

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-265 of 2022

Petitioner : M/s. Shezan (Pvt) Ltd. through M/s Syed Haider Imam Rizvi and Sanaullah, advocates
Respondents No.1&2 : Shahid Gul (since died through his L.Rs) and Javed Akhtar through Mr. Junaid Alam Khan advocate
Respondent No.3&4 : Mr. Zahid Farooq Mazari AAG
Date of hearing : **09th December 2022**
Date of announcement : **21st December 2022**

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 04.01.2022 passed by Appellate Court in FRA No.65/2021 and judgment dated 02.03.2021 passed by Rent Controller concerned in Rent Case No.363/2000, whereby present petitioner was directed to vacate the demised premises.

2. The relevant facts of the case as narrated in the impugned judgment, reads as under:-

“3. Facts leading to the instant FRA are that Rent Case No. 363/2000 was instituted by Shahid Gul (respondent No.1/landlord) for eviction of Javed Akhtar (respondent No.2/tenant) from the rented premises on the grounds of default since January 1995; sub-let; conversion of demised premises from residential to commercial use and personal bonafide need. The respondent No.2 filed the written statement in which all the allegations were admitted. However; the respondent No.2 failed to contest the rent case and the then learned Rent Controller allowed the ejectment application vide order dated 08.04.2000 with direction to the respondent No.2 to vacate the demised premises within 60 days. The execution application was filed by respondent No.1. During the execution proceedings; the present appellant made application under section 12(2) CPC read with Section 20 of General Clauses Act and Section 22 of Sindh Rented Premises Ordinance, 1979 to set-aside the eviction order. The said application was allowed and appellant was impleaded as party in the rent case.

4. The appellant filed the written statement in which it was stated that appellant was inducted as tenant in the rented premises by respondent No.2 (Javed Akhtar) under the lease agreement dated 01.01.1993. It was further stated that rent till December 1994 was duly paid; but the respondent No.2 demanded increase in rent and refused to receive the rent; thus the appellant sent the rent through money order and thereafter deposited in MRC No.442/1995. The appellant denied the allegations of sub-letting and conversion of demised premises for commercial use. The appellant and respondent No.1 led the evidence; whereas the respondent No.2 remained absent and his side of evidence was closed. The ejectment application was dismissed vide judgment dated 25.07.2002 by the learned Rent Controller.

5. The record shows that respondent No.1 (Shahid Gul) preferred FRA No.24/2003 and appellant (M/s. Shezan (Pvt) Ltd) preferred FRA No.255/2002 against the order dated 25.07.2002. The FRA No.24/2003 preferred by Shahid Gul (respondent No. 1) was allowed, whereas the FRA No.255/2002 of appellant (M/s. Shezan (Pvt)) was dismissed vide single order dated 15.07.2004 passed by learned Vth Additional District Judge, Karachi South. This order dated 15.07.2004 was challenged before the Honorable High Court of Sindh in CP No.S-507/2004 and S-547/2004. The Honorable High Court of Sindh vide order dated 26.08.2009 remanded the case with the directions to the respondent No.1 to produce the Power of Attorney and proper authorization of the landlord to institute the rent case.

6. After remand and receipt of R&Ps; the rent case was proceeded before the learned Rent Controller, during which the Advocate of respondent No.1 intimated about the death of respondent No.1 (Shahid Gul) through statement dated 20.01.2010, and the legal heirs of deceased Shahid Gul were taken on record vide order dated 01.03.2010. In compliance of order of Honorable High Court dated 26.08.2009; Imran Shahid; one of the legal heirs of Shahid Gul (respondent No. 1) on 13.03.2010 produced General Power of Attorney dated 01.10.1999 and other documents at Ex. AB/1 to AB/12. During the course of trial; the appellant made application for dismissal of the rent case on the ground that due to death of Shahid Gul; the General Power of Attorney became infructuous. The application was allowed and the then learned Rent Controller dismissed the rent case vide order dated 15.03.2010. The said order was challenged through FRA No.211/2010 before this Court and the rent case was remanded vide judgment dated 05.11.2013 with directions to decide the rent case on merits.

