

**ORDER SHEET**

**THE HIGH COURT OF SINDH, KARACHI  
CP.No.S-682 of 2020**

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Date Order with signature of Judge

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1. For hearing CMA No. 3507 of 2020. (Stay)
2. For hearing of main case.
3. -----

**04<sup>th</sup> December 2020**

Mr. Shahzad Bashir, advocate for the Petitioner.  
Respondent No.3 Malik Gul Muhammad Awan present in person.

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Through instant petition, petitioner has challenged the judgment dated 13.08.2017 passed by the learned District Judge, Karachi East in F.R.A. No. 45 of 2020 whereby order dated 08.02.2020 passed by the Xth Rent Controller in Rent Case No. 286 of 2019 was set aside.

Heard learned counsel for the petitioner and respondent No.3, in person.

2. At this juncture, it would be conducive to refer relevant portion of the judgment passed by the trial Court which is that:

**POINT NO.1**

As far as this point is concerned, it is the case of applicant that initially the opponent was inducted as tenant by his uncle Manzoor-ul-Haq in the demised premises through written tenancy agreement executed between him and opponent on 18.04.2002, wherein the monthly rent of the demised premises were fixed at Rs.4000/- per month excluding the utility charges of water, gas, telephone and electricity. It is further the case of applicant that his father has already expired and after a family settlement the portion which is given to opponent on rent, has been given to applicant being his share as he is also co-sharer in it and after said family settlement the applicant through his Advocate served an intimation dated 27-07-2019 delivered on 29-07-2019 as per TCS confirmation report upon the opponent wherein he was informed about change of ownership and was directed to pay monthly rent to him in future, it is further the case of applicant that notice u/s 18 SRPO 1979 dated 03-08-2019 was also delivered upon opponent as per TCS confirmation report dated 05-08-

2019 for change of ownership and opponent was called upon to pay future rent to applicant Muhammad Asim Salim as the premises in question has been given to him as his share. In this regard the applicant was examined on oath who filed his affidavit in evidence and produced said intimation and notice u/s 18 SRPO with courier receipts which clearly shows that same were delivered to opponent, who himself admitted to have received the same notices. In this regard the opponent has admitted in cross as well, for ready reference the most relevant portion of his cross is as under:-

*“It is correct to suggest that Manzoor-ul-Haq served an intimation notice dated 27-07-2019 upon me wherein it is mentioned that the demised premises has been given to present applicant as per family settlement. It is correct to suggest that I have not replied such intimation notice. It is correct to suggest that in such intimation notice dated 27-07-2019, it was mentioned in para-6, wherein I was intimated to pay future rent to present applicant Asim Saleem. It is correct to suggest that thereafter Asim Salim served notice under section 18 of SRPO 1979 through his counsel. It is correct to suggest that after notice I have not paid rent. It is correct to suggest that MRC is filed in the name of previous landlord Manzoor-ul-Haq. It is correct to suggest that it was mentioned in legal notice dated 03<sup>rd</sup> August 2019 that applicant Asim Salim required the demised premises for his personal use”.*

Furthermore the uncle of applicant Manzoor-ul-Haq has himself appeared in witness box and filed his affidavit in evidence in support of the case of applicant and fully supported his contention to have given the said portion of house/rented premises to applicant after family settlement, hence the contention of opponent that no such family settlement has taken place is baseless, because the person through whom the opponent entered into demised premises has himself deposed on oath to have released the rented premises in favour of applicant, hence the contention of applicant about change of ownership has been proved and it is also proved that it was duly intimated to opponent through notices twice, but despite service of notices for change of ownership and clear directions the opponent instead paying rent to the applicant/new landlord has continued sending the rent through money order in the name of previous landlord Manzoor-ul-Haq, which was refused by previous landlord and thereafter the opponent has filed MRC bearing No.108/2019 which too in the name of previous landlord Manzoor-ul-Haq, despite of service of notices of change of ownership. Such an attitude of opponent clearly shows that he has not paid monthly rent to the new landlord despite clear directions. The oral as well as documentary evidence produced by the applicant finds full support of the relevant law, because it is now a well settled principle of law that after service of notice of change of ownership the tenant is bound to pay the monthly rent to new landlord, unless there is any reasonable explanation or that the previous landlord through whom the tenant entered into premises has objected, but in this case the opponent has tried to take advantage that no any family settlement took place and such plea of tenant would have some value if the previous landlord would have denied change of ownership, which is missing in present case, hence there was no reason available with the opponent for not

paying rent to applicant. Moreover the opponent has taken a plea that when notice was served upon him, he has tried to pay the rent to applicant, but in those days he was out of country, therefore he has paid rent to previous landlord, if for the sake of arguments it is presumed that applicant was out of country, then as to why the opponent has opened M.R.C in the name of previous landlord and as to why he has not filed M.R.C in his name. Even such plea of opponent that applicant was out of country does not find support, for the reason that he has not sent rent through money order in the name of applicant, but in the name of previous landlord. Such an attitude of opponent for not paying rent to applicant amounts to willful default in payment monthly rent which is sufficient to allow the ejection application. It is a fit case where despite service of notice u/s 18 SRPO, the tenant not paid rent which amounts to default as contemplated in clause (ii) of sub-section 2 of section 15 SRPO 1979.

