

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.S-776 of 2016**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Stream Line Agency, through  
M/s. K.A Wahab and Hakim Ali Khan,  
Advocates.

**Versus**

Respondent No.1 : Syed Amir Tassaduq Husain, through  
M/s. Naseer Ahmed and Riaz Hussain  
Soomro, advocates.

Respondent No.2 : VIIth Additional District Judge, Karachi East

Respondent No.3 : IV Senior Civil Judge/Rent Controller,  
Karachi East.

Date of hearing : **08.04.2019**

Reasons/Decision: **13.05.2019**

**JUDGMENT**

**NAZAR AKBAR, J.** The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The IV-Rent Controller, East Karachi by Judgment dated **14.7.2015** allowed Rent case No.74/2012 filed by Respondent No.1/landlord and the VII-Additional District Judge, East Karachi by Judgment dated **15.03.2016** in FRA No.97/2014 maintained the said judgment of Rent Controller.

2. Briefly stated the facts of the case are that Respondent No.1 being owner and landlord of shop Nos.65/1 and 65/2 on plot No.65-C, Central Commercial Area, Tariq Road, P.E.C.H.S, Karachi (the tenement) filed rent case against the Petitioner who is tenant therein.

The tenement was rented out by father of Respondent No.1 in his life time to the Petitioner. After death of father of Respondent No.1, his mother Mst. Amtul Rauf became the owner of the said building and subsequently through deed of relinquishment dated **13.07.1986**, Respondent No.1 became the owner of the tenement. It was further averred that as per arrangement between the parties, the rent was being deposited in account No.4770, HBL Tariq Road Branch in the name of Mst. Amtul Rauf. Subsequently, the landlady left for USA for her treatment where Respondent No.1 was residing. However, Respondent No.1 appointed one Muhammad Sarwat Hayat as his attorney to deal with his said property in Pakistan. It was further averred that Respondent No.1/landlord intended to return to Pakistan on account of serious economic and financial crises coupled with the serious discouragement because of prevailing circumstances in USA and on arrival he intended to start his own business in the tenement. Therefore, a legal notice dated **18.01.2012** was also served upon the Petitioner/tenant to vacate the tenement on the ground that the tenement was required by Respondent No.1/ landlord for his own personal bonafide need. The Petitioner did not reply the said legal notice, therefore, Respondent No.1 filed rent case against the Petitioner through his attorney Muhammad Sarwat Hayat on the ground of personal bonafide need.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he denied all the allegations contained in the rent case and he raised preliminary legal objection that the eviction application signed and verified by Muhammad Sarwat Hayat/ attorney of Respondent No.1 is not lawfully filed and verified and as such the eviction application is not maintainable. He further contended in written statement that the power of attorney is a forged

and fabricated power of attorney. He further contended that through eviction application for the first time he came to know that Respondent No.1 is the owner of the tenement by virtue of deed of relinquishment dated **02.08.1986**, as Respondent No.1 has never informed the Petitioner/tenant about having acquired the property. The Petitioner also denied that Respondent No.1 has decided to shift his family members to Pakistan and to start the business in the tenement as alleged. He further contended that the legal notice dated **18.01.2012** was never received by him as alleged.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, by order dated **14.07.2015** allowed Rent Application filed by Respondent No.1 and directed the Petitioner to vacate the tenement and handover the same to Respondent No.1 within a period of 60 days. The Petitioner filed FRA No.97/2014 against the said judgment before the appellate Court which was dismissed by judgment dated **15.03.2016**. Both the judgments have been impugned herein this constitution petition.

5. I have heard learned counsel for the parties and perused the record as well as written arguments filed by both the parties.

6. Learned counsel for the Petitioner in support of his contentions has relied upon the following case laws:-

- i. *Salyar vs. Amjid Ali and 5 others (2014 MLD 1436 Peshawar);*
- ii. *Mehboob Alam vs. Miss Tehseen Shafqat Khan and others (PLD 2001 Karachi 238);*
- iii. *Shahid Ahmed alias Shahid Akhtar and 9 others vs. Mst. Rasheeda Khatoon and 12 others (1997 CLC 1186);*
- iv. *Sultan Press Ltd. vs. Muhammad Hasan (PLD 1985 Karachi 624);*

