

HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.138 of 2004

Present:

Mr. Justice Nazar Akbar, J.

Petitioner: Mst. Musarrat and three Others through
Mr. Muhammad Nawaid Qureshi, advocate

Respondent: Allah Rakha & Others through Mr. Muhammad
Sadiq Hidayatullah, advocate

Date of hearing **14.10.2015**

Date of Announcement _____**.2015**

ORDER

NAZAR AKBAR, J---. The Petitioners have filed this Petition under Article 199 of Constitution of Islamic Republic of Pakistan 1973, to assail the order dated **23.08.2003**, passed by the learned District Judge, Karachi East, in FRA No.**507/2001**, whereby order of ejectment of respondent No. 1 passed by learned IV Rent Controller, Karachi East, dated 24.12.1999 in Rent Case No.**747 of 1988** in respect of Shop No.3 and 4, situated on Plot No.49-D/6, Commercial Area, Nursery, PECHS, Karachi, was set aside. The F.R.A. against the order of Rent Controller was initially filed before High Court and it was registered as F.R.A. No. 209/2000. However, on amendment in Rent laws the appellate jurisdiction against the order of Rent Controller was conferred on District & Sessions Judge and the Rent Appeal was transferred. On transfer to the District Court, the F.R.A. was renumbered as F.R.A. No. 507/2001.

2. The facts leading to this petition are that, petitioners No.1 to 4 are widow, son and daughters, of late Khawaja Ziauddin. They inherited the property being Plot No.49-D/6, PECHS, Karachi, along with constructions thereon, from late Khawaja Ziauddin, being his only legal heirs. Respondent No.1 is tenant in Shops Nos.3 and 4, situated on the ground floor of the said

building at a monthly rent of Rs.200/- per shop. Respondent No.1 through notice dated **16.03.1988** was informed about the demise of late Khawaja Ziauddin with the request to pay future rent to the petitioners. Despite receipt of notice respondent No.1 failed to pay monthly rent from 04.01.1988 till 04th October 1988 and committed willful default. Consequently ejectment proceedings were initiated under Section 15 of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as SRPO, 1979) through Rent Case No.747/1988. Learned trial Court on the basis of evidence adduced by the parties allowed the ejectment application which was assailed by respondent No.1 in F.R.A. No.507/2001 and the learned respondent No.2 set aside the ejectment order through the impugned judgment.

3. Learned counsel for the petitioner argued that respondent No.1 in his cross-examination admitted that he was fully aware of the fact that Khawaja Ziauddin expired on 04.01.2004, as the deceased used to reside in the said building along with his family where respondent No.1 is tenant in shops on the ground floor. Even notice dated 16.03.1988 was served upon respondent No.1 regarding sad demise of Khawaja Ziauddin as well as change of ownership of the shops in question. Respondent No.1 did not reply the said notice and failed to pay monthly rent of the shops in question. Even in his cross-examination he admitted that the appellants are legal heirs of deceased Khawaja Ziauddin and owners of the shops in question, therefore, the finding of the learned appellate Court that service of notice under section 18 of the SRPO, 1979 has not been proved is contrary to evidence on record. It was further contended by the counsel for the petitioner that respondent No. 1 has categorically admitted that the rent was deposited in the name of deceased Khawaja Ziauddin in M.R.C. No.883/1986 and despite service of notice of rent application No. 747 of 1988 he continued to deposit rent in the

name of dead person. He finally argued that it is settled law that filing of ejectment case, tantamount to notice within the meaning of section 18 of the SRPO, 1979 and non-service of such notice would not amount to negation of the relationship of landlord and tenant between the parties. Non-payment of rent within 30 days from the service of notice of ejectment application constitutes default in payment of rent and renders the tenant liable to be ejected. In support of his contentions he has relied upon the cases reported in **1995 SCMR 204** (Abdul Malik Vs. Mrs. Qaiser Khan), **1995 CLC 348** (Abdul Ghani vs. Hafiz Jalaluddin), **1996 CLC 377** (Mst. Jehan Ara vs. Mst. Tayyaba Khatoon), **1997 AC 454** (M/s Jodhpur Rajasthan Cooperative Housing Society Limited vs. Mst. Yasmeen Aziz) and **PLD 1965 (W.P) Lahore 126** (Bashir Ahmed versus Mumtaz Khan).

