

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S –85 of 2022

C. P. No. S –29 of 2023

Date	Order with signature of Judge
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Petitioner in C.P No.85/22

& C.P No.29 of 2023:

Jan Muhammad Through Mr. Sarfraz
A. Akhund, Advocate

Respondents in C.P No.85/22

& C.P No.29 of 2023:

Muhammad Faisal and others
Through Mr. Farman Ali Rajput.

Province of Sindh:

Through **Mr. Ahmed Ali Shahani**,
Assistant Advocate General

Date of hearing:

08.12.2023

Date of Order:

12.01.2024

ORDER

ARBAB ALI HAKRO, J:

By this Order, I decide on the captioned petitions filed by the petitioner/tenant against separate orders. These orders arose from a rent application and an execution application passed by the III-Rent Controller, Sukkur, and the II-Additional District Judge/MCAC, Sukkur.

2. In C.P. No. S-85 of 2022, the petitioner/tenant has impugned the Order dated 11.11.2021, passed by the III-Rent Controller, Sukkur, in Rent Application No.05 of 2020. The rent application filed by the respondents/landlords under Section 15 of the Sindh Rented Premises Ordinance, 1979 ('SRPO, 1979') was allowed. The Petitioner assailed this decision before the II-Additional District Judge/MCAC, Sukkur, in Rent Appeal No. 19 of 2021. However, the appeal was dismissed vide

judgment dated 09.05.2022, thereby maintaining the Order passed by the Rent Controller.

3. Likewise, in C.P. No. S-29 of 2023, the petitioner/tenant has impugned the Order dated 13.4.2022, passed by the III-Rent Controller, Sukkur, in Rent Execution Application No. 01 of 2022. The execution application filed by the respondents/landlord under Section 22 of SRPO, 1979 was allowed, with a direction to issue a writ of possession against the petitioner/tenant. The Petitioner assailed this decision before the II-Additional District Judge/MCAC, Sukkur, in Rent Appeal No. 08 of 2022. However, the appeal was dismissed vide order dated 01.02.2023, thereby maintaining the Order passed by the Rent Controller.

4. The relevant facts of the case are that the respondents/landlords filed Rent Case No. 05 of 2020 against the petitioner/tenant in respect of Bungalow No. 30, admeasuring 120 Sq. Yds, situated at Sector-02 Sukkur Township (**'demised premises'**) on the grounds of default in payment of rent and personal bona fide need. It is stated in the rent application that the predecessor of the respondents, namely Abdul Rasheed, rented out the demised premises to the Petitioner through a Rent Agreement dated 07.6.2016. The rate of rent was fixed at Rs.10,000/- per month, which was to be paid by the Petitioner to the respondents between the 1st and 5th day of each English calendar month. The Petitioner paid Rs.50,000/- as an advance rent amount to the deceased Abdul Rasheed. It is also asserted that prior to this, the deceased Abdul Rasheed filed ejectment applications, which were dismissed on technical grounds. The Petitioner has also filed F.C Suit No. 88/2018 against the deceased Abdul Rasheed and others for Specific Performance of Contract and Permanent Injunction. After the death of Abdul Rasheed, the Petitioner failed to pay the rent to the respondents despite being informed about the death of Abdul Rasheed and committed a willful default in payment of monthly rent from December 2019. It is also asserted that the

respondents require the demised premises for their personal bonafide need. Hence, they filed the ejectment application.

5. In his written objections, the Petitioner admitted to the relationship of landlord and tenant. However, he stated that he purchased the demised premises from the deceased Abdul Rasheed through a Sale Agreement dated 07.02.2018. He did not receive any notice regarding the change of ownership; instead, he only received an envelope from TCS containing blank papers. He has not committed any default in the payment of rent.

6. In view of the divergent pleadings of the parties, the following points for determination were settled by the Rent Controller: -

- i) *Whether the opponent is liable to be ejected from the rented premises on the ground of personal bonafide need and default?*
- ii) *What should the Order be?*

7. Both parties presented their evidence by filing their respective Affidavits-in-Evidence and producing relevant documents to support their contentions.

8. After evaluating the evidence produced by both parties, the Rent Controller allowed the ejectment application vide Order dated 11.11.2021. The Petitioner assailed the said Order by filing Rent Appeal No.19 of 2021, which was dismissed vide Judgment dated 09.5.2022. Similarly, Execution Application No.01/2022, filed by the Respondents before the Rent Controller, was allowed vide Order dated 13.04.2022. This was also challenged by the Petitioner by filing Rent Appeal No.08/2022, which was dismissed by the appellate Court vide Order dated 01.02.2023. Therefore, the Petitioner, being aggrieved with the above Orders passed against him, challenged the same through present separate Petitions.