- v. *Azra Saeed vs. Raes Kahn through General Attorney and 5 others (2009 CLD 779);*
- vi. *Muhammad Maroof Ahsan vs. Messrs Beach Developers through Partner (2011 MLD 36 Karachi);*
- vii. *Abdul Sattar and another vs. Mian Muhammad Attique (2010 YLR 616);*
- viii. *Moinuddin Ghori and another vs. Administrator of M/S Saint Francis Church (Trust) through Attorney and 2 others (PLD 2014 Sindh 194);*
- ix. *Babu Muhammad Aslam vs. Mst. Rehana Parveen (PLD 1989 Peshawar 185);*
- x. *American Life Insurance Company (Pakistan) Ltd. vs. Commissioner, Sindh Employees Social Security Institution and others (2009 CLD 1329);*
- xi. *Ghulam Haider vs. Abdul Ghaffar and another vs. (1992 SCMR 1303);*
- xii. *Federation of Pakistan through Secretary Ministry of Defence and another vs. Jaffar Khan and others (PLD 2010 Supreme Court 604);*
- xiii. *Imam Din and 4 others vs. Bashir Ahmed and 10 others (PLD 2005 Supreme Court 418);*
- xiv. *Syed Yousuf Ahmed and others vs. Abdul Hadi Khan through Dr. M.A Haseeb Khan and others (1983 CLC 3319);*
- xv. *Mansurah vs. Hussain & others (SBLR 2013 Sindh 780);*
- xvi. *Allies Book Corporation through L.Rs vs. Sultan Ahmad and others (2006 SCMR 152);*
- xvii. *Messrs Journalist Publication (Pvt) Limited through Chief Editor vs. Mst. Mumtaz Begum alias Mustari Begum through her duly constituted Attorney and others (2004 SCMR 1773);*
- xviii. *Muhammad Hussain vs. Bashir Ahmed and others (PLD 1987 Lahore 392);*
- xix. *Muhammad Mehrban vs. Sadrud Din and another (1995 CLC 1541);*
- xx. *Messrs Cargil Incorporated and another vs. Messrs Trading Corporation of Pakistan and another (2010 CLC 420).*

7. Learned counsel for Respondent No.1 in support of his contentions has relied upon the following case laws:-

- i. *Ms. Zeenat Jaffrey vs. Vth Additional Judge, (East) and 2 others (2013 YLR 1654);*

- ii. *Ghulam Farid and 2 others vs. Mst. Hanida Bibi and 2 others (2011 YLR 2188);*
- iii. *Syed Sharif Hussain Shah vs. Mst. Samina Tausif through Attorney and 2 others (2010 CLC 637);*
- iv. *Abdul Ghani and 8 others vs. Ahmed Himani and 3 others (2010 YLR 50);*
- v. *Syed Khursheed Ali Jaffery vs. Jamaluddin Siddiqui (1993 CLC 2511);*
- vi. *Anz Grindlays Bank Ltd. vs. (1) Pak Land Cement Company Limited (2) Tariq Mohsin Siddiqui (NLR 2002 Civil 507);*
- vii. *Ziauddin Siddiqui vs. Mrs. Rana Sultana and another (1990 CLC 645);*
- viii. *Fazal Rehman vs. Khursheed Ali and others (2004 CLC 359);*
- ix. *Alamgir Khan through L.Rs. vs. Haji Abdul Sattar Khan and others (2009 SCMR 54);*
- x. *Syed Abdul Rauf vs. Abdul Sattar (1998 SCMR 2525);*
- xi. *Muhammad Latif vs. District Judge Karachi (South) and others (2009 YLR 2234);*
- xii. *Muhammad Farooque vs. Shakeel Ahmed and 2 others (2007 CLC 717 Karachi);*
- xiii. *Shakeel Ahmed and another vs. Muhammad Tariq Farogh and others (2010 SCMR 1925);*
- xiv. *Neelofar Soomar vs. Mst. Shahida (2010 CLC 447).*

8. The Petitioner has challenged the concurrent findings of the two Courts below on the point of personal bonafide need of respondent by raising question that the rent case was not filed by an authorized person and that the power of attorney through whom the rent case was filed was defective. Out of 20 case-laws relied upon by the learned counsel for the Petitioner, 10 case-laws are on the point of power of attorney to technically knockout the concurrent findings of the two Courts below. Unfortunately none of the case-laws is relevant to the facts of the case in hand. The rent proceedings are governed by special law i.e Sindh Rented Premises Ordinance, 1979

and as observed by the two Courts below the question of power of attorney cannot be raised by the person who himself has accepted the attorney as agent of landlord when he deposited rent in favour of the Respondent/ landlord through the same attorney. The title of Miscellaneous Rent Case No.91/2012 shows that the Petitioner has tendered rent to Respondent No.1 through duly constituted attorney Mr. Muhammad Sarwat Hayat. If we accept the plea of the Petitioner that Mr. Sarwat was not duly constituted attorney, it would mean that the Petitioner has not tendered rent to landlord then obviously the Petitioner would become guilty of non-payment of rent to the landlord and that would entail its consequences. It is an admitted position that the Petitioner himself has tendered rent through MRC in which he has specifically mentioned the same person as attorney of the landlord/ respondent who has filed rent proceedings. The appellate Court in the impugned judgment has rightly observed that ***“under the law no one can be allowed to approbate and reprobate at the same time. Once it has been admitted that Muhammad Sarwat Hayat is attorney of respondent/ landlord it is not lie in the mouth of appellant/ tenant to challenge subsequently his status as being attorney.”*** Besides this factual position, Respondent No.1 has appeared before the Courts during pendency of appeal and even during pendency of this constitution petition and repeatedly stated before the Court that he has authorized his attorney to file the rent case for personal need since he intends to come back to Pakistan to start business in the tenement. The learned appellate Court has also observed that *“I may also add here that respondent/landlord Syed Amir Tassaduq Hussain has been returned to Pakistan and also appeared before this Court on*

**13.02.2016** and filed statement, stating therein that he had executed Power of Attorney in favour of Muhammad Sarwat Hayat.”

