

HIGH COURT OF SINDH, KARACHI

C.P No.S-814 of 2010

PRESENT:

MRS. JUSTICE KAUSAR SULTANA HUSSAIN

STATE LIFE INSURANCE CORPORATION OF PAKISTAN

Vs.

K.R. KHAN & OTHERS

Petitioner: through Mr. Zahid Hussain advocate
Respondent No.1: through Mr. Syed Danish Ghazi advocate
Date of Hearing: 08.03.2018
Date of Judgment: 07.06.2018

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J. Through this Constitutional Petition under article 199 of the Islamic Republic of Pakistan, the petitioner State Life Insurance Corporation of Pakistan has questioned the impugned judgment dated 24.04.2010, passed by learned Additional District Judge-III, Karachi West (**1st Appellate Court Henceforth**), whereby First Rent Appeal No.77 of 2001 was dismissed and also impugned the order dated 17.04.2000, passed by learned Rent Controller-III, Karachi West (**Trial Court henceforth**) in Rent Case No.146 of 1999.

2. Briefly facts necessary for disposal of instant matter are that the petitioner who claims to be landlord and owner of the building standing on plot bearing Survey No.11-F. T 1 known as State Life Building No.1-B, Queens Road, Karachi had filed application under section 15(2)(vii) of the Sindh Rented Premises Ordinance, 1979 for eviction of the respondent No.1/tenant from tenement of Flat No.3, Ground Floor situated in the said building on the

ground of personal bonafide need. Both the parties led their evidence and learned trial Court framed following points for determination:

- i. *Whether this application is not maintainable under the law?*
- ii. *Whether this Court has no jurisdiction to entertain and try this rent case?*
- iii. *Whether the premises in question are required to the applicant for their personal bonafide use to accommodate their employees?*
- iv. *What should the order be?*

3. The learned trial Court dismissed the eviction application on legal points without adverting to the factual point No.3 vide order dated 17.04.2000. The petitioner challenged the said order in First Rent Appeal No.77 of 2001, which was also dismissed by the learned 1st Appellate Court concurring with the findings of learned trial Court on the point of maintainability of the rent application. Being aggrieved & dissatisfied with the impugned order as well as judgment passed by the Courts below, the petitioner has preferred petition in hand.

4. Learned counsel for the petitioner at the time of argument, in fact, has not advanced his arguments on the merits of the case, but laid emphasis on the plea that the person who initiated the legal proceedings against the respondent No.1 was duly authorized to do so. The learned counsel for the petitioner has drawn the attention of the Court to the rent application which has been signed by Latif A. Chaudhry and in this connection also referred the General Power of Attorney executed in his favour by the Chairman and Director of State Life Insurance Corporation of Pakistan. He has also pointed out the contents of written statement as well as affidavit-in-evidence of the respondent No.1, wherein, nowhere the competency of said Latif A. Chaudhry to file ejectment application was challenged. He has further referred the covenant of the General Power of Attorney and stated that under such clause, the attorney was fully authorized to appoint the employees/officer of the petitioner to give evidence and produce documents, therefore, the affidavit-in-evidence filed by Aslam Pervaiz was valid/lawful and proceedings initiated by the attorney fully competent under lawful authority. In this regard, he has

referred case laws reported as 2010 YLR 282 (Karachi), 2010 MLD 386 (Karachi) and 2013 YLR 1817 (Sindh). With regard to non-production of resolution of the Board of Directors in order to establish the fact of execution of General Power of Attorney in favour of Latif A. Chaudhry cannot vitiate the proceedings. In this connection the learned counsel for petitioner has relied on NLR 1991 SC 764. He has further argued that learned Courts below acted in violation of the provisions of section 2(f)(i) of Sind Rented Premises Ordinance, 1979. Lastly, he has contended that both the Courts below gravely erred in law as well as misread the material evidence /documents, committed serious illegality, as such, the order as well as judgment impugned warrant jurisdiction of this Court under the Constitutional Petition.

5. Conversely, the learned counsel for the respondent No.1 has strongly refuted the above submissions and supported the findings of the learned trial Court as well 1st appellate Court. He has further argued that the rent application has been signed and verified by Latif A. Chaudhry without disclosing under what capacity he signed the same. He has further argued that the petitioner being Corporation works under its Memorandum and Articles and Board of Directors and every work requires to be discharged through express resolution, but no resolution whatsoever was produced by the petitioner's side showing the execution of General Power of Attorney in favour of said Latif A. Chaudhry, who filed eviction application. He has further argued that the resolution produced by the petitioner's witness purporting to be executed for eviction of the tenant, neither bears the stamp of the Company, nor signatures of executants thereof, hence same could not be said to be a valid resolution for the purpose of filing of eviction application by the petitioner.

