

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

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**

C.P. No.S-1271 and 1272 of 2017

Khawaja Muhammad Ali  
Versus  
Syed Razi Ahmed & others

Date of Hearing: 20.11.2017

Petitioner: Through Mr. Muhammad Raghیب Baqi  
Advocate.

Respondents: Through Mr. Abrar Hasan and Mr.  
Muhammad Younus Advocate.

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

Muhammad Shafi Siddiqui, J.- The petitioner has challenged order of the appellate Court whereby the application under section 15 of Sindh Rented Premises Ordinance, 1979 was allowed on the ground of subletting, default and personal requirement.

2. The brief facts of the case are that an ejectment application under section 15 of Sindh Rented Premises Ordinance, 1979 was filed on the ground of default, subletting and personal requirement by co-owners/respondents. The application was contested by the petitioner wherein he has raised preliminary objections that the ejectment application was filed against a dead person i.e. opponent No.1 whereas Khawaja Muhammad Ali was not a Sublette and no default was committed.

3. Learned counsel for petitioner referred to earlier round of litigation when a Rent Case No.399 of 2008 was filed by the co-owner. In the earlier round ejectment application was dismissed vide order dated 20.03.2012. The order was challenged by the respondent by moving an application under section 12(2) CPC which was also dismissed on

13.07.2013 followed by dismissal of an appeal as FRA No.171 of 2013 vide order dated 18.12.2014. The respondent preferred fresh ejectment application on the ground of default, subletting and personal requirement arraying Muhammad Ismail as their original tenant and petitioner as Sublette, who claimed to be the son of original tenant Muhammad Ismail, along with A.A. Garments.

4. The evidence was recorded and the Rent Controller framed five issues, which are as under:-

1. Whether Muhammad Ismail (opponent No.1) is father of opponent No.2 or not? Who is/was tenant of tenement premises?
2. Whether applicants has filed Rent case against dead person? Or being a legal heir of Muhammad Ismail opponent No.2 is lawful and statutory tenant of tenement premises after death of his father?
3. Whether opponent No.2 is Sublette of tenement shop?
4. Whether opponent No.2 is defaulter for payment of rent?
5. What should the order be?

5. Surprisingly the issue of personal requirement was not framed. The parties recorded their respective evidence. The Rent Agreement though was not exhibited but an attempt was made to draw attention of the Court that in fact a registered partnership deed existed of which Muhammad Ismail and Muhammad Ali being father and son were also partners, amongst others. Along with this Deed of Partnership, petitioner also filed a letter addressed to the trustees of Sir Jehangir Kothari Trust as to the acquisition of tenement No.4 by M/s Muhammad Ismails, signed by Managing Director Muhammad Ali.

6. It is the case of the petitioner that there is no default as the petitioner had been depositing the rent in Misc. Rent Case, as being

statutory tenant, at the rate agreed and payable and not at the rate that has been demanded. The Misc. Rent Case is also attached as Annexure O/3 as MRC No.47 of 2007 apparently filed by Kh. Muhammad Ali, the petitioner on behalf of M/s Muhammad Ismail Tailors. The rent up to December 2006 was paid to the previous owner and an attempt was made to tender rent to the new owner on receipt of notice and after refusal the subject MRC was filed on 14.01.2007. The money order was apparently sent on 28.12.2006 available at page 391. A receipt of Sir Jehangir Kothari Trust is also available on record at page 395, which shows Muhammad Ismail as tenant. The rent was deposited in the name of Syed Razi Ahmed as the notice under section 18 of Sindh Rented Premises Ordinance, 1979 claims to have been issued on his behalf on 05.04.2006 and accordingly rent was deposited in his name in the MRC.

7. It is the case of the respondent that there is neither any agreement to establish a tenancy between M/s Muhammad Ismail nor is there any evidence that Kh. Muhammad Ali (petitioner) is son of Muhammad Ismail against whom the earlier ejectment application was filed as death certificate of one Kh. Muhammad Ismail came on record, which Kh. Muhammad Ismail was held to be other than Muhammad Ismail, the tenant. Hence, it is observed that the rent has been deposited in the name of Muhammad Ismail, which means that the petitioner is using the name of original tenant to conceal the subletting.

8. The Rent Controller further observed that father of petitioner/opponent No.2 is Kh. Muhammad Ismail and he was not the tenant of the shop in question and hence considered him as Sublette of Muhammad Ismail. Aggrieved of this decision both the tenant and landlord filed their respective appeals as FRA No.83 and 84 of 2015. Both the appeals were disposed of with common judgment and hence these two petitions are filed by the tenant/petitioner as he is aggrieved of the findings in

respect of both the appeals. The eviction application was allowed by the appellate Court on the ground of personal requirement as well as the evidence was available, though the issue was not framed by the Rent Controller.

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

10. The tenancy with previous landlord is not satisfactorily established either by the present landlord or the tenant i.e. respondent and petitioner respectively. The documents to which the petitioner is relying on were not exhibited i.e. registered deed of partnership and a letter sent to M/s Muhammad Ismail by Sir Jehangir Kothari Trust, the previous owner/landlord. Along with the application of Misc. Rent Case under section 10(3) of Sindh Rented Premises Ordinance, 1979 bearing No.47 of 2007 a receipt issued by Sir Jehangir Kothari Trust was attached which pertains to an acknowledgment of rent w.e.f. January 2006 to December 2006 in respect of Shop No.4 as Rs.4200/- which comes to Rs.350/- per month. There is also not an iota of evidence that the rent was payable by the petitioner other than the rent shown in the receipt. No other receipt other than the above subject receipt is available.