9. Interestingly enough, this exercise has also been repeated by Respondent No.1 before this Court on **20.02.2019** when he was personally present in Court and filed the statement which is reproduced below:-

*It is respectfully submitted that in the instant constitution petition the petitioner again raised old legal ground / issue regarding competence/ non competency of power of attorney duly endorsed by Notary Public at loss Angeles and subsequently endorsed by Consulate General of Pakistan.*

*However, today I Syed Amir Tasadduq Hussain S/o. Tassaduq Hussain being the owner of property and respondent in the Instant CP personally present alongwith my attorney namely Muhammad Sarwat Hayat in the Honourable Court and rectify the said power of attorney authenticated by Notary Public and subsequently also countersigned by the Consulate General of Pakistan at USA.*

*I am submitting this statement on the direction of this Honourable Court and my this statement may kindly be taken on the record of this Honourable Court.*

The two Courts below have found the power of attorney sufficient and factually enough to authorize the attorney by Respondent No.1 to file the rent proceedings for his personal bonafide need.

10. To meet the contention of learned counsel for the Petitioner on the question of power of attorney and maintainability of rent case through the attorney, learned counsel for Respondent No.1 has specifically relied on the two judgments both authored by Hon'ble Mr. Justice Mamoon Kazi one in **1993** as he then was Judge of this Court and second in **1998** when his lordship was Hon'ble Judge of Supreme Court in the following citations:-

- i. *Syed Khursheed Ali Jaffery vs. Jamaluddin Siddiqui (1993 CLC 2511)*;
- ii. *Syed Abdul Rauf vs. Abdul Sattar (1998 SCMR 2525)*;

The relevant portion from the case of Syed Khursheed Ali is reproduced below:-

*As is evident from the definition of the term "landlord", a person who is authorised or entitled to receive rent in respect of the premises is to be deemed as "landlord". **Consequently, a mere statement by such person to the same effect would be sufficient to authorise him to institute ejectment proceedings against a tenant.** However, in the present case, since ejectment was sought on the ground that the premises were required for personal use of the landlord and his daughters, the said ejectment application be filed only by the owner of the premises: definition of the expression personal use" in clause (g) of section 2 of the Rented Premises Ordinance. **But, turning to Article 95 of the Qanun-e-Shahadat,** there is a presumption as to the authenticity of the power of attorney. The power of attorney in the present case was evidently authenticated by a notary public. Consequently, the burden of proof would lie on the person who disputes its genuineness. **Furthermore, even oral authorization would be sufficient to enable the agent to institute legal proceedings on behalf of the principal.** Therefore, unless the respondent had himself disputed the execution of the power of attorney, the same cannot be challenged by the appellant in the present case. The first ground urged by Mr. Amanullah Khan is, therefore, without much substance.*

The relevant portion from the case of Syed Abdul Rauf is reproduced below:-

6. *The issue on the question of default in payment of rent by the appellant was decided against the respondent, therefore, we need not dilate upon it and the **only question for consideration in this appeal is that fact of non-appearance of the respondent in the witness-box and having got himself examined through an attorney.** We have considered the above question in the light of the case-law cited by the learned counsel for the appellant. We are of the view that every case is to be decided keeping in view its peculiar facts and circumstances and no hard and fast rule can be*



*laid down. **There can be legitimate causes and reasons for a suitor to a cause for non-appearance in Court.** Mental or physical disability as well as the case of a female would stand on a different footing. **The Courts are meant for the citizens from where they seek justice and, therefore, to put a clog or non-suit them on account of non-appearance even in genuine cases without any valid and cogent reasons would be a dangerous proposition for administering justice with even hands between the parties.** In our opinion, it will not be in the interest of justice to lay down that in every case where a party does not appear or arranges his appearance through attorney, an adverse inference should be drawn against him. Such a rule if laid down, would result into great hardship in cases where the parties, for instance, reside abroad, who will have to sue and defend themselves through their attorney.*

In view of the above, the statement of Respondent No.1 quoted by the First Appellate Court in the impugned judgment and one recorded in this Court reflected in para-8 above, I do not find any force in the contentions of the Petitioner that the rent case was not maintainable or there was any defect in the authority of the person who has filed the rent case.

