

# THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-1180 of 2019

Present: Mr. Justice **Salahuddin Panhwar**

Petitioner : Mst. Zeenat Mehmood through Mr. Aziz-ur-Rehman Akhund advocate

Respondent No.1: Mst. Farhat Fareed Khan through Mr. Muhammad Imran Ameer, advocate

Respondent No.2: IInd Additional District Judge, Karachi East

Date of hearing : 30.09.2020

Date of judgment: 30.09.2020

## JUDGMENT

Mst. Zeenat Mehmood, petitioner has challenged judgment dated 24.09.2019, passed by learned II-Additional District Judge, Karachi East, in FRA No. 86/2019, whereby while allowing the First Rent Appeal, the findings of the Rent Controller were reversed and eviction application was dismissed.

2. Precisely, the relevant facts of the case are that the petitioner, claiming herself to be owner of Flat No.A-110, 1<sup>st</sup> Floor, Shumail Centre, Block 13-E, Gulshan-e-Iqbal, Karachi (hereinafter referred to as the demised premises) filed a Rent Case bearing No. 232 of 2018 against the respondent No.1 on the grounds of default in payment of utility bills and personal bona fide need, to which respondent No.1 filed her objections/written statement, inter alia, denying therein the relationship of landlord and tenant between the parties on the basis of Sale Agreement dated 25.06.2007. Thereafter, in order to prove their assertions, parties led their evidence and ultimately the learned Rent Controller, vide order dated 15.04.2019, allowed the ejectment application directing the respondent No.1 to vacate the demised premises. Against such order, an appeal bearing FRA No.86 of 2019 was preferred by the respondent No.1 before the appellate Court, which was allowed vide judgment dated 24.09.2019, resultantly, the findings of Rent Controller were reversed and the matter was remanded back with direction to the respective parties to adduce their evidence on the point of ownership or produce

documents if any, and thereafter, the learned Rent Controller was directed to decide the matter afresh on merits. Hence, this petition.

3. At the outset learned counsel for petitioner contends that adjudication made by the Rent Controller was in accordance with law, who considered the documents produced by the Petitioner in her favour including utility bills and passed the well-reasoned order after scanning the evidence, whereas Appellate Court has failed to appreciate the evidence and reversed the findings arbitrarily and in a slipshod manner.

4. In contra, learned counsel for respondent No.1 admitted that respondent No.1 was tenant of the Petitioner, however, she purchased the demised premises from the Petitioner and part payment of the sale consideration has also been made to the petitioner and he disputed the relationship of landlord and tenant between the parties.

5. At the outset, I would take no exception to the legal position that ownership *alone* has got nothing to do with regard to relationship of landlord and tenant. One legally can't invoke the jurisdiction of Rent Controller merely by referring his / her title document but would be required to *first* establish such relation else the Rent Controller shall have no jurisdiction to proceed further. The view is based upon guidance, provided by 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”.

6. The above position, however, would never absolve the Rent Controller to first examine this aspect. Since, *legally* the Appellate Court in

rent hierarchy is that of *final authority* therefore, the appellate Court was / is also required to examine whole case including that of *relationship*. Now, it would be conducive to refer paragraph No.12 of impugned judgment which is that :-

*“12. Having heard advocates for both the parties, after perusing impugned judgment and R & Ps, it reveals that the applicant Zeenat Mehmood filed the rent case against the appellant Farhat Fareed on the ground that she is owner of the flat in question (Flat No.A-110, First Floor Shumail Centre, Block-13/E, Gulshan-e-Iqbal, Karachi). Regarding said flat applicant has not produced any ownership documents along with application under section 15 of SRPO 1979 neither she produced ownership documents along with her affidavit in evidence nor produced the same at the time of recording her evidence. The applicant/respondent Zeenat Mehmood stated that she is owner of the flat in question but nothing brought on record regarding ownership in respect of flat in question. Without producing any document proof/title document in respect of ownership, it cannot form opinion that Mst. Zeenat Mehmood is landlady of the flat in question.”*

7. It would be conducive to refer relevant paragraphs of the judgment of the Rent Controller on the question, which reads as under:-

*“Applicant filed present rent case in respect of Flat No.A-110, First Floor, Shumail Centre, Block-13-E, Gulshan-e-Iqbal East Karachi while in rent agreement at Exh-A/1 block 13-D/3 is mentioned. It is not denied by the opponent anywhere in this case that she is not in occupation of rented premises as tenant of applicant. But it is matter of record that opponent neither denied her tenancy in rented premises nor ownership of applicant. On the contrary applicant claims that she purchased same property under sale agreement dated 25-06-2007 from applicant. Opponent in her cross examination has admitted that rented premises is situated in Block-13-E*

*Opponent only denied her relationship as tenant with applicant on the ground of alleged agreement of sale dated 25-06-2007 at Exh-O/1. However, ownership of applicant lady in respect of rented premises is not denied. Opponent did not file any suit or proceedings against applicant on the basis of alleged sale agreement at Exh-O/1. Applicant denied execution of said agreement in toto. Opponent failed to examine any witness in support of her version and learned advocate for applicant during cross to opponent challenged entire version of opponent. Even no marginal witness of said agreement was examined. Opponent remained unable to establish her defense. Moreover where such sale is denied by the landlord/ landlady, tenant cannot be allowed to retain premises during the litigation based on such transaction. Tenant should prosecute his claim by vacating premises, but thereafter he/she would be entitled to an easy and free entry as soon he finally succeeded in establishing his title against the*

landlord. Reliance is placed on 2017 SCMR 330, 2014 MLD 23 & 1999 MLD 2924.