11. In the absence of any proof as to the original tenant as being M/s Muhammad Ismail, a registered or unregistered partnership firm, least that could be a point of understanding or admission that Muhammad Ismail was tenant as the ejectment application was filed against him and Khawaja Muhammad Ali and availability of a rent receipt. The earlier Rent Case bearing No.399 of 2008 filed against one Muhammad Ismail was dismissed on the strength that he had expired. This fresh Rent Case as Rent Case No.723 of 2013 is filed against Muhammad Ismail. Mr. Baqi claimed to have represented Khawaja Muhammad Ali, the son of Khawaja Muhammad Ismail, who was arrayed as Muhammad Ismail and it

was concluded in the said Rent Case that on account of sad demise of Muhammad Ismail the rent case cannot proceed further. Relying on the judgment reported in PLD 2007 Lahore 180 to the effect that by impleading the legal heirs of a dead person the defect cannot be cured, the ejectment application was dismissed by Rent Controller. It was further observed by the Rent Controller that the addition of legal heirs of the deceased would render eviction order void and without justification and it was further observed that the fresh suit/application against the legal heirs could be maintained. The relevant part of the same is as under:-

*“Admittedly, it appears that the tenant Muhammad Ismail has been died and at present Khawaja Muhammad Ali is claiming to be possession of the same premises. The documents produced by the son of deceased Muhammad Ismail which showing that the opponent Muhammad Ismail has been died long ago before filing of this rent case and objection has been raised by the son of the opponent’s counsel that the instant rent case was filed against the dead person and learned counsel has also relied on the case law reported in 2001 SCMR 1 Supreme Court of Pakistan, in which the Hon’ble Apex Court has held that the suit against the dead person is not competent and nullity in the law. The opponent’s counsel has further relied on another case law reported in PLD 2007 Lahore 180 in which the Hon’ble Superior Court has also held that the suit was filed against the dead person and such defect not curable by impleading the legal heirs of defendant, such suit has not been validly instituted, which is liable to be dismissed. Order of Court along with additions of legal heirs of deceased defendant including any subsequent order or decree, if passed, would be void and without jurisdiction and it was further held by the Hon’ble Superior Court that the plaintiff can bring fresh suit against the legal heirs. Therefore, in the light of above case laws, I, dismiss the instant ejectment application. However, the applicant has recurring cause of action in the rent cases to file fresh case against the occupants/legal heirs of opponent.....”*

Perusal of the above shows that Muhammad Ismail who is not shown as Khawaja Muhammad Ismail was considered as father of Khawaja Muhammad Ali who informed the Court about the sad demise and the respondents were allowed to file fresh application on the same cause of action. Muhammad Ismail is thus no one but Khawaja

Muhammad Ismail, father of the petitioner and he is shown to be a tenant vide receipt available at page 395, referred above. The petitioner who is shown as opponent No.2 is thus not a Sublette but statutory tenant as being in occupation after the sad demise of his father. The previous owner never claimed any default as the rent continuously been depositing rent on behalf of M/s Muhammad Ismail and on receipt of notice under section 18 of Sindh Rented Premises Ordinance, 1979 the rent was also offered to present landlord and on his refusal the same was deposited in Court through Khawaja Muhammad Ali hence there is no default at all as Khawaja Muhammad Ali, being son of Khawaja Muhammad Ismail who is shown as Muhammad Ismail, continued to deposit the rent in MRC and hence he is not a Sublette of the premises. The findings of the Courts below are reversed as far as issues of subletting or default are concerned.

The demised premises is required for personal bona fide need for use of respondent No.10 who is claimed to be major and jobless. It is stated that no shop is lying vacant in the building. Syed Jawed Ahmed son of Razi Ahmed is also co-owner and applicant No.10. In the cross-examination no material questions were raised to resist personal requirement. As against question, the respondent Syed Razi Ahmed who has filed his affidavit-in-evidence has stated that the premises is required for his son Jawed who is also co-owner whereas in the earlier Rent Case filed in the year 2008 the ground of personal requirement for Mst. Shama Begum was raised. After five years this could hardly stands against the evidence and findings which has come on record for personal requirement of respondent No.10. The personal requirement of the applicant/respondent No.10 Jawed Ahmed son of Razi Ahmed who has filed his affidavit-in-evidence who is also stated to be co-owner was not denied at all.

In view of the above, both the petitions are disposed of and findings of default and subletting are reversed whereas finding on personal requirement of applicant/ respondent No.10 is maintained and in consequence thereof the ejection application is allowed on the ground of personal need however at the request of learned counsel for the petitioner as an indulgence, in view of old tenancy, eviction order may not be implemented for 60 days' subject of payment of rent and outstanding dues as per agreement and under the law.

Above are the reasons of short order dated 20.11.2017.

Dated:

**Judge**