9. At the outset, the learned Counsel representing the Petitioner contended that there was no relationship of landlord and tenant

between the parties. He argued that the Petitioner purchased the demised premises from the deceased Abdul Rasheed through a sale agreement. Since Abdul Rasheed did not transfer the property in his favour, the Petitioner was constrained to file a suit against him for specific performance. This aspect, he argues, should have been considered by the learned Courts below, and a point for determination regarding the relationship of landlord and tenant between the parties should have been framed and decided by the Rent Controller. He further submits that after the death of Abdul Rasheed, the respondents, who are legal heirs, have not served notice regarding the change of ownership under Section 18 of SRPO, 1979. He also contends that the respondents failed to prove their personal bona fide need and the Petitioner's default in payment of rent.

10. Conversely, the learned Counsel representing respondents No.1 to 5 contended that the fact about the death of the predecessor of the respondents and the change of ownership was known to the Petitioner, but he deliberately avoided and refused to pay the monthly rent to them. He argued that it is not mandatory under Section 18 of SRPO to send the notice for change of ownership, as filing a rent application is itself a notice. Yet, the Petitioner did not tender rent to the respondents after receipt of the notice of the ejectment application. In his cross-examination, the Petitioner admitted that he did not pay rent to the respondents. The learned Counsel strongly supported the impugned orders and judgments and prayed for the dismissal of both these petitions.

11. I have heard Counsel for the parties and have perused the record with their assistance.

12. Before I delve deeper, it's important to clarify that this Court doesn't typically function as an appellate court in rent-related matters. Instead, its jurisdiction is primarily to address those decisions which, on the face of it, seem to have led to significant legal errors,

causing a miscarriage of justice. The appellate Court holds the final say in the hierarchy of rent-related matters, and when both rent authorities have concurrent findings, the scope for intervention becomes quite limited. It's worth noting that the petition in question falls under the writ of certiorari, which is against the judgments passed by both lower courts in rent jurisdiction. It's a well-established legal principle that these judgments cannot be altered unless it can be demonstrated that they are the result of misinterpretation or overlooking of evidence. Reference may well be made to the case of Muhammad Lehrasab Khan vs. Mst. Aqeel-un-Nisa and 5 others (2001 SCMR 338) wherein it is held as under: -

“4. There is no cavil with the proposition that ordinarily the High Court in its Constitutional jurisdiction would not undertake to reappraise the evidence in rent matters to disturb the finding of facts but it would certainly interfere if such findings are found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction and arbitrary exercise of powers. In appropriate cases of special jurisdiction, where the District Court is the final Appellate Court, if it reverses the finding of the trial Court on the grounds not supported by material on record, the High Court can interfere with it by issuing writ of certiorari to correct the wrong committed by the Appellate Authority. Reference can be made to Rahim Shah v. Chief Election Commissioner (PLD 1973 SC 24), Lal Din Masih v. Sakina Jan (1985 SCMR 1972), Muhammad Hayat v. Sh. Bashir Ahmad and others (1988 SCMR 193), Abdul Hamid v. Ghulam Rasul (1988 SCMR 401) and Assistant Collector v. Al-Razak Synthetic (Pvt.) Ltd. (1998 SCMR 2514). In Rahim Shah's case, supra it was held:--

"The scope of interference in the High Court is, therefore, limited to the inquiry whether the tribunal has in doing the act or undertaking the proceedings acted in accordance with law. If the answer be in the affirmative the High Court will stay its hands and will not substitute its own findings for the findings recorded by the tribunal. Cases of no evidence, bad faith, misdirection or failure to follow judicial procedure, etc. are treated as acts done without lawful authority and vitiate the act done or proceedings undertaken by the Tribunal on this ground. Where the High Court is of opinion that there is no evidence proper to be considered by the inferior tribunal in

support of some point material to the conviction or Order, certiorari will be granted."