6. Considering the submissions of the learned counsels for the parties, perused the impugned orders so also the record in the light of case laws cited by the learned counsel for the petitioner. It is noted that the learned trial Court while advertng to the maintainability of the eviction application (Point No.1) observed as follows:

“The applicant corporation filed this rent application. The rent application is verified and signed by Mr. Latif A. Chaudhry but in the rent application it is not clear whether Mr. Latif A. Chaudhry verified and signed the application as attorney. Perusal of copy of General power of attorney Ex-A/3 executed by the Chairman and the Director of the applicant corporation and appointed to Mr. Latif A. Chaudhry being a General attorney of the applicant corporation. Perusal of Ex-A/4 the meeting of the Board of Director of the applicant corporation wherein the name of the opponent is not mentioned for filing the rent ejectment application. In the resolution Ex-A/4 it is not mentioned that the Board of the Director of the applicant corporation have appointed General attorney to Mr. Latif A Chaudhry to file this rent ejectment application. In the General Power of attorney Ex-A/3 it is not mentioned that General Attorney Mr. Latif A Chaudhry is competent to appoint sub-attorney to Mr. Aslam Pervaiz who filed his affidavit-in-evidence on behalf of General attorney of the applicant corporation namely Latif A Chaudhry. In view of the above reasons and in view of the case law PLD 1999 Karachi page 260 I am of the opinion that the rent application is not maintainable. I therefore, answered the issue No.1 in affirmative.”

7. Likewise the learned 1st appellate Court in appeal only confined itself to the extent of discussing the maintainability of the appeal and observed as under:

“I have perused General Power of Attorney Ex-A/3 produced by appellant witness Aslam Pervaiz, wherein Mr. Latif A. Chaudhry has been appointed as General Attorney by the board of directors of the corporation, the affidavit in evidence filed by Mr. Aslam Pervaiz on behalf of the applicant showing that Mr. Aslam Pervaiz has been authorized by the attorney Mr. Latif A Chaudhry which is totally illegal, Mr. Latif A. Chaudhry is not competent to give his authority to Aslam Pervaiz for giving evidence on behalf of Abdul Latif A Chaudhry who was General Attorney of the applicant, it is matter of evidence that the applicant has not produced articles or memorandum of associations of the applicant corporation or resolution of Board of Directors of the applicant corporation wherein Abdul Latif A Chaudhry was appointed as general Attorney to file this rent application, Ex-A/4 whether it was the meeting of the board of Directors, wherein it is not clear in respect of filing this rent application against the opponent, Ex-A/4 does not bears the signature of directors, Mr. Latif A. Chaudhry has failed to give his evidence on behalf of the appellant claiming to be general attorney of the appellant corporation. The rent application is verified and signed by Mr.

Latif A. Chaudhry but in the rent application it is not clear whether Mr. Latif A Chaudry verified and signed the application as attorney, Ex-A/3 executed by the chairman and the Directors of the appellant corporation wherein directors appointed Mr. Latif A Chaudhry being a general attorney of the applicant corporation, in the general power of attorney Ex-A/3, it is not mentioned that General Attorney Mr. Latif A Chaudhry is competent to appoint sub-attorney to Mr. Aslam Pervaiz to file affidavit in evidence on behalf of General Attorney of the appellant corporation namely Latif A Chaudhry.

The learned rent controller has very rightly interpreted section 2(f) and (j) of the S.R.P.O, 1979 and as such has interpreted the definition of a "landlord" and "Tenant" in accordance with the statutory provisions, the learned rent controller rightly appreciated that Mr. Latif A Chaudhry was not competent to give his authority to Mr. Aslam Pervaiz to give evidence on behalf of Mr. Latif A Chaudhry, without approval of board of directors, the learned rent controller has made a correct interpretation of section 15 of the S.R.P.O 1979, that body corporation cannot file an ejectment application on the basis of personal bonafide need. It is settled principle of law that personal bonafide need can only be of persons and as such a corporate body cannot have any personal bonafide need hence the learned rent controller has correctly made an interpretation of section 15 of S.R.P.O, 1979, which is in complete compliance of the statutory provisions as well as is compliance of the long line in precedent of favour of the present contention."

