

# HIGH COURT OF SINDH KARACHI

## C.P No.S-859 of 2017

[Cyrus R. Cowasjee versus The Senior Civil Judge & Rent Controller and Ors.]

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Petitioner : Through R.F Virjee advocate

Respondents No.1&2: Through Mr. M. Kamran Khan Assistant A.G

Respondent No.3 : None present

Date of hearing : 11.12.2023

Date of decision : 08.04.2024

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### ORDER

**KAUSAR SULTANA HUSSAIN J.-** Through this constitutional petition findings of two Courts below, recorded in rent proceedings, have been challenged. Petitioner had filed an application bearing Rent Case No.170 of 2007 [***Re: Cyrus R. Cowasjee versus Pirzada Shujauddin Siddiqui***] under Section 15 of Sindh Rented Premises Ordinance, 1979 (SRPO) before learned III<sup>rd</sup> Rent Controller Karachi West (**Rent Controller**) for eviction of private respondent from property bearing Flat No.A/2/NW, 2<sup>nd</sup> Floor, Mules Mansion Keamari Karachi [**subject premises**], which was dismissed on merit vide Order dated 28.02.2013, which was challenged by the petitioner in FRA No.11 of 2013 before learned I<sup>st</sup> Additional District Judge Karachi West, but the same was also dismissed vide Judgment dated 30.11.2016.

2. Concise facts of the matter are that petitioner filed an application under Section 15 of SRPO, 1979 before learned Rent Controller against private respondent, claiming therein that he is co-owner of subject property while private respondent is statutory tenant of the said property, who had failed to pay rent for last more than 10 years, hence he is liable to be ejected. Summons/notices were issued against private respondent who had filed his Written Statement, wherein he denied his status as tenant of subject property. Nonetheless learned Rent Controller after hearing the parties dismissed the said Rent Application, followed by dismissal of First Rent Appeal bearing No.11 of 2013 preferred there-against by the petitioner, hence this petition.

3. Learned counsel for the petitioner argued that both Courts below have erred in law and facts while passing the impugned Order and Judgment; that since the private respondent had addressed the letter dated 10.07.2007 to petitioner, as such he was duty bound to clarify that who is staying in subject property, if he (private respondent) is not residing in the same; that in fact the subject property

has been sub-let by the private respondent to one Shakeel; that it was incumbent upon the legal heirs of the actual tenant to surrender the subject property to petitioner. He finally prayed for allowing this petition and setting aside of impugned Order and Judgment passed by Courts below respectively.

4. Despite service of notice no one effected appearance on behalf of private respondent. However, in order to bring his defense on record I have gone through the contents of Written Statement filed by him before learned Rent Controller, wherein he denied being tenant of subject property. It is further claimed in said Written Statement that subject premises were originally given on rent to one Ziauddin Ahmed Siddiqui in the year 1948, who expired on 22.12.1968 and thereafter his son namely M.A Siddiqui continued with the rented premises. It is also claimed in the Written Statement that M.A Siddiqui also expired in the year 1999, leaving behind three sons namely (i) Pirzada Shujauddin Siddiqui (*private respondent/opponent*), (ii) Dr. Jamaluddin Ahmed Siddiqui and (iii) Air Commodore Kamaluddin Ahmed Siddiqui, however, he (*private respondent/opponent*) after getting marriage had left the subject property prior to death of his father M.A Siddiqui and then his brother namely Dr. Jamaluddin Ahmed Siddiqui used to deposit rent of subject property in MRC No.191 of 2000.

5. I have heard the learned counsel for the petitioner and have also perused the material available on record.

6. Admittedly the subject property was initially given on rent to one Ziauddin Ahmed Siddiqui (*grandfather of private respondent*) and after the death of said Ziauddin in the year 1968 the father of private respondent namely M.A Siddiqui continued with the rented premises, who also expired in the year 1999. It is well settled law that after the death of the actual tenant his/her surviving legal heirs would be deemed to be the statutory tenants of said property, if they continue with the same after the death of actual tenant and it is not necessary that tenancy agreement be re-executed between the landlord and statutory tenants. Though it is claimed by the private respondent/opponent in his Written Statement that he had left the rented premises prior to the death of his father, however it is not mentioned anywhere that whether he had informed the landlord about said fact immediately after the death of his father or otherwise.

7. In addition to above the letter dated 16.06.2007 was addressed by the petitioner/landlord to occupant of the subject premises (*at the address of subject premises*), however, admittedly it was replied by the private respondent/opponent on 10.07.2007 instead of any other surviving legal heir of actual tenant, whereby he specifically admitted that after the death of their grandfather (*actual tenant*) their family continued to live in subject premises and their Legal Advisor used to deposit the rent regularly in the Court of Rent Controller through MRC No.191 of

2000. Now question arises that, as claimed, if the private respondent/opponent had left the subject premises in the year 1994 during lifetime of his father then how he came to know about the letter dated 16.06.2007, which was addressed to occupant of subject premises and why he had replied the same, if at all he was not residing there, however, there is no explanation on part of private respondent/opponent in this regard.

8. As far as depositing of rent before learned Rent Controller by the private respondent/opponent through MRC No.191 of 2000 is concerned, Section 10(3) of SRPO, 1979 provides that in case the landlord refuses or avoids to accept the rent, the same shall be sent to him/her by postal money order or be deposited with the Rent Controller under whose jurisdiction the premises is situated. In present case there is no denial that petitioner is the successor/legal heir of original landlord, as such the private respondent/opponent was required to pay him rent regularly instead of depositing the same with Rent Controller when there is no refusal on part of petitioner/landlord to receive the rent rather he demanded the rent through letter dated 16.06.2007. Deposit of rent with Rent Controller, as claimed, in absence of any refusal on part of petitioner/landlord prima facie shows malafide on part of private respondent/opponent, coupled with the fact that he has failed to submit any receipt in this regard which is sufficient to prove the element of default.

9. In view of the above discussion instant petition is allowed. Resultantly the impugned Order dated 28.02.2013 as well as impugned Judgment dated 30.11.2016 passed by learned Rent Controller and Appellate Court respectively are set aside. Private respondent/opponent is directed to handover peaceful vacant possession of the subject premises to petitioner/landlord within seven days from the date of this Order. In case of failure, the subject premises shall be got vacated by the learned III<sup>rd</sup> Rent Controller Karachi West through police aid and handover the same to petitioner/landlord. As far as arrears of rent are concerned, petitioner/landlord is at liberty to approach the learned Rent Controller concerned by filing proper application supported by chronological statement for decision in accordance with law.

10. Petition stands allowed in the above terms.

JUDGE