7. The rent case was proceeded and consequently the learned Rent Controller allowed the eviction application vide judgment dated 08.11.2017. The appellant preferred FRA No.610/2017 before the learned XIIth Additional District Judge, Karachi South from where the case was remanded vide judgment dated 05.12.2018 with directions to the respondent No.1 to produce original documents of Ex. AB/1 to AB/12 and the opportunity was given to the appellant to cross-examine the respondent No.1 in respect of these documents.”

3. Learned Rent Controller proceeded with the rent case and ultimately allowed the rent case through the judgment dated 02.03.2021, which was assailed by the petitioner before the learned Appellate Court, but the same was too dismissed vide impugned judgment dated 04.01.2022.

4. Learned counsel for the petitioner contended that the concurrent findings arrived at by the Courts below are against the judgment passed by this Court in C.P.Nos.S-507 & 547 of 2004; that rent case was filed and proceeded by incompetent person; that no power of Attorney or authorization in favour of the respondent No.1 is placed on record; that allegations of subletting and conversion of residential premises into commercial are without any basis; that rent case was filed collusively by the respondent No.1 and 2 against the petitioner; that there exists no relationship of tenant and landlord between the petitioner and respondent No.1 and that the judgments of both the Courts below are based on flimsy grounds and were passed in slipshod manner without appreciating the material brought on record, hence he prayed that instant petition may be allowed by setting aside the concurrent findings of the Courts below.

5. In contra, leaned counsel for the respondents No.1 and 2 supported the impugned judgment by stating that rent case was filed by the competent person being owner of the property which was purchased by him during rent proceedings; that petitioner though was well aware about purchase of the demised premises by the respondent No.1, even then he failed to deposit the rent in his favour; that respondent No.2 was tenant of the demised premises even then he sublet the demised premises to the petitioner; that actually the petitioner is not the tenant in the demised premises, hence he has no *locus standi* to invoking the jurisdiction of this Court by preferring the instant

petition, therefore, he sought for dismissal of the instant petition. He has relied upon decisions reported as **PLD 1968 Lahore 20, 1982 SCMR 237(2), PLD 1986 Karachi 117, 1989 CLC 34, 2001 SCMR 1140 and 2013 MLD 319 [Lahore]**,

6. Heard the respective sides and carefully examined the available material.

7. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to Appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition falls within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

“13. The respondent No.1 (Shahid Gul) in his eviction application as well as in the evidence contended that the tenant (Javed Akhtar) had committed default in payment of rent since 1995. It is a matter of record that (Javed Akhtar) respondent No.2 in his written statement admitted the relationship of landlord and tenant between him and the respondent No. 1 (Shahid Gul) and also admitted default in payment of rent. Whereas, it is the case of the appellant (M/s. Shezan (Pvt) Ltd) that they had obtained the demised premises on rent from (Javed Akhtar) under a lease agreement and has been paying the rent regularly. The appellant also contended that the respondent No.2 demanded increase in the rate of rent thus, the rent was sent firstly through money order which was refused to accept and since then the rent was deposited in MRC No.442/ 1995. It is a matter of record that during the proceedings of this rent case the respondent No.1 has produced the tenancy agreement between him and Javed Akhtar, the General Power of Attorney and also the Sub-Lease in favor of respondent No.1 (Shahid Gul) which sufficiently proves that respondent No.1 is the owner/landlord of the demised

premises. Despite having knowledge that respondent No.1 is the landlord of the demised premises, the appellant failed to pay or deposit the rent in the name of respondent No.1. Thus, the appellant has committed default in payment of rent and liable for ejection.