I would be failing in my duties, if I do not discuss the contention of opponent that there is no any document of transfer of the property in the name of applicant by Manzoor-ul-Haq, first of all the opponent being tenant has nothing to do with the dispute if any of ownership, secondly when the person who inducted the opponent as tenant has appeared and fully supported the contention of applicant, then there remains nothing to deny the ownership. As far as the contention of opponent that he has resided in rented premises for period of 18 years and paid lacs of rupees on account of rent and other charges, admittedly he has enjoyed the possession of rented premises for such period on the rent which was fixed initially in year 2002 and despite of clear agreement between the parties that the monthly rent would be automatically increased at 10% per annum, neither the opponent has paid increased rent nor given any reasonable explanation for not paying rent at increased rent and if the landlord has not demanded increase in rent despite of clause of increase in tenancy agreement, then as to why the opponent on his own has not sent the rent at agreed increased monthly rent.

Here it is also necessary to discuss that during course of arguments and as well at the time of evidence, the opponent has pointed out that the applicant demanded enhanced rent at Rs.45000/- to 50,000/- per month from him and when he has not paid the same, thereafter the applicant filed this case, as actually he want to give said portion to anybody else on higher rent, but in this regard during cross examination upon the opponent, learned counsel for applicant suggested that if the applicant after vacation of house has given the same to anybody else on higher rent, then the opponent would have right to get its possession restored, but on such suggestion the opponent has not agreed and clearly refused, which was mentioned by a note in his cross. The attitude of opponent shows that he wants to continue to reside in rented premises at initial rate of monthly rent forever, which does not find any support from the law. For what has been discussed above, I hold that the opponent has committed willful default in payment of rent, hence this point is answered as affirmative and proved.

**POINT NO.2**

For seeking eviction of a tenant, from the premises in question the only requirement of law is the proof of his/her bona fide need by the landlord, which stand discharged the moment landlord appears in the witness box and makes such statement on oath or in the form of affidavit in evidence as prescribed by law, if it remains un-shattered in cross-examination in the evidence adduced by the opponent party. The contention raised by the opponent, that applicant has failed to produce any evidence to prove his personal bonafide need, does not hold the ground as **landlord's own subjective approach, choice and decision as to which of them in particular he/she wanted to occupy and no one else had a right to interpret the circumstances from his/her own point of view by making allusions to different attending circumstances of the case. Reference is placed on the case of ZARINA AYAZ V. KHADIM ALI SHAH, reported in 2003 SCMR 1398.** Thus, it is the choice of landlord which will be given preference as to which of premises he chooses to be suitable for personal need, so the point No.2 is answered in "affirmative."

However, learned appellate court set aside the judgment, remanded the case to the trial Court with direction to record further evidence in respect of family settlement.

Admittedly, Manzoor-ul-Haq was landlord and property was in the name of his father; after death of his father, during family settlement, he relinquished his share in favour of present petitioner. He filed affidavit in evidence, paragraphs No. 5 and 7 of his affidavit are that:-

"5. That I say and submit that under a Family Settlement I surrendered my share in favour of applicant and the same was communicated/informed to the opponent through my counsel intimation notice dated 27<sup>th</sup> July, 2019 in which I also directed/informed the opponent to tender the future monthly rent directly to the applicant.

7. That I say and submit that applicant going for marriage and he need a separate accommodation but at present he is living with there (their) brothers, they are already married and there is no separate accommodation available and the said premises is required by applicant for his personal bona fide need/use for himself.

The respondent has taken plea that petitioner is not landlord, he is residing in demised premises as tenant since years and judgment of the appellate court is in accordance with law.

Since trial Court adjudicated the issue in splendid manner on the ground of default and personal bonafide need; affidavit filed by Manzoor-ul-Haq shows that the respondent was intimated with regard to change of

ownership as well as the respondent has failed to prove that he increased the rent as per rent agreement, accordingly, petition is allowed; impugned judgment is set aside and the judgment of the trial Court is maintained. However, the respondent (tenant) shall vacate the property within six months.

**J U D G E**

Sajid