

JUDGMENT SHEET
HIGH COURT OF SINDH, KARACHI

Constitution Petitions Nos. S- 1205 to S-1230 of 2016

PETITIONER : Through Mr. S.A. Waheed Advocate

RESPONDENTS : Nemo

DATE OF HEARING : 29.07.2016

DATE OF JUDGMENT : 29.07.2016

JUDGMENT

Muhammad Humayon Khan, J:-There are twenty-six petitions, in which, the respondents, property, facts and grounds are similar and only the tenants/petitioners are different but all the petitions have been signed and filed through common attorney Shahid Hussain son of Sabir Hussain. I, therefore, intend to decide all the twenty-six petitions by this common Judgment.

2. The relevant and material facts for the decision of these petitions are that the respondent No.1 became owner of building known as Gondal Market (old name “Bhatkal Market”) standing on Plot No. 4/2, Bunder Quarters, Karachi, having ground plus five floors comprising of shops at ground floor and offices on upper floors by virtue of Decree dated 27.09.2011 passed in Suit No. 539 of 2011 and subsequent Order dated 17.01.2012 passed in Execution No. 19 of 2011. After becoming owner, the respondent No.1 served all the tenants with notice dated 16.02.2012 under Section 18 of the Sindh Rented Premises Ordinance of 1979 (hereinafter referred to as “the

said Ordinance”), which was replied to by tenants through letter dated 16.03.2012. The petitioner instead of sending rent to the respondent No.1, started to deposit rent in Court in MRC in the name of previous owner who expired on 12.02.2012. In this manner, the petitioner has committed default in payment of rent from February 2012 to February 2013. Consequently, the respondent No.1 filed ejectment cases against all the tenants in the month of May 2013.

3. The petitioner filed written statement, wherein, the petitioner challenged the ownership of the respondent No.1 and further pleaded that the petitioner is the pugri holder of the rented premises and has paid the monthly rent up-to-date including maintenance and other utilities to the previous owner. It was further pleaded that during pendency of rent case, the petitioner send rent through money order to the respondent No.1 which was refused and therefore the petitioner filed MRC and deposited rent in Court in the name of the respondent No.1.

4. Later on, the respondent No.1 filed his affidavit-in-evidence and he was cross examined. On the other hand, the petitioner filed his affidavit-in-evidence and he was cross examined.

5. The learned Rent Controller framed following points for determination:-

- i) Whether the opponents have committed default in payment of rent to the applicant in respect of rented premises since February 2012 till filing of case?

- ii) Whether the opponent No. 1 has sub-letted the rented premises to the opponent No.2?
- iii) What should the order be?

6. The learned VIIth Rent Controller, Karachi-South, by his Order dated 01.10.2015 allowed the ejectment application only on the ground of default in payment of rent with direction to the petitioner to hand-over vacant possession of the rented premises to the respondent No.1 within 45 days from the date of order.

7. Against the said order, the petitioner filed first rent appeal, which was dismissed by Judgment dated 30.04.2016 passed by the learned VIIIth Additional District Judge, Karachi-South.

8. Against the concurrent findings of both the Courts below, the petitioner has filed this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

9. I have heard the learned counsel for the petitioner and perused the material available on the record.

10. The learned counsel for the Petitioner contended that there is no default in payment of rent as the petitioner replied the notice under Section 18 of the said Ordinance by reply dated 16.03.2012, wherein, the Petitioner demanded title documents from the respondent No.1 which were not provided. He further contended that the petitioner depositing rent in the name of previous owner and after filing of rent case, the petitioner tendered rent through money order to respondent No.1 and upon his refusal the petitioner deposited rent in MRC in the name of the respondent No.1. He further contended that there is no

default at all in payment of rent as the petitioner has already deposited rent in the name of previous owner. In support of his arguments, the learned counsel for the petitioner has relied upon the following case law:-

- i) Abdul Kadir and another Vs. Muhammad Yaqoob (1991 SCMR 1029);
- ii) Moizur Rehman Vs. Mrs. FakhraJaved (PLD 1991 Karachi 452).

11. I have carefully gone through both the case law referred to by the learned counsel for the petitioner. The facts of the case of Abdul Kadir and another Vs. Muhammad Yaqoob reported in 1991 SCMR 1029 are totally different as in the reported case the tenant before the receipt of notice under Section 18 of the said Ordinance had already paid rent for the months of July and August 1993 to the previous owner and in these circumstances it was held by the Hon'ble Supreme Court that till the time the tenant was intimated about the change of ownership, he was obliged to pay the rent to his previous landlord. Therefore, this case law is not applicable to the facts and circumstances of this case. Similarly, the facts of the case of Moizur Rehman Vs. Mrs. Fakhra Javed reported in PLD 1991 Karachi 452 are totally different and therefore this case law is also not applicable to the facts and circumstances of this case.

