

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A. NO.14/2018

Appellant : Tanveer Ahmed Shah,
through Mr. Mehmood Habibullah advocate.

Respondent : Mst. Naghma Ansari,
through Mr. Muhammad Yaseen Azad, advocate.

Date of hearing : 09.04.2019.

Date of order : 09.04.2019.

ORDER

SALAHUDDIN PANHWAR, J. Appellant has challenged judgment dated 28.06.2018 passed by concerned Controller of Rents in Rent Case No.19/2010 (Re: Mst. Naghma Ansari vs. Tanveer Ahmed Shah) allowing ejectment application.

2. Facts leading to filing of this appeal are that the applicant/respondent filed ejectment application claiming to be the landlady of flat premises bearing flat No.A/70, 9th floor, Impire Centre, Johar Mor, Gulistan-e-Johar, Karachi, against opponent/appellant as her tenant vide tenancy agreement dated 04.03.2003 at the monthly rent of Rs.2,000/- and Rs.10,000/- as security deposit; that most of times she used to go to the opponent with her driver namely Jamil to collect the rent of the premises; that after the expiry of first tenancy agreement, another tenancy agreement was executed on 26.03.2004 on the same terms and conditions however with enhancement of rent to Rs.2,500/- per month and after expiry of this second tenancy agreement, another tenancy agreement dated 22.11.2005 was executed on same terms and conditions following the previous agreements with enhanced rent

of Rs.3,500/- per month; that in the month of September, 2005 the applicant with her husband went to collect the rent of the premises from the opponent and also requested that the applicant requires the premises for her personal use since the applicant is residing in rented premises with her family, the opponent paid the rent to applicant and further replied that he is trying to find another residence and soon will vacate the premises; that opponent paid rent of the premises up to the month of February, 2006 and thereafter from the month of March, 2006 failed to pay and/or tender the rent of the premises to the applicant; that in the month of December 2006, when the applicant went to the opponent for receiving the rent and for the vacation of the premises, opponent refused to pay the rent so also to vacate the premises and also issued threats to the applicant and her husband; that before filing of present ejectment application, the applicant had earlier filed ejectment application before 1st Senior Civil Judge & Rent Controller Karachi East which was subsequently withdrawn with permission to file a fresh before the Controller of Rents, Cantonment Board concerned having jurisdiction.

3. The opponent/appellant in his written statement denied the existence of relationship of landlady and tenant between the parties, he termed the tenancy agreements attached therewith the ejectment application as forged and fabricated; he denied that applicant/respondent is owner of the premises and stated that opponent is the tenant of one Naveed Iqbal from the year 2002 who is the owner according to Cantonment Board's record; he further stated that Naveed Iqbal produced such agreement of tenancy in Rent Case No.535/2006 before 1st Senior Civil Judge & Rent Controller Karachi East; that according to Cantonment Board's record dues and

challans were paid by Naveed Iqbal in respect of premises and the ejectment application is fictitious and false.

4. Trial Court framed and answered following the issues as under:-

1. Whether the opponent is tenant of the applicant vide tenancy agreements dated 04.03.2003, 26.03.2004, and 22.11.2005?	In affirmative
2. Whether the opponent has failed to pay the rent of the premises to applicant from the month of March, 2006 till date?	In affirmative
3. Whether the applicant requires the premises bonafidely for her personal use?	In affirmative
4. What should the order be?	Ejectment application allowed.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for appellant has argued that in fact appellant was tenant/licensee of original owner namely Naveed Iqbal, who had filed a rent case No.535/2006 against appellant before the Court of 1st Rent Controller, Karachi-East, later on it was withdrawn; that according to Cantonment Board said Naveed Iqbal is/was owner of subject flat as informed by E.O, CB-Faisal to police in connection with a complaint lodged by respondent; that respondent had also filed rent Case No.69/2007 before 1st Rent Controller against present appellant being attorney of Syed Karimuddin s/o Rukanuddin which was dismissed on 19.07.2008; that respondent had filed ejectment application which was allowed vide order dated 16.10.2014, same was challenged by filing FRA No.36/2014 before this Court which was allowed vide order dated 29.01.2018 and the order of ejectment

was set aside, case was remanded back; after arguments that ejectment application was allowed impugned herein. It is contended that respondent is neither owner nor landlady for appellant; that though appellant filed application u/s 151 CPC for framing of issue as to the relationship of landlady and tenant and another application for dismissal of ejectment application but inspite of order that those applications will be decided at the time of final disposal of matter, same were never decided by trial court. He further added that impugned judgment is illegal, null and void, without authority, without appreciation of evidence available on record in which respondent had failed to prove her relationship as landlady with appellant as tenant, that trial court failed to record its findings on issue No.1 relating to relationship; that in case of disputed relationship landlord is first required to seek his title cleared from civil court and then invoke rent jurisdiction; that civil litigation filed by respondent for declaration of her title came to an end with failure and here she is only relying upon file of the builder with regard to ownership of subject flat; that trial court misread the evidence and also failed to consider admission of respondent that she did not file any sale agreement between her and Syed Kareemuddin as well she inspite of filing present case on the basis of power of attorney allegedly executed by Syed Kareemuddin but Syed Kareemuddin recorded his statement u/s 161 CrPC before I/O of complaint registered by respondent wherein said Syed Kareemuddin denied execution of power of attorney in her name; hence impugned judgment is liable to be set aside. He relied upon PLD 1991 Karachi 417, 2001 YLR 1224 and 1994 MLD 561.