15. The authorities relied upon by the learned counsel for the appellant are different from the facts and circumstances of the present rent case. In 2006 SCMR 437, 2011 CLC 1534, 2005 CLD 1208, CLD 2008 239, 2012 CLD 957 held that the person who instituted ejection proceedings on behalf of the company being not duly authorized the ejection application was rightly dismissed. But in the present case; the respondent No.1 (Shahid Gul) produced General Power of Attorney dated 01.10.2010 to prove that he was competent to file and proceed the rent case. 2015 SCMR 1044 and 2015 YLR 1387 pertain to the suit for specific performance of an agreement to sell whereas the present proceedings is under section 15 of Sindh Rented Premises Ordinance 1979."

8. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:-

"Point No.1:

The burden to prove this point lies on the shoulders of the applicant. On aforesaid point, the applicant stated in Para-4 of his main rent application in respect of default in payment of monthly rent as well as fittings & fixture charges of the demised premises to applicant from 12.01.1995 to 11.02.2000.

On the other hand, in written statement, the opponent No.1 admitted the contents of Para-4 of rent application, same is reproduced as under:-

"That contents of Para-4 of the application are admitted. In fact, the sub-tenant has not paid to me monthly rent since January 1995. Hence, did not pay the rent to the applicant".

In the light of above admission of opponent No.1, it is crystal clear that opponent No.1 has committed default in payment of monthly rent. Under such circumstances, the answer of this point is in affirmative.

Point No.2:

The burden to prove this point also lies upon the shoulders of applicant. On this point, the applicant stated in Para-5 of his rent application that respondent

(opponent No.1) has illegal sub-let the demised premises to M/s Sheezan Pvt. Ltd without consent of the applicant and in Para-6, it has been mentioned that the demised premises was rented out for residential purpose only but respondent (opponent No.1) without permission & consent of applicant put into commercial use.

In written statement, the opponent No.1 admitted the contents of Para-5 & 6 of rent application, same are reproduced as under:-

“That the contents of Para-5 are correct that I have sub-letted the premises but that fact is in the knowledge of the applicant”

“That the contents of para-6 are correct but it is in the knowledge the applicant that it is being used for commercial purpose”

In view of the above admission in the written statement by the opponent No.1, it is proved that opponent No.1 sub-let the demised premises to M/s Sheezan Pvt. Ltd and same is being used for commercial purpose without written consent of applicant/ under such circumstances, the answer of this point is in affirmative.

Point No.3:

In the light of discussion in aforesaid points, the rent application is hereby allowed. The opponents are directed to handover the vacant physical possession of the demised premises to the applicants within 30 days from the date of passing of this judgment.”

9. Initially, the petitioner claims that they had obtained demised premises from respondent No.2 under a lease agreement and rent was being paid to him, however, due to demand of increase in monthly rent, the rent of the demised property was sent to him through money order and on his refusal the same was deposited in the MRC No. 442/1995, whereas, as per the case of respondent No.1, the respondent No.2 committed default in payment of rent, hence, rent case was filed against him, in which the respondent No.2 admitted default in payment of rent. It is an admitted fact that the Respondent No.2 was not the owner/landlord of the demised premises; therefore, the Petitioner was under obligation to pay rent to the Respondent No.1 and not to the Respondent No.2, who was admittedly tenant of the Respondent No.1. In Case of *Habib Bakhsh v. Mst. Bilquis Begum and others (1995 SCMR 448)*, it was held

by the Apex Court that: “*Since the petitioner was insisting not to pay rent to the deceased purchaser, the deposit of rent by him with the Rent Controller through Miscellaneous Rent Application in the name of the previous owner, who had ceased to have any interest in the tenement was of no legal consequence. The High Court’s judgment seems to be in consonance with law and, therefore, does not call for interference by this Court. The petition is, therefore, dismissed*”. Record reflects that respondent No.1 had produced Tenancy Agreement executed between them, General Power of Attorney as well as Sub Lease in his favour, which prima facie depicts that the respondent No.1 is the owner of the demised premises and it appears that despite having knowledge, the petitioner had not paid rent to the respondent No.1, hence, concurrent findings regarding fact of default in payment of rent by the petitioner do not require interference by this Court.