[Emphasis supplied]

13. Shifting focus to the merit of the case, it is significant to note that the Petitioner has questioned the landlord-tenant relationship in the current Petitions for the first time. Intriguingly, the Petitioner did not present this query in his written statement to the Rent Controller, nor was it mentioned in the appeal to the appellate Court. This plea was first introduced in the constitutional petition. Yet, it lacks backing from either the pleadings of the involved parties or the other circumstantial elements of the case. This situation raises questions about the plea's validity and relevance in the context of the ongoing proceedings. In this regard, I find strength in the case of Hyder Ali Bhimji vs. VIth Additional District Judge, Karachi (South) and another (2012 SCMR 254), where the Supreme Court of Pakistan has ruled as follows: -

"13. Assessing the present case in the context of above analyzed legal principles, we note that the appellant had not pleaded or deposed before the trial Court that the company or the firm were his licencees and were so inducted in the demised premises to do business of the appellant or their own. The Judgment dated 4th November, 2008 of the learned VI-Additional District Judge, Karachi East shows that the appellant also failed to raise such a plea before the learned First Appellate Court. Similarly neither in his Constitution petition nor in the arguments before High Court did the appellant premise his case on the licencee status of the company/firm. We thus agree with Mr. Rasheed A. Rizvi, learned Senior Advocate Supreme Court for respondent No.2 that this plea having never been raised before any of the Courts by the appellant, cannot be considered for the first time by this Court particularly when no evidence on record exists to substantiate such a plea. Arguments of Syed Sharif-ud-Din Pirzada and the cases referred to by him on the factum of company/firm being appellant's licencee, can thus be of no benefit to the case of the appellant."

[Emphasis supplied]

14. The Petitioner has alleged that he did not receive any notice under Section 18 of the SRPO, 1979. Instead, he claims to have received an envelope from TCS that contained only blank papers. However, without delving into the factual dispute, it might be adequate to state that filing the ejectment application itself has been treated as a notice under Section 18 of the SRPO, 1979. In Case of Haji Rauf v. Abdullah Qaiser and others (2014 SCMR 979), it was held by the Supreme Court of Pakistan as under:-

“Although it is an admitted fact that no notice under section 18 of the Ordinance was issued but the petitioner had admitted that he had the knowledge of the change of the ownership and therefore it was his duty to approach the new landlord and pay the rent or in case of refusal, follow the procedure prescribed under section 10(3) of the Ordinance. The petitioner is therefore in default from 14.2.1999 and has accepted the same when he sent a letter dated 23.5.2011 along with a cheque for arrears amounting to Rs.60,000 which was refused to be accepted by the respondents. We are of the view that despite non-service of notice under section 18 of the Ordinance the petitioner is not absolved of the liability to pay the rent and if he had deposited the rent in MRC before the Rent Controller or send the same by postal money order, we would have accepted his plea of bona fide but the default of more than 13 years cannot be condoned on any ground”.

In Case of Messrs Habib Bank Limited v. Sultan Ahmad and another (2001 SCMR 679), it was held by the Supreme Court of Pakistan that:-

“It may be noted that if for sake of arguments it is assumed that appellant had no knowledge about the transfer of the property to the initial round of litigation but at least when eviction application given rise to instant appeal was filed and respondents have asserted themselves to be landlords of the premises the appellant must have gained knowledge and such application can be treated to be as a notice binding the appellant to start making payment of rent and factum of institution of application for ejectment would be deemed to be substantial compliance of the provisions of section 18 of the Ordinance being a convincing source as it has been held in the cases of (i) Khuda Bakhsh v. Muhammad Yaqoob and others (1981 SCMR 179), (ii) Syed Azhar Imam Rizvi v. Mst. Salma Khatoon (1985 SCMR 24) and (iii) Major (Retd.) Muhammad Yousuf v. Mehraj-ud-Din and others (1986 SCMR 751). Thus we are of the opinion that the facts and circumstances of the case reveal that appellant had acquired

knowledge about transfer of ownership in favour of respondents on two occasions firstly when application under Order I, Rule, 10, C.P.C. dated 18-9-1980 was filed and secondly when in the year 1988 the respondents instituted instant ejectment application against appellant which has given rise to instant proceedings but despite of that till 1992 as per the statement made by the learned counsel for appellant at the bar rent was not deposited in favour of respondent; therefore, without any hesitation it is concluded that a wilful default was committed by appellant in making payment of rent”.