7. Learned counsel for respondent argued that as many as three tenancy agreements were executed between the parties; case

filed before the Rent Controller concerned was withdrawn as that Court had no jurisdiction; that appellant filed frivolous petitions being CP No.107/2013 and S-673/2014 before this court which was dismissed with cost of Rs.10,000/- and direction to appellant to submit receipt of payment before this court; that initially burden was upon respondent to prove that appellant is her tenant which burden she has discharged by producing three tenancy agreements and further by producing witness in whose presence she used to collect the rent and one attesting witness of the tenancy agreement; that she has also proved default in payment of rent; hence impugned judgment is in accordance with law, appeal is liable to be dismissed. He has relied upon 2008 CLC Karachi 877, 2002 SCMR 241, 2000 SCMR 1292, 1997 SCMR 1062, 2010 SCMR 1925 and 2010 CLC Lahore 1006.

8. *Prima facie*, the appellant has challenged the competence of the respondent / landlady to file the eviction proceeding while disputing ownership as well status of the respondent / landlady as **'owner'**. Such plea, *prima facie*, appears to have been raised without careful reading of the Act. The perusal of the Act shall make it clear that term **'owner'** has not been given any separate space (definition) nor the right to file eviction proceeding is subject to such status. I would further add that the Act was / is meant to deal with dispute between **'landlord** and **tenant'** and not **'owner and occupant'** . This has been *sole* reason that the Act, no where defines the word **'owner'** but defining section only speaks about **'landlord** and **tenant'**.

9. Thus, it is evident that satisfaction of term **'landlord'** is subject to **'entitlement to receive rent'** hence the moment one is *legally* entitled to receive / collect the rent and the **tenant** in

recognition of his / her such entitlement starts paying **rent** to him then such **tenant**, at any subsequent stage, cannot question legal status of such person as **'landlord'**. In any case, a challenge to such person could only be made by the **'owner'**.

10. Thus, to establish *prima facie* status of **'landlord/landlady'** the factum of **'existence of relationship of landlord & tenant'** would be sufficient. This, *prima facie*, could be proved either by **'written rent agreement'** or by establishing factum of **'payment of rents'**. The *pleas* , raised by tenant, denying / disputing title / ownership would be of no help in such like matter. Reference is made to the case of *Afzal Ahmed Qureshi v. Mursaleen* 2001 SCMR 1434 wherein it is held as:-

“4. ... In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that “the issue whether relationship of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith”. PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. **We are conscious of the fact that 'ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties'**.
(emphasis provided)

11. Perusal of the record shows that the respondent / landlady not only brought on record the **written rent agreements** but also proved by way of evidence the factum of payment of rent by the appellant. At this point, the relevant portion of the *impugned* judgment, being relevant, is made hereunder:-

“These both issues are connected with each other hence I take both issues together. The burden of issue no.1 is lying on the

applicant first. The applicant filed her affidavit-in-evidence and examined her and in support of her contentions produced original tenancy agreements dated, 04.03.2003, 26.03.2004 and 22.11.2005, Schedule of payment receipts to the builder (including payment receipts), acknowledgement of physical possession letter, provisional allocation letter to Ahmed Saeed son of Sayed Ashraf, sale agreement of Sayed Ahmed Saeed with Syed Karimud-Din dated 15.11.2001 and sale agreement of Syed Karim-ud-Din with the applicant (Mst. Naghma Ansari w/o Abdul Ghafoor Ansari). **The applicant came in witness box to support her contents of ejectment application on oath** and thus was cross-examined by the Counsel appearing for opponent but nothing has been brought contradictory against her claim rather she fully supported grounds taken in the ejectment application.

12. Thus, initial burden to prove the existence of relationship of landlady and tenant was discharged. It is material to add here that the appellant, while admitting his induction as *tenant*, took a complete different plea that the premises in question is owned by Naveed Iqbal and that he (appellant) was his (Naveed Iqbal's) tenant hence it was obligatory upon him (appellant) to have brought some material on record so as to prove his such claim but perusal of the record shows *otherwise*. The relevant portion of the cross-examination of appellant, being relevant in this regard, is reproduced hereunder:-

"...Mr. Naveed Iqbal is my landlord. Naveed Iqbal is the resident of Quetta and I was the tenant of Naveed Iqbal from January, 2002 to June, 2006 thereafter I purchased the same. It is correct to suggest that I have not filed any title documents in respect of flat in question that Naveed Iqbal is owner of property. It is correct to suggest that I have not filed any documentary evidence alongwith my affidavit-in-evidence and written statement which can show that I purchased this property from him. It is correct to suggest that I have no documentary evidence of sale of flat in question. I cannot show any document of ownership of the flat in question". "It is correct to suggest that Naveed Iqbal has not filed any affidavit in my favour that he has sold out the property to me". "I have no knowledge that on 15.11.2001 Syed Ahmed Saeed has sold out this flat to Syed Karim-ud-Din son of Syed Rukun Din. I have no knowledge that on 19.08.2002 Syed Karim-ud-Din sold out this flat to Mst. Naghma Ansari (applicant/landlady) and total payment was made by Mst. Naghma Ansari to Syed Karim-ud-Din"

