

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-1891 of 2016

Present

**Mrs. Justice Kausar Sultana Hussain**

Abdul Waheed Qureshi.....Petitioner

Versus

Mukhtar Ahmed Siddiqui & three others.....Respondents

Date of Hearing 15.03.2018

Date of Order 14.06.2018

Mr. Badar Alam, advocate for Petitioner

Syed Muhammad Abid Ali Qureshi, advocate for respondents No. 1 & 2.

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ORDER

Kausar Sultana Hussain, J. :- Through this Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has impugned the judgment dated 24.09.2016, passed by learned IIIrd Additional District Judge Central, Karachi, whereby First Rent Appeal No. 82 of 2015, filed by the respondents No. 1 and 2 was allowed and order dated 09.09.2015, passed in Rent Case No. 619 of 2011 by learned IInd Rent Controller Central, Karachi was set aside.

2. The necessary facts spelt out from instant petition are that respondents No. 1 & 2 filed rent application under section 15 of the Sindh Rented Premises Ordinance, 1979 for eviction of the appellant. It was claimed by them that Wasi Siddiqui was allottee/owner of shop No. 1/220, Khalid Cloth Market, Liaquatabad, Karachi and after his death they acquired

the same being his legal heirs. It was alleged that the appellant is tenant of the said shop, paid rent up to December, 2007, thereafter since January, 2008 onwards failed to pay the monthly rent, committed willful default. It was also alleged that the said shop is required to the respondent for personal bonafide use for running his self-business of Hosiery Fabric.

3. The appellant filed written statement at the very outset denied relationship of landlord and tenant between the parties. It was stated that his mother Aqeela Begum is tenant of the said shop since inception. The appellant also challenged the status of the respondents No. 1 & 2 being co-owner/co-sharers or legal heir of deceased Wasi Ahmed and further stated that as such question of personal need does not arise. The appellant also denied that no default is been committed in payment of monthly rent and stated that his mother obtained the premises on Puggri basis in 1987 from previous tenant Haji Muhammad Zakria, paid a sum of Rs. 2,00,000/- to Wasi Ahmed (late) and his son Shamim Ahmed (late) as Good will Puggri/change of receipt through her late husband Abdul Hameed (father of the appellant) and said Shamim Ahmed was initially receiving the rent, after his death, his son Tasneem Ahmed and sister Amna are receiving the rent till to-date without any default and also issuing receipts. It was also stated that rent application is not maintainable, liable to be dismissed.

4. As per record, both the parties led their evidence and the learned Rent Controller framed following points for determination :-

- i. Whether the relationship between the parties are existing. ?

- ii. Whether the applicant is entitled for filing ejectment application against opponent for eviction from the demised premises. ?
- iii. Whether the opponent has committed willful default in payment of monthly rent and utility bills in respect of demised premises. ?
- iv. Whether the demised shop is require to the applicant for his personal bonafide need. ?
- v. What should the order be?

5. The learned Rent Controller answered both the points No. 1 & 2 in affirmative, observing that there exists relationship of landlord and tenant between the parties and also the respondents No. 1 & 2 being legal heirs of deceased Wasi Siddiqui entitled for filing ejectment application, however, dismissed the eviction application with the observation that neither default as alleged has been proved, nor the plea of personal need taken with bonafide, vide order dated 09.09.2015. Being aggrieved, the respondents No. 1 & 2 preferred First Rent Appeal under Section 21 of the Ordinance, being F.R.A. No. 82 of 2015, which was ultimately allowed by the Court of learned Additional District Judge IIIrd, Karachi (Central) and eviction of appellant/opponent was ordered on the ground of personal need, vide impugned judgment dated 24.09.2016.

6. The learned counsel for the appellant/opponent argued that learned first appellate court has not appreciated the circumstance and evidence adduced by the appellants, while passing the impugned judgment. Precisely, the arguments of the learned counsel are that both the courts below have erroneously concluded that the respondent No. 1 is competent to

file eviction proceedings ignored the fact that the respondent No. 1 completely failed to prove his plea that he is co-owner/co-sharer and his father late Wasi Ahmed Siddiqui was owner of the subject shop, from whom he allegedly claimed to have derived inheritance. He has further argued that both the courts below ignored the legal requirement that the person seeking ejectment of tenant has to satisfy the Rent Controller that he is owner of the demised premises. In this regard, he has relied on 1991 SCMR 1376, PLD 1985 S.C-1, 1990 MLD 1009 (Karachi, 1992 MLD 1391 (Karachi). He has further argued that both the courts below committed a blatant error and completely ignored the non-existence of relationship of landlord and tenant between the parties as Aqeela Begum is actual tenant, who obtained the demised shop from previous tenant and paid Rs. 2,00,000/- to the late father of the respondent No.1. Learned counsel referred the rent receipts produced at Exh. 0/1 to Exh. 0/49, so also the evidence of the witness Haji Muhammad Zakria (previous tenant). He further argued that the respondents No. 1 & 2 did not make said Aqeela Begum as party in the eviction application and in her absence, no relationship of landlord and tenant exists between the present parties, but both the courts below ignored all these material facts and travelled the proceedings in contravention of law. He has further argued that in absence of relationship of tenancy, the Rent Controller had no power to adjudicate the matter as it was the primary requirement of taking cognizance of a rent application. He while referring case law PLD 1987 SC 447, stated that it is settled position that when Tribunal goes wrong in law, it goes outside jurisdiction conferred on it, because Tribunal has jurisdiction to decide rightly but not the jurisdiction to decide wrongly. He further argued that when a Tribunal makes an error