12. However, there is a case of Messrs Habib Bank Limited Vs. Sultan Ahmed and another reported in 2001 SCMR 678, wherein, their lordships of the Hon'ble Supreme Court have held that:-

“We have heard parties’ counsel at considerable length and have also carefully gone through the earlier proceedings initiated by previous owner Muzaffar Ali being No.82 of 1979 as well as the Contents of application filed by respondents under Order I Rule 10 C.P.C. for their impleadment as applicants. It is significant to note that in the proceedings the respondents not only disclosed the fact that they had attained ownership of the property through a registered sale-deed but have also attorned the appellant as their tenant. The application was not opposed and learned Controller allowed the same in terms of its prayer. No doubt that as per requirement of section 18 of the Ordinance a landlord who has acquired the rights of ownership and has also become the landlord is supposed to issue notice under registered cover to the tenant but such provision of law can be considered to have been substantially complied with if record speaks that intimation about transfer of ownership in favour of respondents has been conveyed by means of convincing source. In this behalf this Court in the case of Ghulam Samdaniv. Abdul Hameed (1992 SCMR 1170) while dealing with a case pertaining to default in payment of rent under section 17 of the Cantonments Rent Restriction Act, 1963 held that if in earlier proceedings it has come in the notice of the tenant that the property in his possession has transferred in favour of new landlord he was bound to attorn to him as his landlord and also to tender rent **but if he desists from making payment of rent and continues depositing the same in favour of previous landlord it would be deemed that default in payment of rent has been committed.** It may be noted that if for sake of arguments it is assumed that appellant had no knowledge about the transfer of the property in 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 held in the cases of (i) Khuda Bukhsh vs. 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 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.

Before parting with the judgment we would also like to observe that the tenant has no right to demand title documents from the landlord on receipt of notice within the meaning of section 18 of the Ordinance because no sooner notice is served upon him or it is otherwise conveyed to him either in the judicial proceedings or by some other reliable source he is bound to accept the new owner as his landlord as held in the cases of Muhammad Ashraf v. Abdul Hameed and others (1982 SCMR 237(2) and Suleman and another v. M.A. Mallick (1988 SCMR 775)."

This reported Judgment of Hon'ble Supreme Court is followed by this Court in the case of Hameed and 3 others v. Jitendra and 2 others reported in 2010 CLC (Karachi) 561.

13. In view of the law laid down by the Hon'ble Supreme Court, I have carefully examined both the judgments of courts below. The Learned Rent Controller after taking into consideration the entire evidence on record came to the following conclusion:-

"From perusal of evidence and record of the case it is admitted fact that despite of receiving of notice U/S 18 of SRPO and even after having knowledge of filing rent case on the basis of change of ownership, the opponent No.1 has remained failed to tender/deposit rent in the name of applicant/new landlord within 30 days but the rent was tendered after the delay of 20 months of receiving notice u/s 18 SRPO or after more than four months of receiving notice of filing rent case. The case laws cited by the learned counsel for the applicant is very much applicable according to the facts of this case, as opponent No.1 has not tendered rent and monthly maintenance charges within 30 days within the meaning of Section 18 of SRPO, therefore I am of the view that opponent No.1 has committed wilful default in payment of rent to the applicant/new landlord as alleged by the applicant, whereas the case laws cited by the learned counsel for the opponent is on different footing as in the case reported in PLD 1991 Karachi 452 the learned rent controller has condoned one month delay but herein this case there is 20 months delay after receiving of notice U/s 18 SRPO, or/and a delay of about more than four months after filing of rent case. Therefore I am of the view that being a Rent Controller, I cannot condone such delay of 20 months or more than four months in the circumstances of the case, as condoned by the learned

Rent Controller in the case cited by the learned counsel for the opponent No.1 mentioned above by using his discretion upto one month as the fact of that case is very much different from the facts of the present case. Whereas in the case law cited reported in 1991 SCMR 1029 cited by the learned counsel for the opponent No.1 the tenant had already paid the rent in advance to the previous landlord before receiving the notice U/s. 18 SRPO therefore, it was not deemed as default but herein in this case the opponent No.1 after receiving notice U/s 18 has remained failed to tender the rent to the new landlord upto next 20 months after receiving notice or upto next more than four months after receiving of notice of filing of rent case on the basis of change of ownership. Admittedly, the case laws cited by the learned counsel for the opponent No.1 is on different footings, therefore I have not found any force in the contentions of the learned counsel for the opponent No.1. In view of the above discussion, I am of the humble view that applicant has succeeded to establish that opponent No.1 has committed willful default in payment of rent as well as maintenance charges within the meaning of Section 18 SRPO R/W Clause (ii) of Sub Section 2 of Section 15 SRPO. It is therefore answer of this point No.1 is in affirmative.”