15. It is not disputed, but rather admitted, that the Petitioner was inducted into the demised premises as a tenant. The condition under which the Petitioner retained possession in the Agreement to Sell is not presumed to be possession in terms of Section 53-A of the Transfer of Property Act, 1882. The Petitioner asserts that the late Abdul Rasheed sold him the demised premises, and he now possesses it as a purchaser, not a tenant. He has also filed F.C Suit No. 88 of 2018. Regardless, the mere existence of a civil suit in Court cannot undermine an established title for rent cases under the SRPO, 1979. The validity of the alleged agreement and its subsequent impact will be independently assessed by the civil Court. According to established law, until the tenant can prove his claim for "specific performance" based on the supposed sale agreement, the landlord will retain the status of the premises owner or landlord. The relationship between the parties will be governed by the terms of the tenancy agreement until that time. The tenant cannot legitimately oppose the maintainability of eviction proceedings against him on the basis of the sale agreement. This argument is reinforced by the rulings in the cases of Haji Jumma Khan vs. Haji Zarin Khan (PLD 1999 SC 1101), Iqbal and 6 others vs. Mst. Rabia Bibi and another (PLD 1991 SC 242), Waheed Ullah vs Rehana Nasim (2004 SCMR 1568), and Muhammad Nazir vs Saeed Subhani (2002 SCMR 1540). Therefore, considering the circumstances of the case, I find the Petitioner's claim to be without merit. In similar circumstances in Case of Abdul Rasheed v. Maqbool

Ahmed and others (2011 SCMR 320), it was held by the Honourable Apex Court of Pakistan that:-

“Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist”.

16. The sale agreement does not grant any ownership rights to the tenant unless it has been validated by a court with the appropriate authority. This viewpoint is supported by the case of *Mst. Bor Bibi and others vs. Abdul Qadir and others (1996 SCMR 877)*. In my opinion, such an agreement (an Agreement to Sell) would not allow the tenant to refuse to pay rent from the date the agreement was made. This perspective is reinforced by the cases of *Haji Jan Muhammad vs Ghulam Ghous and 2 others (1976 SCMR 14)* and *Khawaja Ammar Hussain vs Muhammad Shabbiruddin Khan (PLD 1986 Karachi 74)*.

17. In simpler terms, Article 115 of the Qanun-e-Shahadat Order, 1984, which is mentioned here, reinforces the landlord's rights in any disputes within such a relationship. In fact, this Article prevents the tenant from denying the existence of the landlord-tenant relationship while the tenancy is ongoing. Article 115 *ibid*, titled “Estoppel of tenant and of licensee of person in possession”, states that no tenant of a property, or anyone claiming rights through such a tenant, is allowed to deny that the landlord had ownership of the property at the start of the tenancy, as long as the tenancy is in effect. Furthermore, anyone who has access to any property through the permission of the person in possession cannot deny that the person had a right to that possession when the permission was granted.

18. The Petitioner has admitted in his cross-examination that he has not paid rent to the legal heirs (respondents) of the deceased

Abdul Rasheed. Such an admission itself proves that the Petitioner is a willful defaulter in the payment of rent.

19. As far as the personal bona fide need is concerned, indeed, the averments of the rent application have been verified by respondent No.1 in his affidavit in evidence. He maintained that the demised premises are required for his personal bona fide need/use. In his cross-examination, his statement on oath remained quite consistent with the averments of the ejectment application. Neither his statement was shaken, nor was anything adverse brought in evidence to contradict his statement. It is well-settled that the sole testimony of the landlord is sufficient to establish his personal bona fide need for the premises. This is the case where the statement of the landlord on oath was quite consistent with the averments made in the ejectment application, and neither his statement was shaken nor was anything brought in evidence to contradict his statement. That would be sufficient for the acceptance of the ejectment application. In this regard, I am fortified by the dicta laid down in the case of **Iqbal Book Depot and others vs. Khatib Ahmed and 6 others (2001 SCMR 1197)**, wherein the Supreme Court of Pakistan has observed that:-

“Where the statement of the landlord on oath was quite consistent with his averments made in the ejectment application, and the same had neither been shaken nor had anything been brought in evidence to contradict the statement, such a statement on oath would be considered sufficient for the acceptance of the ejectment application”.

20. In Constitutional Petition No.S-29 of 2023, the Petitioner challenged the Order dated 13.4.2022, passed by the Rent Controller in a Rent Execution Application. The respondents/landlord had filed an execution application under Section 22 of SRPO, 1979, which was granted, leading to a directive to issue a writ of possession against the petitioner/tenant. The Petitioner contested this decision before the appellate Court in a Rent Appeal. However, the appeal was dismissed, thereby upholding the Order passed by the Rent Controller. Now,

both these orders are being impugned in the above Constitutional Petition. Upon careful consideration, it is found that the constitutional petition lacks merit. The Rent Controller's Order was made in accordance with the provisions of the SRPO, 1979, and the appellate Court correctly upheld this Order. The Petitioner has not presented any arguments to demonstrate that the Rent Controller and appellate Court committed any irregularity or illegality in exercising jurisdiction or otherwise while allowing the execution application.

21. For what has been discussed above, Petitioner has failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant petitions are **dismissed**.

JUDGE

Faisal Mumtaz/PS