of law in deciding matter before it, which goes outside its jurisdiction, it can be quashed under writ jurisdiction. Learned counsel in the same time also attacked to the order of the learned Rent Controller that since there was no relationship of landlord and tenant exists between the parties as the premises was acquired by Aqeela Begum and rent was/is being paid in her name, even the receipts issued in her name as well as such learned Rent Controller had no jurisdiction to decide the rent application filed against the appellant/opponent in absence of relationship of landlord and tenant.

7. Conversely, the learned counsel for the respondents No. 1 & 2 has supported the findings of both the courts below on this point and submitted that the induction of the respondents No. 1 & 2 being legal heirs of the deceased Wasi Siddiqui can file eviction proceedings against his tenant. He has also contended that since the appellant/opponent admitted the tenancy, therefore, later on deviation from it cannot be allowed per law under the principle of approbate and reprobate. In this regard, he has relied on case law 2000 YLR 1343 (Lahore), PLD 2002 S.C. 534, 2004 CLC 318 (Azad J&K) and 2007 SCMR 569. He further argued while referring the case law 1979 CLD 229 (Lahore), that it is settled law that even one co-owner can eject tenant on ground of default without impleading other co-owners, therefore, the respondents No. 1 & 2 being legal heirs of deceased owner have got legal right to initiate eviction proceedings against his tenant. He has further argued that statement on Oath of respondent No. 1 in respect of personal requirement of the demised premises remained consistent and he fully established the same in good faith, as such, findings of the learned appellate court is lawful and required no interference. In this contest, he

has made reference to case laws reproduced in 1991 SCMR 2337, 1996 SCMR 1178, 2001 SCMR 1197, 2002 SCMR 241 and 2012 SCMR 1498.

8. I have considered the above submissions and also perused the impugned judgment/order in the light of case laws cited by the learned counsel for the parties. The Sindh Rented Premises Ordinance, 1979 has been promulgated to deal the tenancy matters and as per law, a Rent Controller only postulates its jurisdiction to entertain an eviction application on fulfilment of pre-requisite viz; existence of relationship of landlord and tenant between the parties. In case of Hafiz Muhammad Ikram Versus Muhammad Mushtaq (PLD 1978 Lahore 996) and another case of Tariq Javed and two others Versus Additional District Judge Gujrat and others (1988 CLC 1940), it was held that jurisdiction of Rent Controller under the Ordinance is contingent on existence of relationship of landlord and tenant between the parties and the property subject matter of the proceedings should be a building residential or non-residential, rented land or scheduled building situated in an Urban Area. Existence of relationship of landlord and tenant between the parties is *suiquo non* for assumption of jurisdiction by the Rent Controller. If such relationship is denied Rent Controller will not assume jurisdiction till such fact is established before him. The Hon'ble apex court in a case of Mansab Ali Versus Amin and 3 others (PLD 1971 SC 124) also set the principle that it is an elementary principle that, if a mandatory condition for the exercise of jurisdiction by a court tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction. Any order passed in continuation of these

proceedings in appeal or revision equally suffer from illegality and are without jurisdiction.

9. In view of the above canon as well as submission so advanced by the learned counsels for the parties, I have examined the record of present case and it is revealed that since inception the appellant/opponent specifically agitated/challenged the existence of relationship of landlord and tenant, between the contesting parties on the ground that Aqeela Begum is the actual tenant of the demised shop. It is noted that the learned Rent Controller, through framed point No. 1 in respect of relationship of landlord and tenant between the parties, yet did not touch the said plea of the appellant/opponent rather in his discussion stick to the fact of co-ownership of the respondent No. 1. Likewise, the first appellate court also committed the same error and did not bother to discuss such a vital aspect of the controversy involved rather wrongly assumed the appellant/opponent as tenant, being the son of Aqeela Begum. It may be observed that the learned counsel for the appellant/opponent has also strongly objected to the observation of the learned appellate court whereby it was observed that the learned counsel for the appellant/opponent has no objection to the findings on points No. 1 and 2 and considered existence of relationship of landlord and tenant between the parties in respect of demised premises, as claimed by the learned counsel for the respondent. He went on to date further and added that the appellant/opponent throughout the proceedings before the trial Court as well as appellate court raised plea of non-existence of relationship, as such, how would it be possible to record no objection to this extent. The record reflects that the appellant/opponent in his written