*In view of above stated position, I am of the opinion that version of applicant regarding status of opponent in demise flat as tenant is remained un-rebutted and unchallenged and is near to probable truth as comparative to the version of opponent. Hence point No.1 is answered in Negative. "*

8. From perusal of the above paragraphs, it clearly shows that learned Rent Controller decided the questions relating to ownership and relation of landlord and tenant after going through the record. However, learned Appellate Court has not properly appreciated the contents of written statement of the respondent No.1, wherein she categorically admitted firstly her induction as tenant and thereafter alleged purchase of the said flat from the Petitioner. Even during the course of arguments, learned counsel for the respondent No.1 has admitted that respondent No.1 was inducted as tenant in the demised premises, but claimed that respondent No.1 has purchased the demised premises from the petitioner.

9. As regards to the purchase of the demised premises is concerned, it would suffice to say that taking of such a plea (filing and pendency of such *lis*) by a tenant leaves him with no option but to do what has been enunciated by Apex Court i.e "to put the landlord into possession and then to *proceed* for enforcement of his rights". Reference may be made to Abdul Rasheed v. Maqbool Ahmed & others 2011 SCMR 320 wherein it is held as:-

5. ... *It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.*

10. Since *prima facie* the question of *personal* bonafide need is involved therefore, I find it in all fairness to refer the relevant provision of Sindh Rented Premises which is Section-15(vii) of the Ordinance which reads as:-

*“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.”*

11. The words ‘*occupation*’ and ‘*use*’, since not been defined by the Ordinance, hence their *ordinary* meaning would be taken. Since the *terms* have deliberately been used *independently* therefore, *prima facie* former appears to be relating to a case where eviction is being *sought* to ‘**occupy**’ while the *later* i.e ‘**use**’ appears to deal with cases where eviction is being sought for using the premises for purpose business/earning purpose, as was being used by *tenant*. At this *point*, I would insist that the *criterion* for establishing a case of *eviction* on count of ‘*requirement of premises for his own **occupation***’ would be much *lighter* from that of ‘*requirement of premises for his own use*’ because the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is *otherwise* guaranteed by Article 23 of the Constitution. Reference may well be made to the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui 2000 SCMR 1613 wherein it is held as:-

*“4. ... It is well-settled that the landlord has the absolute right to acquire and deal with his property in the manner best suited to him and a tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is again guaranteed by Article 23 of the Constitution.”*

12. I would further say that in such like cases the landlord would only require to *establish* that requirement is *reasonable* and does not appear to be *mala fide* one. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such occupation. This would carry presumption of *truth* hence strong evidence would be required from *tenant* to rebut it. Conclusion is drawn from case of Mehdi Nasir Rizvi supra wherein it is held as :-

*“4....there is no circumstance available on record tending to show that the desire of the respondent to use his own property is tainted with malice or any evil design. In fact respondent’s statement on oath has not been seriously challenged and in law it being consistent with the case pleaded by him must be accepted on its face value and given due weight. In the absence of any strong evidence to rebut the presumption of truth in the statement of the respondent it is difficult*

to dislodge the conclusion drawn by the learned Rent Controller as well as the learned High Court.

13. In the present case, the findings of the learned Rent Controller on both these issues are based on sound and cogent reasoning as the Petitioner's statement on oath regarding personal need has not been seriously challenged by the respondent No.1.

14. As regards to the default in payment of rent is concerned, the learned Rent Controller decided the same in favuor of the Petitioner/ landlady. It would be pertinent to reproduced here the definition of term '*rent*', which reads as:-

*"2(i). "rent" includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid".*

15. From above definition it needs no further discussion in saying that *legally* such charges (utility charges) do include in the term '*rent*' hence default towards such liability would be a *default*. Here, a referral to admission, made by the respondent No.1/ tenant in her written statement wherein she in unequivocal terms has admitted that she had not paid/deposited the electricity bill.

16. For the foregoing reasons, the instant petition is allowed; impugned judgment recorded by the appellate Court is set aside. Respondent No.1 shall handover the peaceful vacant possession of the demised premises to the petitioner within three months, subject to the payment of rent. In case of default either in payment of rent or to vacate the demised premises within the stipulated period of time, the respondent No.1 shall be evicted from the demised premises with police aid without notice.

**J U D G E**

Sajid