

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-177 of 2005

Aslam Petitioner

Vs.

M/s. United Bank Ltd. & another Respondents

CP No.S-178 of 2005

Nazim H. Odhwani Petitioner

Vs.

M/s. United Bank Ltd. & another Respondents

M/s. Mushtaq Ahmed Memon and Shahid Ali Ansari, advocate for petitioner
 Mr. Abdul Haleem Siddiqui, advocate for respondent No.1.

Date of hearing **27.08.2024.**

Date of order: **04.09.2024**

O R D E R

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MUHAMMAD IQBAL KALHORO J: This judgment disposes of two constitution petitions arising out of impugned judgments dated 08.02.2005 passed in two different First Rent Appeals (**FRAs**) numbered as 236/2001 and 238/2001. The reason to dispose of both the petitions by one and single judgment is that in both the cases respondent/landlord is the same viz. M/s. United Bank Ltd. (UBL), the demised premises are situated in the same building and both the impugned judgments have been passed on the same day by the same Court. CP No.S-177/2005 is in respect of Shop No.5 and CP No.S-178/2005 is about Shop No.8, both situated in UBL Building Chowrangi Mahal, Gurumandar Mandar, Karachi. The Rent Case No.1215/2000 was filed against petitioner in CP No.S-177/2005 Aslam and Rent Case No.1217/2000 was filed against petitioner Nazim in CP No.S-178/2005 by the respondent.

2. The grounds in both the rent applications seeking eviction of the petitioners was subletting the demised premises and committing default in payment of rent but later on the ground of subletting the premises was withdrawn. After the trial, rent applications were dismissed by the Rent Controller in terms of two separate orders passed on the same date 31.03.2000, mainly holding that the Power of Attorney (**PoA**) filed by the attorney of the bank/respondent did not specifically confer authority on him to file ejectment application and lead evidence. And furthermore, no copy of resolution in favour of the attorney by the Directors of the Company / bank to file ejectment application was attached along with the rent case. Hence, the very filing of ejectment application and giving evidence by the attorney were not maintainable in law and

could not be taken into account as merits of the case. The issue of default was also decided against the respondent by the Rent Controller, who has observed in the orders that from evidence, it is clear that petitioner used to pay rent in lump sum and there is record showing that rent has been paid to the bank up to the disputed period of default. Against such order, respondent's bank filed separate FRAs as stated above and through the impugned judgments has succeeded to seek ejectment order against the petitioners. Hence, these petitions.

3. I have heard learned counsel for the petitioners, who has drawn my attention to the PoA available in the file and submits that attorney was not given authority exclusively to file ejectment application or give evidence singly by filing only his affidavit-in-evidence in the Court. According to him, in the PoA the word jointly in para-1 is mentioned and in terms of para-9, the attorney was required to jointly act with the other attorney of the bank by not only filing the rent application together but giving the evidence accordingly. Therefore, the evidence of a single attorney on behalf of the bank is invalid and would not be read as a statement having any evidentiary value.

4. Insofar as default is concerned, his argument is that as per routine, the rent was being paid to the bank by the petitioner in lump sum. Previously also through a single pay order, the petitioners had been paying the rent of many months to the bank without a single objection raised by the latter. Particularly, in this regard, he has drawn attention to para-3 of the written reply filed by the petitioners to the rent case showing that on at least seven occasions, the rent of several months in lump sum was paid to the bank through one pay order / cheque without any objection from the bank. He has submitted that the rent, till December, 1996, was accordingly paid to the bank by the petitioner. Therefore, since no receipt was being issued against the rent, hence, initially, the rent was tendered through a money order in the month of January, 1997, which was returned un-delivered, hence, through MRC No.81/1997, the petitioner started paying the rent in the Court of II-Rent Controller, Karachi. He submits that since the rent had been paid up-to the disputed period of default, no case for eviction on the ground of default was made out against the petitioner and the rent case on such sole ground was not sustainable. He has relied upon case laws reported in **1986 SCMR, 1988 SCMR 1385, 1989 SCMR 403, PLD 1980 SC 298, 1993 SCMR 200, 2000 SCMR 472, PLD 1982 Karachi 71, 1994 MLD 2251 and PLD 2005 SC 418** to support his arguments.