statement as well as affidavit in evidence in a categorical term challenged the existence of relationship of landlord and tenant between the parties in two dimensions, firstly on the ground that infect the tenancy of the demised shop stands in the name of his mother namely Aqeela Begum, secondly the respondent No. 1 has failed to prove his status of landlord/owner of the demised shop. As to first plea (supra), it is found that the appellant/opponent in his evidence produced rent receipts (Ex. 0/1 to Ex. 0/49), which clearly depicted that the same contained the name of tenant as Aqeela Begum. Besides, in this connection the evidence of witness namely Haji Muhammad Zakria is important are owing to the reason that the very witness was previous tenant in the demised shop from whom the same was acquired by Aqeela Begum. The said witness was got examined by the appellant/opponent, who in his affidavit in evidence categorically deposed that the tenancy was acquired by Aqeela Begum through her husband and paid Rs. 2,00,000/- to the owner Wasi Ahmed (late) and his son Shamim Ahmed (late) as goodwill. It is noted that the above version of the witness was neither denied, nor rebutted by the respondent No.1's side. The credibility of this witness not at all questioned by the rivalry, as such, his evidence is of one which should be given preference, having weight. The respondent No. 1, even after filing of written statement by the appellant/opponent did not deny the fact of existence of tenancy in the name of Aqeela Begum in his affidavit in evidence. Admittedly, eviction application has not been filed against Aqeela Begum. It may be observed that though the appellant/opponent namely Irshad is son of Aqeela Begum, however, per law an eviction application can only be relied against the heir (s) an demise of the original tenant in the light of section 2 9j)(ii) of the Sindh Rented

Premises Ordinance, 1979. On the other hand, the respondent No. 1 failed to bring on record any iota of substance to show that the very appellant/opponent Irshad is tenant of the demised premises or any rent receipt was issued in his name. It is pertinent to observe that the respondent No. 1 did not examine a single witness before the Rent Controller during the proceedings of the eviction application, however, in this petition has filed affidavits of Mst. Amna Khatoon and Tasneem Ahmed. Though at this stage, these affidavits have got no value per law, nevertheless, on perusal thereof, it is revealed that Mst. Amna Khatoon has not denied that the original tenant of the demised premises is Aqeela Begum, even the rent receipts (Ex.0/1 to Ex.0/49) bearing her signatures have not been disputed. Likewise, the second affidavit of Tasneem Ahmed is showing altogether different tenant namely "Akbar". The contention of learned counsel on the principle of approbate and reprobate viz; partly could not say at one time that transaction was valid and thereby obtaining some advantage and at another time say that it was invalid for the purpose of showing further advantage and in this behalf also referred the case law 2004 CLC 318 (Azad J&K), PLD 2002 SC 534, 2007 SCMR 569 and 2000 YLR 1343 (Lahore). I may say that the facts and circumstances of reported cases are quite distinguishable from the case in hand as in present case, as the appellant/opponent has been raising/agitating the non-existence of relationship of landlord and tenant between the parties, even in the evidence a well, therefore, there is nothing on record under which it could spelt out that the appellant/opponent's side ever made admission to said extent.

10. What has been discussed above, it is revealed that the respondents No. 1 and 2 did not establish the facts of existence of relationship and tenant between the contesting parties, as it quite explicitly visible on record that original tenant of the demised premises is Aqeela Begum, as such, eviction application filed by the respondents No. 1 and 2 against the appellant/opponent namely Irshad is not maintainable, ought to have been discussed on this account. As far as, the competency of the respondents No. 1 and 2 to file eviction application being heirs of the original deceased owner/landlord, is concerned, there is no two view that after the death of original landlord/owner, his heirs stepped into his shoes and become co-owners/co-sharer to his property in accordance with the law. However, the point of competency coupled with default in payment of rent as well as personal need of the demised premises could only be discussed and decided by a Rent Controller subject to jurisdiction and existence of relationship of landlord and tenant between the parties. Since it is abundantly clear on record that the respondents No. 1 and 2 failed to establish the factum of existence of relationship of landlord and tenant between them and the appellant/opponent Irshad, therefore, there is no reason to discuss the factual points, which become redundant and as such findings of both the courts below there on have also got no consequences.

11. For the reasons, recorded above, while accepting instant Constitution Petition, the impugned judgment dated 24.09.2016 passed by the learned appellate court as well as findings of the learned Rent Controller on point of existence of relationship of landlord and tenant are set aside. Consequences, whereof, eviction application stands dismissed for want of

existence of relationship of landlord and tenant between the contesting parties. Instant Constitution Petition is allowed accordingly.

**J U D G E**

Faheem/PA