

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui

No.(1) C.P. No.S-140 of 2011

Naimatullah Shaikh  
Versus  
Mansoor Ali Jaffar & others

**A N D**

(2) C.P. No.S-194 of 2011

M/s Shell Pakistan Limited  
Versus  
IIIrd Additional District Judge & others

Date of Hearing: 19.10.2017

Petitioner in C.P. No.S-140 of 2011 & Respondent No.3 in CP No.S-194/2011: Through Mr. Altaf Ahmed Shaikh Advocate.

Petitioner in C.P. No.S-194 of 2011 & respondent No.2 in CP No.140/2011: Through Mr. Muhammad Ehsan along with Mr. Haque Dad Khoso Advocates.

Respondents No.1 and for respondent No.2 in C.P. 140 and 194 of 2011 respectively: Through Mr. Muhammad Rafi Advocate

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- These are two petitions involving common questions of law and fact. They are arising out of the same judgment passed in FRA No.32 of 2009. This is apparently second round of litigation whereas in the first round the application under order I rule 10 CPC, which was declined by the trial Court/Rent Controller, was ultimately allowed by this Court. In petition No.140 of 2011 the petitioner as such as being dealer was impleaded as being necessary and property party in terms of order dated 16.09.2009. Both the petitioners are aggrieved of the order passed in FRA No.32 of 2009 on the ground of

subletting and default in payment of rent and expiry of tenure/period mentioned in the lease. The two Courts below gave conflicting findings.

I have heard the learned counsel for parties and perused the material available on record.

The reasons assigned by the learned Additional District Judge for allowing the application is summarized in the following extract from the judgment:

*“The facts referred above, establish that the appellant (respondent No.2) is a landlord and competent to file rent case against his tenant. It is a matter of record that lease granted to the respondent was also expired and the respondent (appellant) as per conditions mentioned after the expiry of the lease enjoying the possession and also handed over possession to some other person meaning there is that subletting has been made”.*

The appellant filed rent case on three-fold grounds. For the sake of convenience the grounds are summarized as under:-

- i) After expiry of lease the continuance of a sub-tenant is a subletting;
- ii) Since after the expiry of the lease/agreement the rent has not been agreed upon or rescheduled therefore there is default; and
- iii) The expiry of lease itself.

In respect of default alleged to have been committed by the petitioners the impugned judgment at typed page 12 observed as under:-

*“I am of the view that the rent was fixed at Rs.25000/- in FRA No.17/2002 by the learned District Judge Karachi West up to expiry of deed of lease/agreement. The period of deed of lease/agreement ended on 31.12.2004 thus after December 2004 no rate of rent fixed by the applicant, therefore, at moment no rate of rent is existing nor applicants are receiving any rent or issuing any receipt, therefore, the opponent is liable to be evicted as per its new version/plea and right being statutory has transferred/hand over the possession to one Naimatullah Shaikh illegally, the version of statutory tenant by the*

*opponent is not entitled to receive rent from third person....”*

The above text, which is reproduced verbatim, has attempted to show that after the expiry of lease period i.e. 20 years plus 10 years the status of tenant and sub-tenant would be of an unauthorized occupant. It further goes on to establish that if at all any permission under lease agreement was given to the tenant to sublet the premises that also vanishes along with the expiry of lease/agreement. The above text also attempted to establish that since there was not rent agreed after expiry of lease therefore, the petitioner and the sub-tenant have become defaulter. Consequently the appeal was allowed and the order of the Rent Controller was set aside.

The initial period of lease was 20 years which was extended to another period of 10 years by consent. The deed of lease dated 18.01.1975 provides in terms of sub-clause (e) of clause (II) that the lessee shall be entitled to “assign or sublet” the demised premises to any company, firm or person provided however that notwithstanding such assignment/transfer the lessee shall be liable for the due performance and observance of the terms and conditions of this lease.