5. On the other hand, leaned counsel for the respondents has supported the impugned judgment.

6. I have considered submissions of the parties and perused material available on record. The record reflects that application u/s 15 of Sindh Rented Premises Ordinance (**SRPO**) was filed in respect of the above shops against the petitioners by the respondent on the ground of subletting the premises and default in payment of rent. The ground of subletting since was withdrawn; the case proceeded only on the ground of default allegedly from 01st January, 1995 till filing of the case. In the written reply, the petitioners have refuted the said claim and have made a further claim of having paid *pugri* of Rs.37000/- as advance rent. It is further stated by the petitioners that the rent was being paid by them in lump sum. There was no default committed by them.

7. Insofar as the ground of petitioners that the very filing of application through attorney, who appeared in the Court and gave evidence, is not valid, is concerned, it may be said that PoA in clear terms confers authority on the attorney in terms of clause-9 to represent and file applications, written statement, etc. in the Courts in any proceedings on behalf of the bank. This authority was not challenged by the petitioner specifically, either in the rent case or in FRAs subsequently. It is not disputed either that rent application was filed jointly by the two attorneys of the bank as envisaged in PoA. However, at the time of evidence, since one attorney namely Kamran Aziz, who had filed the rent case, was on leave, the other attorney namely Abdul Razak appeared in the Court and filed his affidavit-in-evidence on behalf of the bank. Neither at the time of filing of written reply, nor at the time of recording of his evidence, any objection to his authority to adduce evidence and represent the bank was raised by the petitioners. The bank being a company was required to be represented by some of its officials having been conferred due authority in clear terms, which requirement was fulfilled on filing of the PoA. Therefore no further document was required to confirm authority of the attorney to represent the bank in the Court proceedings. By submitting a copy of PoA, not objected by the other side, by the bank representative to show his authority was sufficient evidence to satisfy the requirement of adequate representation of the bank in the Court of law. Further, the proceedings before the Rent Controller are *quasi judicial* in nature and technicality of any nature frustrating the aim and object of SRPO cannot be allowed to prevail. The perusal of PoA clearly states that all the powers necessary to represent the bank were bestowed upon the attorney to appear and act on behalf the bank in the proceedings before the Rent Controller. In view of such material, no further evidence on the point was required, nor on any technically the evidence of the attorney could be discarded.

8. As for default in payment of rent is, the argument of learned counsel for the petitioner is that the petitioner used to pay the rent to the respondent in lump sum, and hence there is no default. It may be said that such practice cannot be considered to override either the terms of tenancy agreement between the parties or aim and object of SRPO. A precedent regarding payment of rent in a particular mode, either in lump sum or separately each month, set in the past between the parties, neither would absolve the petitioners / tenants from the responsibility to pay the rent of every month in advance as per terms and conditions of tenancy agreement. Nor would it deprive the bank of its right to seek payment of rent of each month in advance as agreed in the tenancy agreement. Besides, record does not reflect that respondent bank was through some fraudulent means trying to create default against the petitioners by delaying receiving the rent amount from the petitioners, in order to create such ground in its favour, to give any consideration to the case of the petitioners.

9. The learned appellate Court while discussing this issue has referred to cross examination of petitioner and has recorded his admission that he had not paid the rent w.e.f. January, 1995 to November, 1996 because according to him no representative of the bank had come to collect the same. Next, the rent for that period as well as the rent of December, 1996 was paid only on 08.12.1996. Further, as per appellate Court's observation, the petitioner has admitted in his evidence that there was no agreement between the parties to pay the rent amount in lump sum, and that the bank had never refused to receive the rent and hence, there was no justification for him to file MRC for depositing the rent in the Court. Learned appellate court while discussing both issues in hand has thoroughly examined the evidence and the relevant case laws in true context and has rightly concluded that the findings of the Rent Controller dismissing the rent cases were based on mis-appreciation of facts and law which required payment of rent of each month in advance. To such findings, in my view, no exception can be taken.

10 In view of above discussion, I do not find any illegality or perversity in the findings of the appellate Court to justify interference in the constitutional jurisdiction of this Court. In absence of material leading to a different view, and in the light of clear scheme of SRPO, plus, the terms and conditions of the tenancy agreement, these constitution petitions are found meritless, and are accordingly dismissed along with pending application(s). The petitioner shall vacate the demised premises within 15 days from today.

Petitions stand disposed of in above terms.

JUDGE