – (i) any person who continues to be in possession or occupation of the premises after the termination of his tenancy; (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant.

10. Since no material or evidence was placed on record to say that Mushtaq Ahmed was doing the separate business or he was paying rent to his maternal uncles, in absence convincing evidence thereof, it cannot be held that Petitioner No 4 was a sub-lettee of the demised premises. On the contrary being son of one of the legal heirs he also fell within the definition of the statutory tenant. Reliance in this regard is placed upon the case of **Ms.Hajran Begum** *supra*.

11. This Court is very slow in disturbing the concurrent findings of fact rendered by the Courts below. The ejectment application on the grounds of bonafide need and default was dismissed and remained unchallenged and a cursory glance at the record leads to an ineluctable inference that no material was available to conclude that the demised premises were sub-let to Mushtaque Ahmed. The findings of Courts below to that extent suffered from mis-reading and non-reading of evidence, as such a fit case to exercise the powers of judicial review under Article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 is made out.

12. In the wake of above discussions, this petition is allowed. The judgment dated 8.7.2002 passed by the appellate court in the FRA no 346 of 2001 and the order dated 29.09.2000 passed by learned Trial Court in rent

case No 1400 of 1989 stand set-aside. Rent Case filed by the Respondents No 1 to 6 stands dismissed, however, the petitioners shall continue to deposit the rent as directed by the Trial Court in the rent proceedings or they may institute a fresh MRC, if so advised.

Copy of this order shall be sent to learned trial Court for information.

JUDGE

Nasir

Approved for reporting