8. It may be observed here that the matter in dispute is relating to rent laws and it is settled principle that proceedings before Rent Controller being quasi-judicial in nature, technicality of law could not be over stretched as to defeat very purpose of administering substance justice of parties. Reliance is placed to the case of M/s. Forward Traders v. M/s. M.F.M.Y Industries Limited (PLD 1995 Karachi 510). It may be observed that there is no denial of the relationship of landlord and tenant between the parties. Yet, I have meticulously vetted the record concerning maintainability of ejectment application filed by the appellant through one Mr. Latif A. Chaudhry. It is interesting to note that both the courts below curiously remained around the competency of filing of eviction application by Mr. Latif A. Chaudhry on behalf of the Appellant, but failed to note that the respondent No.1 neither raised such objection in his written statement nor in his affidavit-in-evidence, rather

even not controverted during cross-examination of the appellant's witness. What to speak up validity as discussed by the Courts below, even the witness examined on behalf of the appellant namely Aslam Pervaiz was not put with a single suggestion, denying the competency of Mr. Latif A. Chaudhry for the purpose of filing of ejectment application. Per copy of General Power of Attorney in favour of Mr. Latif A. Chaudhry placed on record, which manifestly shows his competency to file eviction application as it was signed by the Chairman as well as Director of State Life Insurance Corporation of Pakistan, and same is registered as well. In the position stated supra, the requirement of producing resolution on the basis whereof such General Power of Attorney was executed by appellant was not necessary, while saying so, I have derived the strength from the case of **The Central Bank of India Ltd. Lahore v. M/s. Tajud-Din Abdur Rauf & others (NLR 1991 SCJ 764)**, wherein the Honourable Apex Court while dealing with the point relating to filing of suit on the basis of Power of Attorney, held that the attorney is not required to prove resolution by which Directors resolved to grant such power of attorney to attorney. As per record, the ejectment application was signed and verified by Mr. Latif A. Chaudhry, he was duly authorized by the Chairman and Director of State Life Insurance Corporation of Pakistan through General Power of Attorney duly registered having No.95, executed in reference of decision of Board of Directors of the Corporation dated 16.08.1995, as such, the ejectment application was filed under the signature of Attorney, who exercised such authority on the basis of registered General Power of Attorney duly executed by the Chairman as well as Director of the Corporation. Be as it may be, Provision of Order XXIX Rule 1 CPC, which envisages the procedure of subscription and verification of pleading in suits by or against a Corporation, are not strictly applicable to the proceedings before the Rent Controller. In this regard, reliance is placed to the case of **Ch. Muhammad Iqbal v. Rent Controller No.IV Karachi South, City Court Karachi & another (2010 MLD 386 Karachi)**.

9. Yet another grave illegality committed by the Courts below in the quoted paragraphs of impugned orders, reproduced above, that in the general power of attorney Exh. A/3, it is not mentioned that general attorney Mr. Latif A. Chaudhry is competent to appoint sub-attorney or authorize Mr. Aslam Pervaiz to file affidavit on behalf of General attorney of the appellant Corporation namely Latif A. Chaudhry. Learned counsel for the appellant in this connection emphasized on clause-4 of the General Power of Attorney. A glance at the said clause, it has candidly visible that the attorney Mr. Latif A. Chaudhry was also duly authorized to authorize the employees/officers of the corporation to give evidence and produce documents and to do all acts or things in relation thereto. In presence of such a categorical authority, the observation of the Courts below in this Court is a sheer erroneous on law, having been given without appreciating the material and applying judicious mind.

10. Moreover, there is no denial of the relationship of landlord and tenant between the parties. The respondent No.1 during his cross-examination categorically admitted to have acquired the premises in question as a tenant under tenancy agreement on record from the appellant. Thus appellant and respondent no.1 come within the status of the landlord and tenant as defined by the Section 2(f) & (j) of Sindh Rented Premises Ordinance, 1979 and premises in question also falls within the Section 2(h) of the Ordinance. The proper party has been sued in the instant proceedings.

11. As far as interference in the writ jurisdiction is concerned, the High Court cannot interfere unless order impugned was found to be wholly perverse, arbitrary, based on misreading of evidence and having resulted in absolute miscarriage of justice. The High Court in writ jurisdiction cannot interfere merely on the ground that on the basis of evidence adduced before the Rent Controller another view of the matter, contrary to one taken by Courts below, was also possible. In this matter, there is sheer and flagrant mis-appreciation as well as mis-conception of the Courts below in passing the

impugned order. The Rent Controller as well as the Appellate Court failed to note that respondent No.1 did not challenge the competency of Mr. Latif A. Chaudhry to file ejectment application, neither in written statement nor in affidavit-in-evidence, even did not controvert in the cross-examination of the appellant's witness, likewise, both the Courts below further ignored the very clause-4 of the registered General Power of Attorney, wherein the said attorney was duly authorized to appoint any employee/officer of the appellant for giving evidence. The findings recorded by the Courts below to be perverted and patently illegal in the circumstances discussed above. Both the Courts below committed flagrant error on law so also mis-appreciated and mis-read the available material on record, as such, impugned order and judgment are not sustainable in the eyes of law, required interference by this Court in its constitution jurisdiction.

12. For the reasons, recorded above, petition in hand is accepted, consequently, the impugned judgment dated 24.04.2010 as well as order dated 17.04.2000 of the Courts below are set aside and ejectment application is remanded to the Rent Controller for disposal thereof on remaining factual points in accordance with law.

J U D G E

Faheem/PA