

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-2068 of 2017
Faisal Mustafa . v . Mst. Zubaida & Ors.

Date	Order with signature(s) of Judge(s)
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For hearing of main case.

19.11.2025.

Mr. Shaikh Adnan Usman, Advocate for Petitioner.
Mr. Abdul Rauf, Advocate for Respondent No.1
Mr. Faiz Muhammad Awan, Advocate for Intervenor.

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has challenged the judgment dated 26.08.2017 passed by the Court of the Additional District Judge, South Karachi, whereby the rent appeal was allowed and the order dated 27.03.2014 passed by the IV Rent Controller, South Karachi, in Rent Case No. 1208 of 2010 was set aside.

2. Learned counsel for the petitioner submits that the demised premise was rented out to the respondent, being the grandmother of the petitioner, who passed away in the year 1990. During her lifetime, she transferred her title to Aziz Nigar who also died issueless, and the petitioner, being one of the legal heirs, is entitled to receive the rental amounts. He next contends that the petitioner, through notices dated 30.10.2010 and 02.04.2012, required the respondent to pay the regular rent and arrears of rent to him, but the said notices were never replied to; therefore, he filed an application under Section 15 of the SRPO, 1979 seeking ejectment of the respondents on the ground of default in payment of rent. He further submits that the respondent was required to pay the rent to the legal heirs of the deceased, but instead, the rent was being deposited before the Court in MRC No.749 of 1986 which does not constitute legal payment and cannot be considered payment towards the rental amount. He additionally contends that the legal heirship of the petitioner was not disputed, and the petitioner was entitled to receive the rent as none of the legal heirs of the said Aziz Nigar ever raised any objection. He has relied up on the cases reported as 1996 AC 682 re: Feroz Khan v. Syeda Zoha, and 2018 SCMR 762 re: Zohra Bibi v. Haji Sultan Mahmood and unreported order passed by this Court in C.P. No.S-66 & 67 of 2022 and, therefore, prayed that the order passed by the trail Court in rent appeal is set-aside.

3. Mr. Abdul Rauf, learned counsel for the respondent, contended that the ejectment application was filed solely on the ground of default in payment of rent. He further submits that the respondent made efforts to pay the rent, but the same was not received due to the death of the original owner, Mst. Noor Jehan, and

Aziz Nigar. Therefore, he preferred M.R.C. No. 749 of 1986 and started depositing the rent regularly before the Court. As such, the provisions of sub-section (ii) of Section 2 of Section 15 of the SRPO, 1979 protected the right of the respondent, as he did not commit any default. He prayed to dismiss the petition.

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

5. The petitioner sought the ejectment of the respondent solely on the ground of default in payment of rent. The trial court framed a specific issue in this regard and held that the respondent was a defaulter in the payment of rent, therefore ordered his ejectment. It will be conducive to reproduce the findings of Point No.2 regarding default in payment of rent herein below:

It is the case of applicant that he sent legal notice to the opponent to pay rent to him, but even then the opponent failed to pay rent to applicant. The opponent has also admitted in his cross examination that his - mother did not pay rent to any legal heir of Mst. Noor Jahan Begum after her death because they were not in knowledge of death of Mst. Noor Jahan Begum. The opponent also admitted in his cross examination that it is not mentioned in his affidavit in evidence that he was not in knowledge that Mst. Noor Jahan Begum had expired. The opponent also admitted in his cross examination that he has not paid rent to the applicant after death of his mother, nor sent rent to the applicant through money order and stated that the applicant is not the owner of the premises in question. The opponent further admitted that even after receiving notices from the applicant for payment of rent to him, he did not pay any rent to the applicant. The opponent further stated that he has been depositing rent in the court in MRC No 749/1986 up to date, but since the opponent has been depositing rent in MRC No 749/1986 in favour of deceased Mst. Noor Jahan Begum, therefore I am of the humble view that such deposit of rent in MRC by the opponent is not a valid tender of rent in this regard. I am fortified by case law reported as 2012 CLC Lahore 1178 and 1996 A.C 682, 1 wherein it has been held that deposit of rent in name of a dead person would not be due tender and the tenant in such case would be defaulter within the meaning of section 15 2 (ii) of SRPO 1979 and would be liable to eviction for defaulter. Hence for the foregoing reasons and in the light of afore cited case law I am of the humble view that the opponent has committed willful default in payment of rent to the applicant in respect of premises in question. Hence this point is answered in affirmative”

6. In appeal, the Appellate Court held that since the legal entitlement of the petitioner was under dispute, therefore, until the decision in Suit No. 271/1998 filed by the legal heirs of deceased Mst. Noor Jehan and Aziz Nigar, respondent No. 1 shall continue to have possession of the tenement premises. It is further contended that once the claim of legal heirship is settled, the legal heirs, including the petitioner, would be entitled to seek ejectment of the tenement in accordance with law. It is also observed in the appellate judgment that the respondent shall continue to deposit the rent in M.R.C. No. 749 of 1986.

7. It is an admitted position that the respondent has been depositing the rent before the competent Court of law since 1986 till date. Section 15(2)(ii) of the SRPO, 1979 provides for the ejectment of a tenant. The said provision states that if, on the first day of hearing, the tenant admits his liability to pay the rent claimed from him, the Rent Controller shall, if satisfied that the tenant has not committed such default on any previous occasion and that the default does not exceed six months, direct the tenant to pay all the rent claimed from him on or before a date to be fixed for the purpose. For the sake of convenience Sub-Section (2) (ii) of Section 15 of SRPO, 1979 is reproduced below:

15. (2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that:

(ii) 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 “provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application.”

8. The proviso (ii) to clause (2) provides that if the default in payment of rent is made good, the Rent Controller shall reject the application, meaning thereby that if the Court is satisfied that there is no default in payment of rent, then on this sole ground the ejectment application cannot be sustained and is liable to be dismissed. In the present case, the respondent has been regularly depositing the rent before the Court, which fact has also been admitted by the petitioner. His only contention is that depositing the rent before the Rent Controller or the Court concerned does not fall within the meaning and scope of the SRPO, 1979, and that the rent was being deposited in the name of a deceased person. Even if this analogy is accepted, it remains unexplained how the petitioner can now claim rights against a deceased person, when by his own admission she is no longer alive. Needless to say, the right of ownership does not extinguish upon the death of a person; rather, it devolves upon the legal heirs in accordance with law.

10. The cases relied upon by the learned counsel for the petitioner pertains to situations where default in payment of rent had been fully established. In the instant case, however, no such default has been established; therefore, the cases cited by the petitioner are not applicable and are distinguishable on facts.

11. In the present case, since respondent No. 1 has been depositing the rent before the Court, the legal heirs of the deceased would be entitled to collect the rent upon production of valid documents establishing their right of heirship. As sufficient material is available on record to hold that the respondent was not a defaulter in payment of rent, the ejectment application filed solely on the ground of default was not maintainable. The Appellate Court therefore rightly held that the petitioner would be entitled to the benefit of the rental amount if and when he establishes his claim of heirship, which is already subjudice before the competent Court. The order passed by the Appellate Court appears to be in accordance with law. Learned counsel for the petitioner has failed to point out any illegality or infirmity in the said order warranting interference by this Court. Consequently, this **petition is dismissed**, and the ejectment application filed by the petitioner, as rightly concluded by the Appellate Court, also stands dismissed. However, the petitioner shall be at liberty to initiate fresh proceedings, if so advised and available under the law. The respondent shall continue to deposit the rent where he is presently depositing it, and the legal heirs, if they so desire, may collect the rent from the Court concerned.

JUDGE