The Learned Additional District Judge after taking into consideration the entire evidence on record came to the following conclusion:-

“13. Further it is also admitted that appellant/respondent after becoming the owner, in respect of tenement send the notice U/S 18 of SRPO 1979 vide letter dated 16.02.2012. Whereas it is also admitted the same notice under section 18 of SRPO 1979 was replied by the appellant/opponent dated 16.03.2012. I would like to reproduce the relevant portion of cross examination of attorney of appellant/opponent No.1 as follows:-

“It is correct to suggest that applicant sent notice U/S 18 of SRPO, 1979 to opponent. It is correct to suggest that till filing of W/S (23.02.2013), the monthly rent was not deposited by the opponent in the name of applicant. Vol. says that the opponent was depositing rent in the name of previous owner Muhammad Hussain and after his death applicant came in picture and as per order of Court, we started depositing rent in the name of present applicant. It is correct to suggest that nowhere it is mentioned in W/S that monthly rent deposited in the name of applicant or will be deposited in the name of applicant Muhammad Younus Gondal. It is correct to suggest that opponent has not filed any proof alongwith W/S or by me along with A/E in respect of pugree as well as maintenance charges of rented premises in question.”

“It is correct to suggest that opponent has not filed the certificate of GPO concerned in respect of refusal of alleged money order sent by opponent along with W/S or along with A/E. It is correct to suggest that official seal is not affixed on the certificate.”

14. It is also admitted that despite of receiving notice under section 18 of S.R.P.O.1979, the opponent/appellant failed to deposit the rent in the name of respondent/ applicant till filing of the rent case by the respondent/applicant.

I would like to reproduce the relevant portion of cross examination of attorney of the applicant/opponent which reads as follows:

“It is correct to suggest that the written statement was filed by appellant/opponent in Court on 23.02.2013 before this Court. It is correct to suggest that till filing of written statement the monthly rent was not deposited by the appellant/opponent No.1 in the name of respondent/applicant.”

15. It is also admitted that appellant/opponent has replied the notice under Section 18 of SRPO, 1979 on 16.03.2012 and deposited rent in respect of rented premises in favour of respondent/applicant for the first time in MRC that is after delay of 20 months.

17. In view of the above discussed circumstances since default was proved to hilt the learned trial court was justified in holding the appellant/opponent as defaulter in payment of rent in respect of rented premises. Therefore there is no need to interfering in the impugned order/judgment so passed by the learned rent controller; therefore, appeal in hand stands dismissed. There shall be no order as to cost.”

14. The Ho'nble Supreme Court in the case of Shakeel Ahmed and another Vs. Muhammad Tariq Farogh and others reported in 2010 SCMR 1925 has held that the Appellate authority is the final authority under Sindh Rented Premises Ordinance, 1979 and constitutional jurisdiction cannot be invoked as substitute to another appeal against such order. This reported Judgment was followed by this Court in the case of MessersAtif Ali and another Vs. Mst. Noor Jahan through Attorney and 2 others reported in 2015 CLC (Sindh) 310.

15. It is also well settled principle of law that the High Court in its constitutional jurisdiction can only interfere in concurrent findings of two courts below 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 as has been held in the cases of (i) Abdul Aziz Mysorewala v. Manvadar Sadargh Memon Jamat, through President and 2 others reported in 2013 YLR (Sindh) 1405, (ii) Mst. Rehana Hafeez v. Muhammad Ali alias Ehsan through L.Rs. reported in 2014 CLC (Sindh) 1242 and (iii) Muhammad Sanawar Khan v. Akhtar Khan and 2 others reported in 2015 CLC (Sindh) 1253.

16. The Learned Counsel for the petitioner has failed to point out any non-reading or misreading of evidence or misinterpretation of law by both the courts below.

17. I have carefully gone through the entire evidence and found that both the courts below have correctly appreciated the evidence and correctly applied the law in deciding the instant case.

18. Above are the reasons for short order dated 29.07.2016, whereby, I have dismissed all the twenty-six petitions in limine with the following directions:-

“The Petitioner in all the petitions is allowed sixty days’ time to vacate the subject property from the date of this short order subject to depositing rent in Court in time and utility bills.”

This short order may be read as part and parcel of this Judgment.

JUDGE