

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**

C.P. No. (1) S-1358, (2) S-1359, (3) S-1384 & (4) S-1385 of 2017

(1) Ismail Ibrahim, (2) Muhammad Yousuf,  
(3) Arshad Pervez and (4) Sohail Mohammad Younus

Versus

Kashif Muhammad Baig & others

Date of Hearing:	29.03.2018 and 17.05.2018
Petitioners in C.P. No.S-1358 and S-1359 of 2017:	Through Mr. Iftikhar Javed Qazi Advocate.
Petitioners in C.P. No.S-1384 and S-1385 of 2017:	Through Mr. Khalid Jawed Khan Advocate.
Respondents No.1 to 3:	Through Mr. Shahzad Abdullah Advocate.
Respondent No.4:	Nemo

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.** - These four connected petitions filed by the tenants/petitioners impugn the orders of the VIII-Additional District Judge Karachi South in FRAs No.152, 153, 154 and 156 of 2013.

Brief facts of the case are that the respondents No.1 to 3, being co-owners of the subject demised premises and landlord, filed eviction applications bearing Rent Cases No.908, 909, 911 and 912 of 2009. During pendency of the eviction applications, respondent No.4 moved application under order I rule 10 CPC, as being fourth co-owner/ landlord, which application was allowed.

The evidence of the parties recorded and the Rent Controller framed three issues i.e.

- I) Whether the opponent has committed willful default in payment of monthly rent of the premises?
- II) Whether the opponent has committed additions and alterations or any other structural changes in the premises and impaired the material and utility value of the premises?
- III) What should the judgment be?

The Issue No.1 was decided in affirmative and the eviction application was allowed only on the ground of default in payment of rent. The tenants/petitioners being aggrieved filed their respective appeals which also met the same fate as being dismissed hence these petitions.

The respondents claimed default in the application w.e.f. June 2007 till date of filing of the eviction application as being willful defaulter in payment of rent under section 15(2)(ii) of Sindh Rented Premises Ordinance, 1979. In defence the petitioners filed their respective written statements and pleaded that the rent of the subject month and onward was deposited in the respective MRCs before the Rent Controller as there was a dispute in the shape of Civil Suit No.217 of 2007 between co-owners/respondents. It is pleaded that there was an interim order in the shape of "status quo" effective from 01.03.2007. Prior to the dispute amongst the co-owners, the father of the applicants/respondents No.1 to 3 was authorized to receive rent. He received rent up till May 2007.

I have heard the learned counsel for the parties and perused the material available on record. Although separate judgments have been passed by the Rent Controller and appellate Court however since the facts are more or less common and the arguments advanced are based on legal point, I propose to dispose of these petitions through common judgment.

The eviction application was filed by respondents No.1 to 3 whereas respondent No.4 was made party during pendency of the eviction application on an application moved by him under order I rule 10 CPC. The application was allowed on 04.05.2010. Though respondent No.4 was impleaded as one of the applicants in the eviction application yet he has not opposed the contents and facts of the written statement, either in the shape of affidavit-in-evidence or otherwise. Other applicants of eviction applications filed their affidavit-in-evidence but not on behalf of fourth applicant. On 29.10.2011 his side to lead evidence or to file affidavit-in-evidence was closed. His interest apparently was only to the extent of result of eviction application. This aspect of the matter will be discussed later.

In these petitions too though respondent No.4 is stated to have expired but one of the legal heirs/son of respondent No.4 namely Shahid appeared and informed the Court about his sad demise and sought time to place on record copy of the death certificate and the list of legal heirs, but he never appeared since then. A Power of Attorney however was filed by respondent No.3 whereby all other legal heirs of respondent No.4 had appointed above named Muhammad Shahid Bawani son of Muhammad Arif Bawani. How that Power of Attorney came into possession of respondent No.3 is not ascertainable. The record shows that the suit filed by respondent No.4 against other co-owners was subsequently withdrawn on 04.03.2008 along with pending applications.