In addition to the rent agreed earlier in the year 1975 as Rs.1500 it appears that the rent at the rate of Rs.25,000/- was fixed in FRA No.17 of 2002 by the District Judge Karachi West. The only point that requires consideration is as to whether the terms of the lease/ agreement would continue to operate as long as they are not in conflict with the parent statute. The leading judgment on this count is reported in the case of Zarina Khawaja v. Agha Mehboob (1988 SCMR 190) wherein the Hon’ble Supreme Court observed as under:-

*“We have carefully considered the implication of various judgments of the Supreme Court which deal with the question of continuance of the terms of agreement of tenancy, after its termination. Leaving aside the*

*theoretical possibilities all of them can be interpreted consistently on the following lines:*

*ONE; notwithstanding the enactment of the rent laws the relationship of landlord and tenant would continue to be determined and regulated in accordance with:*

- (a) The general law; and,*
- (b) The terms of tenancy between the parties.- But, subject to a very important condition that in case of repugnancy of either of these two elements to any of the provisions of the rent law the latter shall prevail, meaning thereby that the provisions of the general land and/or the covenants, in the agreement to the contrary, shall have no effect;*

*TWO : during the continuance and subsistence of the agreement of tenancy, the question of relationship of landlord and tenant, the regulation of that relationship particularly vis-à-vis the determination and payment of rent; as also the eviction, shall be governed by the covenants contained in the agreement; provided that those covenants do not come in conflict with the provisions of the rent law and in case of conflict the provisions of that law will prevail notwithstanding any term of agreement to the contrary:*

*THREE: after the expiry of the agreement of tenancy the general law of holding over by the tenant has not been repealed or modified by the rent laws except to the extent that it comes in conflict with the provisions of the Rent Restriction Law. On the contrary, it was specifically provided in the definition of a 'tenant' in section 2 of the West Pakistan Urban Rent Restriction Ordinance, 1959, that a tenant would include "a tenant continuing in possession after the termination of the tenancy in his favour". The definition of tenant in the present Sindh Law also provides that a tenant would include "any person who continues to be in possession or occupation of the premises after the termination of his tenancy". Not only this, the present Sindh Law made it more clear when the provisions contained in sections 6 and 15(2)(i) of the Sindh Rented Premises Ordinance, 1979, providing that no tenancy would remain valid beyond the mutually agreed period and that a tenant would be liable to be evicted on termination of such period, were repealed. The obvious reason was that the pre-existing law before the re-enactment was kept intact; namely, that the previous tenancy arrangements between the parties will continue to operate notwithstanding the termination of the period and will govern the continuance of tenancy as visualized in the definition of the tenant holding over. However, notwithstanding the continued operation of the terms of the agreement after the termination of the agreement; by process of law as aforesaid, its provisions whenever they are in conflict with the rent law, shall not be operative. For example, if a special method of eviction of the tenant is provided in the terms of the agreement which are repugnant to the*

*provision contained in the relevant Rent Restriction Law, the latter shall prevail to the extent of repugnancy. Section 15 of the Sindh Law is explicit on this point. Same was the position in the repealed Law. Similar would be the case relating to some other situations, for example, the determination of the fair rent. Similarly the vice versa position would also be correct. The terms of the so-called expired agreement which are not repugnant to the rent law shall continue to operate. For example, the rate of rent, the mode of payment thereof including its advance payment or deposit, provision for agreed increase in rent provided it is not after the determination of fair rent, provision for re-entry of a tenant after he vacates the premises for re-construction, all covenants which support the conditions in section 15 of the Sindh Law and section 13 of the Law repealed by it, and similar other conditions and comments. There is useful discussion on this aspect in the case of Muhammad Yunus Malik v. Mst. Zahida Irshad 1980 SCMR 184. We accordingly answer the 4<sup>th</sup> question in the negative and hold that the terms of an expired agreement as such, continue in operation, to the extent they are not repugnant to the Rent Law. Indeed same would be the position with an unexpired agreement also.”*