10. With regard to the ground of subletting, record reflects that the demised premises was rented out to the respondent No.2 by the respondent No.1 in the year 1992 and according to the respondent No.1 the demised premises was sublet by the respondent No.2 to the petitioner, who admitted that the said premises were obtained by it from the respondent No.2 under Lease Agreement dated 01.01.1993, which was executed by the respondent No.2 being owner/attorney, however, the witness of the petitioner stated during his cross examination that he had no document of attorney/power of respondent No.2, thus it prima facie appears that respondent No.2 was not authorized to rent out the demised premises to the petitioner in the capacity of landlord/attorney and the petitioner was sub-tenant of the demised premises. Sub-Lease dated 09.01.2010 proves the respondent No.1 to owner of the demised premises and it has come on record that the said premises was rented out to the respondent No.2. Even this Court has consistently held that a sub-tenant has no independent right of his own and has to stand or fall, sail or sink with the tenant and has no right to claim tenancy or pay rent or file appeal against orders of ejectment, when the tenant has not appealed. Reliance is placed upon the cases reported as Abdul Rauf v. Nawab Ali and 3 others PLD 1986 Kar. 117, Pakistan State Oil Company Limited v. Sikandar A. Karim 2005 CLC 3 (Karachi) and Mrs. Ruby Misso v. Mrs. Kaniz Fatima and others 1990 CLC 1320 (Karachi). In similar circumstances, in Case of **Messrs Noorani Travels Karachi v. Muhammad Hanif and others (2008 SCMR 1395)**, it has been held by the Honourable Supreme Court of Pakistan that “*It is well settled that an unauthorized*

sub-tenant can be evicted along with the tenant against whom the eviction order is passed by Rent Controller and he is not a necessary party to the proceedings, being unauthorizedly in occupation of the premises. Though in order to avoid complications in the execution, it has been, in some cases, suggested that sub-tenant may also be impleaded in the rent proceedings, yet, the fact remains that in order to become a party to the proceedings it is to be established by the intervener or the interceptor that he has a "legal right in the property which is enforceable by law", otherwise he cannot claim to be a necessary party in the proceedings". Reference may also be made to the Case of **Muhammad Sulleman v. Abdul Sattar (2004 SCMR 415)**, wherein it has been held by the Honourable Supreme Court of Pakistan as under:-

“The contention of the learned counsel for the petitioner that landlord having received the rent regularly from the petitioner has acknowledged his status as tenant, has no substance as there was no material on record in support thereof except the bare statement of the petitioner. The admitted position is that the premises were rented out to Muhammad Iqbal and the tenancy continued in his name without any change till, the filing of ejectment petition by the landlord and in absence of any proof of delivery of the possession of premises to the petitioner by Muhammad Iqbal with the permission of landlord or the acknowledgment of the status of the petitioner as tenant of the premises: the petitioner would be deemed to be in occupation of premises through Muhammad Iqbal and would have no independent right to retain the possession and resist the ejectment”.

Thus, findings to this effect are also not calling for any interference by this Court.

11. At this juncture, learned counsel for the petitioner argued that ejectment application was filed by the respondent No.1 in the year 2000 whereas, Sub-Lease was executed in his favour in the year 2010, hence the Rent case No. 363/2000 was not maintainable. However, learned counsel for the petitioner has failed to show any provision of law or principle of law which provides non-maintainability of an ejectment application on this ground. Transfer of property does not affect or abate the pending proceedings. Even where during pendency of ejectment application the transfer of ownership rights is effected by the landlord, the person upon whom the ownership rights devolved by virtue of the transfer can be impleaded as a party to continue the proceedings. Reliance is placed upon the case of **Kasim Tar Muhammad vs. Mst. Sherbano and another (1987 SCMR 380)**, hence the contention of the learned counsel for the petitioner is misconceived.

12. In consequence to what has been discussed above, I find no illegality in the judgment *impugned*, which is accordingly maintained. In consequence thereof the petition is hereby dismissed.

J U D G E

Sajid