11. As far as the personal bonafide need of Respondent/ landlord is concerned both the Courts below have thoroughly examined the evidence in coming to the conclusion that the bonafide personal need has been established and the Petitioner has failed to show any malafide on the part of the Respondent/ landlord in claiming the personal bonafide need. The learned appellate Court has even reproduced the evidence which is reproduced in the following terms:-

*Needless to add that from the cross-examination of partner of tenant it crystal clear that he has not seriously denied the plea that respondent/ landlord is not required the premises for his personal use. The last few lines of cross-examination of partner of tenant reads as under:-*

*“-----It is correct to suggest that I have not filed any proof that applicant will not return to Pakistan.*

*It is correct to suggest that I have not filed any proof that applicant and his son are doing any permanent job in America. It is correct to suggest that demised premises is situate in commercial area. I do not know whether the applicant can also do business in the demised premises if it is handover to him by the Court. It is correct to suggest that demised premises is situated at Prime Location of Tariq Road. I do not know whether the demised premises is required by the applicant for personal bonafide need.*

12. It is by now settled law that constitution petition cannot be converted into a second appeal for coming to a different conclusion on the same facts of the case on which the Courts below have formed judicial opinion. In coming to this conclusion I am fortified with the observations of the Hon'ble Chief Justice of Sindh Mr. Justice Anwar Zaheer Jamali (as he then was) in the case of Muhammad Latif vs. District Judge South Karachi and others reported in **2009 YLR 2234** in which his lordship in para-14 of the said judgment has observed as follows:-

14. *Leaving apart the above discussion, it may also be observed here that **the jurisdiction of this Court under Article 199 of the Constitution is not meant to serve the purpose of second appeal against the order of the Rent Controller and the Appellate Court, therefore, it would not be justified for this Court to embark upon re-examination of the evidence for the purpose of evaluating the merits of the impugned judgments.** If any case-law is needed to fortify this view, reference may be made to the case of Messrs Mehraj (Pvt.) Ltd. v. Miss Laima Saeed and others 2003 SBLR 391 and Mst. Sughran and 11 others v. Muhammad Ishaque and another PLD 2004 Kar. 48.*

The same view has been reiterated by his lordship in para-8 in the case of Shakeel Ahmed and another vs. Muhammad Tariq Farogh reported in **2010 SCMR 1925** as follows:-

8. *We have carefully perused the impugned judgment passed by the learned Single Judge in chambers of High Court of Sindh and seen that not only the said judgment is outcome of*

*misreading and non-reading of evidence, but also the **learned single Judge in chambers failed to appreciate, that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court.** Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e. Sindh Rented Premises Ordinance, 1979.*

13. Before concluding I feel it necessary to mention here that the Hon'ble Supreme Court has repeatedly disapproved the practice of filing constitution petition by **tenant** to delay their eviction. In this context one may refer to the following observation of Supreme Court in the judgment reported as Muhammad Hussain Munir and others v. Sikandar and others (**PLD 1974 SC 139**):-

*"It is wholly wrong to consider that the above constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction **merely because in its opinion the decision is wrong.** In that case, it would make the High Court's jurisdiction indistinguish-able from that exercisable in a full-fledged appeal, which plainly is not the intention of the constitution-makers."*

The Hon'ble Supreme Court in 1981 following the above referred case-law while affirming dismissal of a constitution petition in a rent case arising from the conflicting findings of Rent Controller and the Additional District Judge in the case of Muhammad Sharif v. Muhammad Afzal Sohail (**PLD 1981 SC 246**) has observed as follows:-

*"**We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop.** We have been noticing, of late, that notwithstanding the fact that the Legislature, in its wisdom has abolished the second appeal in cases under the West Pakistan Urban Rent Restriction Ordinance and has made the orders of the District*

*Judge as final, yet the parties, probably after obtaining legal advice, have taken to filing writ petitions in the High Court against the final order passed by the appellate Court, merely to take another chance or to delay their eviction, hoping that the matter shall take considerable time to be disposed of or that in any case the **High Court while dismissing their writ petition may be persuaded to allow further time for vacating the premises-in-question.** (Emphasize provided).*

In the case in hand the petitioner has challenged the concurrent findings on **10.05.2016** and obtained orders of suspension of the two orders of the lower Courts on **19.09.2016**. Therefore, after almost **two years and six months** he cannot be given more than **30 days'** time to vacate the tenement without further notice.

14. In view of the above facts, this constitution petition is dismissed. The Petitioner is directed to vacate the tenement within **30 days** from the date of passing of this order. If the Petitioner fails to vacate the tenement within **30 days**, the Executing Court on expiry of **30 days** will complete writ of possession, already issued, with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi  
Dated:13.05.2019

Ayaz Gul