

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Date Order with signature of Judge

CP.No.S-2561 of 2018

1. For hearing of CMA No. 10877 of 2017 (For stay).
2. For hearing of main case.

CP.No.S-2562 of 2018

1. For hearing of CMA No. 9206 of 2017 (For stay).
2. For hearing of main case.

23rd January 2020

Mr. Muhammad Aziz Khan, advocate for petitioners.

M/s. Faiz Muhammad Durrani, Samia Faiz Durrani and Ghulam Muhammad advocates for respondents.

This common order would dispose of the captioned petitions. C.P. No.S-2561 and 2562 of 2018 filed against the judgment dated 20.10.2018 passed in FRA No.293 and 292 of 2017, whereby the judgment dated 06.11.2017 passed in Rent Cases No.323 and 324 of 2012 were challenged. Through the impugned judgments the appellate Court (VIII-Additional District Judge, Karachi East) while upholding the judgments of the trial Court (IV-Rent Controller, Karachi East), dismissed the FRAs with direction to the tenants (petitioners) to vacate the subject premises and hand over possession thereof to the landlords (respondents) within three months' period. Hence these petitions.

2. Heard learned counsel for the respective parties.
3. At the outset learned counsel for the petitioners, *inter alia*, contends that impugned judgments recorded in both cases are against the pleadings; that petitioners, being tenants, are in occupation of demised premises since several years; that they were tenants of one Hashmi, however, on the demise of said Hashmi there were many claimants, hence, they started depositing the rent in MRC. He also admits that in MRC the rent is being deposited in favour of respondents as landladies. Learned counsel for the petitioners further contends that original sale deed in favour of respondents was not produced and only transfer order was produced wherein real owners were Mst. Shakila and Jannat Bibi. He also contends that property is situated in the commercial area, which is not falling within the industrial zone, hence,

respondents cannot open pathological lab in that premises. He has also referred the evidence while highlighting that other documentary proof was not submitted with regard to ownership of premises by the respondents. In support of his contention he has relied upon decisions reported as 2006 SCMR 152, 2008 SCMR 398, 2001 SCMR 1434, 2003 SCMR 1662, PLD 1985 Karachi 624, 2013 CLC 280 [Sindh] and 2013 CLC 280 [Sindh].

4. In contra, learned counsel for the respondents contends that transfer order reflects that both respondents are the owners of the subject matter properties; the rent receipts were produced. Admittedly, MRCs are in favour of respondents, hence, there is no dispute of relationship being tenants and landlords and sufficient evidence was produced for personal *bonafide* need of the premises. He has relied upon decisions reported as PLD 2018 Supreme Court 81, 2010 SCMR 1925, 2014 YLR 1074 Sindh, 2015, YLR 308 [Peshawar], 2017 YLR Note 68 [Sindh], 2017 MLD 605 [Sindh], 2016 CLC Note 49, [Peshawar], 2013 YLR 1200, 2008 CLC 87 [Karachi], 2012 MLD 1572 [Sindh], 2004 SCMR 1607, 2001 SCMR 550, 2002 SCMR 333, 2002 SCMR 412, 2014 MLD 288, 2015 MLD 1830 [Sindh], PLJ 1998 Karachi 660, PLD 2003 Supreme Court 277, 1998 SCMR 2374, 2007 SCMR 128, 2000 SCMR 1613, 2000 SCMR 1624, 2000 SCMR 1960, 1999 SCMR 88, 2014 YLR 1226 [Sindh], 2017 YLR 453 [Sindh] & PLD 1998 Karachi 533.

5. It is pertinent to mention that captioned petitions fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction. It is settled principle of law that same cannot be disturbed until and unless it is proved that same are contrary to evidence or against the basic of principles of rent jurisdiction.

6. The *core* contention of the learned counsel for the petitioner is the challenge, made towards ownership of the respondents. Here, it needs not be reiterated that in rent laws the status of **landlord** has not been confined to sole requirement of title / ownership but one, authorized or entitled to receive rent in respect of *premises*, does fall within definition of **landlord** (section 2(f) of Ordinance). It is important to add here that the jurisdiction and competence of the **Rent Controller** is always subject to existing of a **relationship of landlord and tenant** between parties. The term does include the **owner** in definition of **landlord** but the term '**tenant**' has *strictly* been confined to:-

2(j) “tenant” means any person who undertakes or is bound to pay **rent** for possession or occupation of any premises by him or by any other person on his behalf and includes:-

- (i) Any person who continues to be in possession or occupation of the premises after the termination of his tenancy;
- (ii) Heirs of the tenant in possession or occupation of the premises after the death of the tenant; and

while the term “**premises**” is defined as:

2(h) “**premises**” means a building or land, let out on rent, but does not include a hotel;

Thus, if all three terms are read together then it can *safely* be concluded that mere ‘**ownership / title**’ alone shall never be sufficient to invoke jurisdiction of **Rent Controller** unless it is, *prima facie*, evident that :

- i) *he was authorized or **entitled** to receive rent in respect of premises which was **rented out**;*
- ii) *person in possession either undertook or bound to pay the rent. The one acting (in possession) under him or on his behalf would also be a tenant i.e one put into possession by tenant or his heirs;*

Further, the object of the Ordinance is only confined to:

“for regulation of relations between landlords and tenants and protect their interests in respect of rented premises ..”