I may add that in case any new landlord enters in a situation where covenants of the original lease/rent agreement provides subletting or increase in rent proportionately, as agreed periodically, or the mode of rent either in advance or at a later stage i.e. within sixty days of its becoming due, that would continue to bind the new landlord/owner as he could only stepped into the shoes of previous owner/landlord. The tenant (M/s Shell Pakistan Ltd.) herein, whose successor (Pakistan Burma Shell), has filed this petition, was already permitted to sublet the demised premises to any other company, firm or person is neither in conflict with the main statute i.e. Sindh Rented Premises Ordinance, 1979 nor it violates any term of the original lease. It would thus continue to operate and would not render the petitioners to be evicted on this count.

Similarly the payment of rent in terms of the lease or any other terms that subsequently entered into would continue to operate and the expiry of lease or agreement cannot nullify a prior arrangement of the agreed rent unless otherwise agreed, nor the expiry of lease itself would

render the petitioner to be evicted from the demised premises. The findings of the appellate Court are thus contrary to the above judgment of Hon'ble Supreme Court and despite the fact that it was cited, as recorded in typed page 10 of the judgment, it was not given due consideration.

As far as the expiry or cancellation of the license agreement for storage of petroleum product at the premises is concernedly, it is only related to the business which in the absence of such license could not be carried out but the relationship or the terms of the tenancy would not come to an end after the expiry or cancellation of the license required by a petroleum company or its dealer to carry on business, therefore, the cancellation of such license cannot supersede the observation of the Hon'ble Supreme Court. How the Additional District Judge/appellate Court fortified with the submission of the counsel appearing for the respondent is senseless. In addition to the above, it was also observed that after expiry of lease/ rent agreement the tenant or sub-tenant has failed to establish that they are lawfully entitled to retain possession of the premises as being tenant or sub-tenant, which permission ceased after expiry of lease/rent agreement.

It may further be observed that there is no cavil with the proposition that ordinarily the High Court in its constitutional jurisdiction would not undertake to reappraise the evidence in rent matters to disturb the finding of facts but it would certainly interfere if such findings are found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction and arbitrary exercise of powers. In appropriate cases of special jurisdiction, where the District Court is the final Appellate Court, if it reverses the finding of the trial Court on the grounds not supported by material on record, the High Court can

interfere with it by issuing writ of certiorari to correct the wrong committed by the Appellate Authority.

Insofar as Section 6 of Sindh Rented Premises Ordinance, 1979 is concerned, the proviso was omitted by Sindh Ordinance IV of 1984.

Section 6 thus as it stood is as under:-

*“Tenure of tenancy.--- No tenancy shall, at a time, be valid beyond such period as the landlord and tenant: have, by mutual agreement, fixed before or after the commencement of the tenancy :*

*Provided that nothing in this section shall affect any tenancy existing immediately before coming into force of this Ordinance.”*

The Ordinance IV of 1984 in terms of Sindh Rented Premises (Amendment) Ordinance 1984 was omitted and hence this ground is no more available under section 15 of the Sindh Rented Premises Ordinance, 1979 that could enable the landlord to seek eviction on the ground that the period of tenancy ceased by virtue of expiry of the agreement. Section 15(2)(i) at the relevant time when the Ordinance was promulgated in 1979 enables the landlord to seek eviction under section 6 when the tenancy ceases by the expiry of the tenure which ground is no more available in terms of amendment by way of omission of these provisions.

In view of the above, I find sufficient material to interfere with the findings as recorded by the appellate Court in the impugned judgment. Accordingly, the petitions are allowed only to the extent of decision of appellate Courts below and the order passed by learned III-Additional District Judge Karachi West dated 15.01.2011 in F.R.A. No.32 of 2009 is set aside and the Rent Application No.116 of 2007 under section 15 of Sindh Rented Premises Ordinance, 1979 filed by respondent Mansoor Ali Jaffer stands dismissed.

Dated: 21.10.2017

Judge