

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP Nos.S-825, 826, 827 & 828 of 2018

Date	Order with signature of Judge
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1. For orders on office objection at at 'A'.
2. For hearing of CMA No.3279/2018 (stay)
3. For hearing of CMA No.3280/2018 (U/o.21(2) SRPO)
4. For hearing of Main case

06.12.2018

Mr. Muzammil Iqbal Qazi, advocate for the petitioners.
M/s. Asif Ali Pirzada, & Muhammad Fahad Pirzada, advocates
for Respondent No.1.

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NAZAR AKBAR, J. The four petitioners have challenged identical Judgment dated **05.03.2018** passed by the Vth Additional District Judge, Central Karachi, whereby FRA Nos.239/2017, 240/2017, 241/2017 and 242/2017 filed by Respondent No.1/landlady were allowed and the findings of the Rent Controller passed in Rent Case Nos.690/2016, 691/2013, 692/2016 & 693/2016 by order dated **12.09.2017** were reversed.

2. Precisely the facts of the case are the Respondent No.1/landlady filed separate ejectments application against four tenants/Petitioners who were in occupation of Ground floor, 1st floor, 2nd floor and 3rd floor of quarter No.136-A Block-5, Liaquatabad, Karachi (the demised premises) on the ground of default in payment of rent. The rent cases were dismissed by the Rent Controller by order dated **12.9.2017** on the ground that the Petitioners were paying rent to one of the legal heirs of previous owner on the basis of a fresh agreement of tenancy. Respondent No.1/landlady against the said orders filed FRA Nos.239/2017, 240/2017, 241/2017 and 242/2017 respectively, which were allowed by the appellate Court by order dated **05.03.2018**. The

said judgments of the appellate Court are impugned herein these four constitution petitions.

3. I have heard learned counsel for the petitioners and Respondent No.1 and perused the record.

4. Learned counsel for the petitioners contended that Rent Controller order has been set aside by the appellate Court without examining the evidence on the record and merely on improper interpretation of **Section 18** of the SRPO, 1979. The background of these constitution petitions is that father of respondent No.1 has inducted the petitioners as tenant in the demised premises individually and separately and he was treated by all of the tenants as owner of the whole building. Respondent No.1 after the death of her father through notice dated **04.11.2016** demanded rent from the Petitioners claiming to be owner of the demised premises though in the lifetime of her father she never disclosed that she is owner and her father was only the rent collector of her property. However, before receiving the notice the petitioners have already started paying rent from August 2015 to her brother as one of the legal heirs of the deceased landlord. This is an admitted position from the record that petitioners were never informed that the owner of the demised premises is anyone other than the father of Respondent No.1 and on his death her brothers and sisters.

5. The counsel for Respondent No.1 contends that the notices under **Section 18** of SRPO, 1979 were sent to the tenants/ Petitioners because the property is in the name of Respondent No.1 and the rent collector has died, and nobody else was entitled to the rent of the demised premises. However, learned counsel for Respondent No.1 confirms that she has neither purchased the

demised premises after the induction of Petitioners in it as tenants nor it was transferred in her name during the existence of tenancy. It is also not disputed by her that the person to whom the Petitioners are paying rent is her real brother and one of the legal heir of the earlier rent collector. It is clear from the facts of the case that on the death of rent collector the ownership of the demised premises has not been challenged. Notice **Section 18** of SRPO, 1979 is to given to the tenant by the **new** landlord who purchases or otherwise acquires the property already on rent by the previous landlord. **Section 18** of SRPO, 1979 reads as under:-

18. Change in ownership.- *Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of sub-section (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.*

The intention of the law is that on change of ownership an intimation is sent to tenant who is in possession of the property about change of landlord on transfer of the property otherwise **Section 18** is not relevant. Therefore, in view of the above legal position the findings of the learned Appellate Court that the Petitioners have not tender rent to Respondent No1 within one month of receiving the said notice was contrary to law. Neither she claimed to be **new owner** of the demised premises nor she has disclosed her title to the Petitioners who were paying rent in good faith to one of the legal heirs of the rent collector after his demise. Respondent No.1 is also one of the legal heirs who claimed the ownership on the basis of title documents, which were not produced in evidence before the Rent Controller, however, the

same were brought to the notice of Petitioners in the appellate Court. Therefore, in these facts and circumstances, the default on the part of the petitioners in not paying rent to Respondent No.1 in response to her legal notice was neither willful nor deliberate. Admittedly the Petitioners were already paying rent to one of the legal heirs of rent collector and Respondent No.1 has neither approached them immediately nor stopped her brother from collecting the rent, therefore, the Petitioners become victim of some hidden dispute in the family.

6. Learned counsel for Respondent No.1, having realized that his notice dated **4.11.2016** was neither under **Section 18** of the SRPO, 1979 nor it could entail consequences of default since the Petitioners were regularly paying rent under written tenancy agreement with one of Respondents' brother, contended that his client will not press eviction if future rent is paid to Respondent No.1. Therefore, these petitions are allowed and the appellate order is set aside being contrary to the correct application of **Section 18** of the SRPO, 1979. However, since the brother, who is collecting rent after the death of father of Respondent No.1, has not contested the case and the title document of the demised premises are in the name of Respondent No.1, therefore, by consent of both parties the Petitioners from **01.01.2019** onwards shall pay rent through cheque in the name of Respondent No.1.

7. All the pending applications have become infructuous in all the above petitions.

JUDGE