7. Therefore, at no material times, the tenant is, *legally*, competent to make challenge / denial to **ownership** of one, stepped forward as ‘**landlord**’ before the **Rent Controller** but can competently deny relationship of **landlord and tenant** between him and such a person, came forward as ‘**landlord**’. Moreover, on last hearing due to anxiety of counsel for the petitioners that respondent Dr. Sara is not daughter of Hashmi the documents in this behalf were directed to be placed, in compliance whereof the documents produced are consist of degree certificates particularly medical education issued by different institutions including Pakistan Medical and Dental Council, which show that Dr. Sara Minhas is daughter of Masood Ali Hashmi. This, however, would not change the *legal* consequences which, on filing MRC, the petitioners own. In view of such a legal position, I find that main contention of learned counsel for the petitioners is entirely misconceived.

8. Here, it may well be added that one, if agrees or undertakes to pay rent, becomes the *'tenant'* and it shall not be open for him to take a *contradictory* plea. In the instant matter it is not matter of dispute that the present petitioners do not deny their status as *'tenants'* and admit that after demise of landlord they stopped paying rent and preferred depositing rent in "MRC" and in title thereof the present respondent is included in title of "landlords". At this *juncture*, it would be relevant to refer the principles, enunciated by Apex Court in following cases, being relevant are reproduced hereunder:-

"Abdul Ghani v. Abrar Hussain 1999 SCMR 348"

".. It seems to be a well-settled proposition of law that a co-owner can file ejectment proceedings against a tenant without impleading his other co-owners under the Rent Laws the ejectment proceedings against a tenant without Rent impleading all the co-owners."

"Muhammad Hanif & another v. Muhammad Jamil Turk & 5 others 2002 SCMR 429"

"On the contrary, general rule of law has been that a co-sharer can file ejectment proceedings against a tenant without impleading other co-sharers. The wisdom behind such principle is that co-sharer acts on behalf of and represents the interest of all the co-owners of the property."

9. In view of above, it can safely be concluded that on demise of *landlord* any of his legal heirs can competently file the ejectment proceedings even without consent of other co-sharers. Since, in the instant matter the present petitioners themselves are depositing rent in names of persons, wherein the present respondent, is included in title of *landlords* therefore, relationship of **landlord** and **tenant** can't be denied.

10. To see, whether there is any *departure* to such position by Courts below, it would be conducive to refer paragraph No.13 of the judgment passed in First Rent Appeal No. 293 of 2017 (C.P.No.S-2561 of 2018) by the appellate court, which is that:-

13. Now, the question arises as to whether appellant had knowledge about the status of the respondent being owner of the subject property or not. Learned counsel for the appellant has submitted that no legal notice was ever sent by the appellant to the respondent, also there is no written agreement between the two and evidence of the respondent is

containing favourable response to the appellant; therefore, aspect of relationship between parties as landlady and tenant does not exist. **While, learned counsel for the respondent resisted by referring the MRC No. 163 and 164 of 2007 submitting that these have been filed by the appellant by mentioning the name of the respondent Sara Minhas.** According to him, these are sufficient proof of acknowledgment of ownership as well as landlady. In such context, it appears quite clear that notice under Section 18 of SRPO, was not necessarily required. Even otherwise, it is matter of the record that previously an application for ejection was also filed and the same was withdrawn within the knowledge of the appellant. This position of the record reflects that matter was within the well knowledge of the appellant; therefore, he cannot escape. **Appellant is admitting him to be tenant on the subject property but at same time, he is not accepting the respondent to be his landlady.** When the documentary proof is on record proving the respondent to be owner of the subject property and previous ejection application was filed with regard to same property, then how, appellant denying the character of respondent being his landlady. **Appellant is supposed to not indulge him in unnecessary queries more particularly when he has sufficient knowledge about the landlady and her character/title on the property.** Admittedly, there is no written tenancy agreement between the appellant and respondent **but depositing the rent in MRC by the appellant even after having knowledge about the documents of the respondent, is the kind of technical escape and nothing else.** Even today, appellant is not accepting the respondent to be his landlady though, all relevant documents are on record and are within his knowledge. **Considering all these circumstances, learned Rent Controller has rightly held that relationship of landlady and tenant do exist between the parties."**

11. The findings of the appellate Court are within spirit of law as well evidence, brought onto the record, therefore, the same need not be disturbed merely for reason of possibility of any other conclusion because this Court cannot act as a court of appeal while examining the order of appellate Court in rent matters. Reference is made to case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214 wherein it is affirmed as:-

"8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. **The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible.** The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

12. As regards to the argument of learned counsel for the Petitioners that property is situated in the commercial area, which is not falling within the industrial zone, hence, respondents cannot open pathological lab in that premises is concerned, the same does not appear to carry any weight, it is observed that it is prerogative of the landlord to run any business in the demised premises and even landlord is not bound to mention (detail) the business in his pleading as well in his statement because pendency of proceedings may cause effects upon any *planning* which is not limited but includes financial position, margin of profit and chances of success. Reference may well be made to the case of Muhammad Iqbal v. Syed Sohail Wajid Gillani 2004 SCMR 1607 wherein it is held as:-

5. ... The landlord is not bound to mention the name of business in his statement as he keeping in view his financial position, margin of profit and the chance of success, may select any suitable business after obtaining the possession of premises and therefore, in absence of choice of the business the bona fide personal need is not effect. The law has provided sufficient safeguard for the tenant under section 17(6) of the Cantonment Rent Restriction Act, 1963 wherein it is provided that if the landlord after obtaining the possession of premises on the ground of personal need, does not occupy the same within a period of one month, the tenant is entitled to ask for restoration of possession.

13. I have examined the judgments of both courts below in juxtaposition of arguments raised by learned counsel for the petitioners and am of the view that there is no illegality and infirmity in the impugned judgments, hence, petitions are dismissed. However, in case, petitioners are willing to evict the premises voluntarily, without preferring any appeal and disputing status of landladies, executing court would be competent to allow the reasonable time of eviction with consent of parties.

J U D G E