On the basis of the pleadings and the evidence that has come on record, the questions arose are:-

- I) Whether in view of facts and circumstances and in view of the dispute amongst the co-owners petitioners were under

obligation to offer rent to any one set of co-owner, in case it was possible and lawful?

- II) Whether petitioners were justified in view of facts and circumstances of the case to have deposited the rent before the Rent Controller without a specific refusal from all co-owners/landlords/respondents?

The attorney of the applicants/ respondents No.1 to 3 filed affidavit-in-evidence and in respect of subject default pleaded in paragraph 13 of the affidavit-in-evidence that without any reason the petitioners/opponents failed to tender the rent from the month of May/ June 2007 till filing of the eviction application hence the petitioners were considered willful defaulters in payment of rent.

The rent for the month of May/June 2007 was deposited by the petitioners in Court directly. The provisions of Section 10(3) of Sindh Rented Premises Ordinance, 1979 enables a tenant to deposit the rent with the Controller within whose jurisdiction premises is situated provided the landlord refused or avoided to accept the rent.

The situation here is different than the legislature has encompassed. There is a dispute amongst the co-owners. At one point of time the Rent Collector who was authorized to receive rent was receiving rent from the tenants/petitioners.

In terms of definition 2(f) of Sindh Rented Premises Ordinance, 1979 the landlord means the owner of premises and includes a person who for the time being is authorized or entitled to receive rent in respect of such premises. It can be safely presumed that until there was no dispute amongst the co-owners, the father of the applicants/ respondents No.1 to 3 was authorized to receive rent. The dispute amongst the co-owners unfolded when suit bearing No.217 of 2007 was

filed along with an application under order XXXIX rule 1 & 2 CPC. Filing of suit by one of the co-owners against rest of the co-owners along with application that other co-owners be restrained from collecting the rent shall be deemed as withdrawal of the authority which was given to the father of respondents No.1 to 3 for collecting rent. The contents of application for the sake of convenience are reproduced as under:-

*“For the facts and reasons disclosed in the accompanying affidavit, it is most respectfully prayed on behalf of the plaintiff above named that this Honourable Court may be pleased to restrain the Defendants, their men, friends, servants, subordinate, staff, attorney(s), Sub-attorney(S), legal heirs, executors, administrators, person or persons, party or parties acting on their behalf, from creating third party interest, demolishing, changing, collecting rents, negotiating, alteration, interfering, transferring the suit property/Rehman Mansion, Plot No.273/2, Artillery Maidan Quarters, measuring 816 sq. yds situated at Regal Chowk, Saddar, Karachi, the Rehman Mansion constructed Triple Storied (Ground Plus Third Floors in four blocks) with 12 shops, 12 Flats and 2 Garage as well as open space, by any illegal ways/means without due course of law forever.”*

However, this Court while granting status quo order in the aforesaid suit observed that since respondent No.4 i.e. the fourth co-owner apprehends that other co-owners are likely to create third party interest by demolishing the subject property, the interim order of status quo was granted. Filing of a suit can however at the best be considered as withdrawal of the authority to collect the rent. In view of such withdrawal of authority, the father of respondents No.1 to 3 cannot be deemed to be an authorized person to receive the rent. Whether in view of such facts and circumstances, the petitioners were still obliged to tender the rent through money order to rent collector or to any one set of co-owners. Such being the situation faced, the tenant deposited it in Court leaving other co-owners to claim default.

These four co-owners are independently enjoying their undivided share of 25% each in the demised premises and this property was not

physically partitioned. Section 10(3) of Sindh Rented Premises Ordinance, 1979 does not cater for the situation that the petitioners have faced i.e. the mechanism of tendering rent to co-owners who are in dispute and having undivided share in the property.