13. From above referral it is quite clear that appellant produced nothing in support of his claim, therefore, the learned lower court rightly observed as:-

“The opponent has completely failed to support his contents of written statement by producing a single document as to the purchase of the premises from Naveed Iqbal and further the opponent failed to produce documents of even ownership of the premises of Naveed Iqbal. The opponent repeatedly stated in his written statement and affidavit-in-evidence that opponent was tenant of Naveed Iqbal and thereafter, purchased the premises from him but surprisingly, not only the opponent failed to file -such affidavit of Naveed Iqbal but also failed to produce him before this Court as his witness. From the perusal of pleadings and the evidence of opponent it is crystal clear that the opponent, having gained complete information as to the current status of the premises, cunningly created Naveed Iqbal as dummy owner of the premises especially to keep him away from the liability of payment of rent to the applicant and to retain possession of the premises for a considerable time. The opponent stressed on few receipts of dues & challans which are paid in the name of Naveed Iqbal in the Cantonment Board record but by payment of such taxes in one's name does not create any title in his name. Although, it came on record that the applicant was in possession after purchase of the premises and she has inducted the opponent in the occupation of the premises as tenant. By now, it is well settled law that a person inducted into premises as tenant, remains tenant and it does not lie in his mouth to take the plea adverse to his status where heavy burden lies upon him to prove. Case laws relied up by the opponent are not applicable to the facts of present case.

14. The conclusion, so drawn by learned lower court in respect of the point no.1, was / is within all settled principles of law for such **point**. Needless to add that in existence of such plea of the tenant an answer to point no.1 in **affirmation** was / is always sufficient to answer the point no.2 as **affirmative** therefore, lower court was quite right in deciding both points *jointly* and answering the same as **‘affirmative’**.

15. While attending the findings on the third point relating to personal *bona fide* need of the respondent / lady, I would say that in such like situation a positive answer towards **default** in paying the

rent is sufficient for eviction of the tenant. However, let's examine the findings of the learned lower court on such point which reads as:-

“Now I take the applicant's personal requirement. The applicant stated in her ejection application that she requires the premises for her personal bona fide use since she resides in a rented flat so also applicant annexed the copy of tenancy agreement dated 01.02.2010 as annexure "P/4". To prove her ground of personal need the applicant filed her own affidavit-in-evidence and produced her in witness box and was subjected to cross-examination. The burden was on the applicant to prove her personal bona fide hence, applicant successfully discharged her burden, nothing has been brought as contradictory with her claim as per pleadings and the same was shifted to the tenant. From the perusal of written statement, affidavit-in-evidence of opponent, the opponent did not place a single sentence that the applicant does not require the premises for her personal use or the demand of applicant's for personal use of premises is not genuine. The same position is the cross-examination of the applicant where the opponent's Counsel did not put a single question as to the applicant's personal need of the premises.. However, the opponent in his cross —examination stated that "I do not know that the applicant is residing in rented premises and the premises in question is required by the applicant for her personal use."

Since the contents of applicant's case regarding personal need remained unshattered hence the applicant proved her case on the present issue of personal bona fide need of the premises. Hence this issue is answered in affirmative.”

16. *Prima facie*, the appellant has not challenged the claim of the respondent / landlady rather he (appellant) remained stuck with his plea of being tenant of **‘Naveed Iqbal’**, which, as already discussed, was immaterial for issue involved. Thus findings of learned lower court are also in line with settled principle of law for determination of such issue, as was reaffirmed in case of Habib Bank Ltd. V. Haji Karim Dad & another 2017 CLC 1624 as:-

“8..... in this regard, reliance is placed on Iqbal Book Depot and others v. Khatib Ahmed and others, 2001 SCMR 1197 wherein it was held that:-

“It is well-settled by now that where the statement of landlord on oath was quite consistent with his averment made in the ejection applications, neither his statement was shaken nor anything was brought in evidence to contradict the statement that would be considered sufficient for acceptance of the ejection application. In this regard we are fortified by the dictum laid down in case titled Juma Sher v. Sabz Ali 1997 SCMR 1062 wherein it was held as follows:-

“Sole testimony of the landlord is sufficient to establish his personal bona fide need of premises. Where the statement of landlord on oath was quite consistent with his averments made in the ejectment application and neither his statement was shaken nor any thing was brought in evidence to contradict his statement and tenant had not even stepped in the witness-box to controvert the testimony of the landlord, Rent Controller was fully justified in accepting the evidence of the landlord and ordering eviction of the tenant.”

17. In consequence of what has been discussed above, I am of the clear view that the order of the learned Controller of Rent is not shown to be suffering from any illegality or jurisdictional error hence the instant appeal merits no consideration, accordingly dismissed.

J U D G E

IK