4. The learned counsel for respondent No.1 has contended that the petitioners have categorically admitted that the rent was deposited in the name of deceased Khawaja Ziauddin in M.R.C. No.886/1986. The petitioners have failed to prove the service of notice under section 18 of the SRPO, 1979 upon respondent No.1. He further contended that service of notice of the change of ownership is mandatory requirement of law and on account of the omission on the part of the landlord, no rent proceedings can be instituted as it is settled law that when legislature wants an act to be done in a specific manner it must be done in the manner provided under the law. He lastly, contended that learned appellate Court had rightly reversed the order passed by learned Rent Controller and the petition is liable to be dismissed.

5. I have heard learned counsel for parties, perused record and impugned order of learned District Judge, Karachi East in F.R.A. No. 507/2001.

6. The record shows that the learned appellate Court set-aside a well reasoned finding of learned Rent Controller on question of default and has failed to appreciate evidence and even cross-examination in which the respondent/tenant has himself admitted that he has been depositing rent in the name of dead person knowingly well that he has expired. He did not dispute receiving of notice under Section 18 of SPRO, 1979. He only denied his signature on the postal acknowledgement receipt. However, the learned appellate Court despite such evidence wrongly applied provisions of **Article 129 of Qanun-e-Shahadat Order, 1984** to hold that notice under Section 18 of SRPO, 1979 was not served on the respondent as its acknowledgement slip did not bear signature of respondent/tenant and therefore he was not guilty in continuing to deposit rent in the name of dead person. The requirement of Section 18 of SRPO, 1979 for the new owner who has acquired the property even by inheritance is to "send intimation of such transfer by registered post to the tenant". The burden of Section 18 of SRPO, 1979 was discharged by the petitioners/landlord when in cross the tenant/respondent No.1 admitted as follows:-

"I see postal receipt and A/D slip. Signature on the A/D is not mine. The address on the acknowledgement receipt and certificate of posting are correct."

The provisions of Article 129 of Qanun-e-Shahadat Order, 1984.

129. Court may presume existence of certain facts:

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The learned appellate Court from the evidence reproduced above failed to appreciate the natural presumption of fact that once the notice was delivered at the right address then following the "common course of natural events,

human conduct and public and private business” the notice was delivered to the respondent and proved in accordance with Article 129 of the Qanun-e-Shahadat Order, 1984. Section 18 of SRPO, 1979 does not envisage delivery of notice to the tenant in person and even otherwise delivery of letter by post at the right/correct address is sufficient compliance of Article 129 of Qanun-e-Shahadat Order, 1984 to establish that relevant post has been received by the relevant person.

7. The learned appellate Court beside the perverse appreciation of Article 129 of Qanun-e-Shahdat, Order 1984 on the issue of “default in payment of rent” totally ignored following pieces of evidence from cross-examination of respondent No.1.

“It is correct to suggest that I did not deposit in the name of legal heirs of the applicant but I used to deposit in the name of Khwaja Ziauddin. It is correct to suggest that I do not send any money order in the name of applicants. After filing the case in this Court, notice was received by me. It is incorrect to suggest that after receiving notice from Court I did not deposit the rent in the name of applicants. It is incorrect to suggest that I have not filed any receipt which has been deposited in the name of applicants. It is correct to suggest that there is no receipt of deposit of rent in name of applicant, in Court.”

The appellate Court erred in law not only in ignoring the above piece of evidence and other relevant evidence but also by refusing to follow the law laid down by superior court and quoted by the Rent Controller in the ejectment order. The Rent Controller has mentioned the following case law in his order:-

1. 1995 SCMR 204 Abdul Malik..Vs..Mrs. Qaisar Jehan
2. 1995 CLC 348 Abdul Ghani..Vs..Hafiz Jalaluddin

Both the cited judgments squarely covers the case of the petitioner, however learned Additional Session Judge like evidence ignored the case and did not

even look into it.

8. In view of the above discussion and analysis of impugned order since the learned appellate Court has mis-applied the law as well as ignored evidence and at the same time failed to follow the law cited before him, the impugned order is set-aside and the petition is allowed. The order of ejectment of respondent from shop No. 3 and 4 on the ground of bar of the building standing on plot No. 49-D/6 P.E.C.H.S. Karachi passed by the Rent Controller in Rent Case No. 747/1988 is restored. The appellate Court's perverse order has denied a **widow** and **orphans** of deceased landlord to enjoy their right to possess, hold and take full benefit of their of property for almost **eleven** years here in this Court and **sixteen** years before the two courts below from 1988 onwards, therefore, respondent is directed to vacate the premises within **fifteen** days from today and in case he fails to vacate the premises within fifteen days, once Execution is filed by the petitioner the executing court should issue writ of possession with police aid without giving even notice to the respondent or anyone in occupation of the same.

JUDGE

Karachi

Dated:_____