The affidavit-in-evidence filed by the petitioners talks about the notices issued by the counsel of the respondent No.4. In terms of paragraph 12 defendants/petitioners states that a civil suit No.217 of 2007 was filed before this Court wherein respondent No.4 was able to obtain status quo order in the month of February 2007 whereafter applicants'/respondents' attorney refused to receive the rent from the opponents/petitioners which was tendered through money order up till May 2007. At paragraph 11 the petitioner stated that the fourth co-owner Muhammad Arif Bilwani sent a legal notice to the tenants/petitioners which was received by hand on 15.05.2007 whereafter the petitioners started depositing the rent in Court in MRC No.(1) 650, (2) 839, (3) 841 and (4) 842 of 2007 vide ledger No. 87, 194, 196 and 197 of 2007 respectively w.e.f. 26.05.2007 i.e. from June 2007 onwards (in MRC No.650 of 2007 from 30.04.2007) and ever since the rent order under section 16(1) Sindh Rented Premises Ordinance, 1979 was passed the rent was being deposited in subject rent cases. In paragraph 16 it is claimed that respondent No.4 filed suit bearing No.455 of 2010 for partition which was decreed on 10.12.2012. The petitioner was cross examined by the counsel for respondents No.1 to 3 whereas respondent No.4 or his counsel has not cross examined the petitioners. The lengthy cross-examination was conducted by the counsel for respondents No.1 to 3 however the part which is relevant for the issue in hand is reproduced as under:-

*“..It is correct that I have stated in para No:4 of W/S that I have sent the rent for two months March & April through money order 04.04.2007 which was received by applicants’*

*father/attorney of Wahid Muhammad Baig. I had sent the rent through money order as the applicants were not receiving the rent directly by hand from me. It is correct that I have not stated in my W/S that the applicants refused to receive the rent by hand from me. It is correct that I had not given the notice to the present applicant prior to filing MRC and depositing the rent in the Court. ...We after receipt of order passed on 28.02.2007 along with copy of notice consulted with my advocate. I received the legal notice dated 15.05.2007 after deposit of rent by me in MRC. I received the legal notice dated 15.05.2007 by hand through the special person of the applicant. It is correct that I have not stated in my written statement that the legal notice dated 15.05.2007 was served upon me through special person of the applicant No:4. It is correct that forth co-owner of the premises gave us legal notice along with copy of stay order of Honourable High Court to deposit the rent in court and then we deposited the rent in Court. ....It is incorrect to suggest that I had directly deposited the rent in the MRC and committed default in payment of rent. It is correct that I have not stated in my W/S and affidavit in evidence after depositing the rent in MRC I intimated to the landlord about depositing the rent in MRC.”*

The alleged fact of receipt of a legal notice dated 15.05.2007 from fourth co-owner by hand was not specifically denied in the cross-examination. All that was agitated in the cross-examination was that such fact was not pleaded in the written statement. The subject cross-examination that concerns such fact has already been reproduced above. There is no cavil that the fact regarding receipt of notice dated 15.05.2007 was not pleaded in the written statement but it was also not questioned in the cross-examination. The contents were reiterated in the cross-examination that the petitioners received legal notice dated 15.05.2007. However, there was an admission that such legal notice was received on 15.05.2007 after deposit of rent in the MRC.

I have perused the record and it appears that Misc. Rent Case was filed on 25.05.2007 i.e. after receipt of notice from the fourth co-owner. So this could either be a typing mistake or a statement, which is not borne out of the record. Since the fact of receipt of legal notice

dated 15.05.2007 was not specifically denied in the cross-examination, it would be safely presumed that such notice was received and that receipt of that notice amounts to withdrawal of the authority of the rent collector. Even if such notice was taken out of consideration, how in a situation when co-owners are disputing over the property, the rent could be tendered to one co-owner.

Consequently the petitions are allowed, the impugned judgments passed by the Courts below are set aside and resultantly the Rent Cases No.908, 909, 911 and 912 of 2009 filed by the respondents against the petitioners stand dismissed.

Dated: 13.08.2018

**Judge**