

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 184 of 2021

Petitioner : Mst. Shakila Appa, since deceased, through her legal heir Ameen S/O Abdul Latif (late), through Mr. Shah Khan, Advocate.

Respondent No.1 : Nadeem Ghani, through Mr. Murtaza Hussain, Advocate.

Respondent No.2 : IXth Additional District Judge Karachi South.

Respondent No.3 : XVth Rent Controller Karachi South.

Date of hearing : 18.10.2021.

ORDER

NADEEM AKHTAR, J. – Rent Case No.325/2019 filed by respondent No.1 / landlord against the petitioner / tenant seeking her eviction on the ground of default in payment of the monthly rent was allowed by the Rent Controller vide judgment dated 23.12.2019 ; and, First Rent Appeal No.36/2020 filed by her against the order of her eviction was dismissed by the appellate Court vide judgment dated 04.02.2021. The petitioner has impugned the concurrent findings of the learned Courts below through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. In the rent case, the petitioner was sued through her son / legal heir Amin. It was the case of respondent No.1 before the Rent Controller that the petitioner was his tenant in respect of Flat Nos.17 and 18, situated on the first floor of the building known as ‘Naveen Mansion’ constructed on Plot / Survey No.RB-6/86, Feroz Shah Street, Gharikhata, Karachi (**‘demised premises’**), at a monthly rent of Rs.210.00 each. It was alleged by respondent No.1 that the petitioner had committed deliberate and willful default in paying the agreed monthly rent for the period June 2004 to 2019. In the written statement filed on behalf of the petitioner by her son / legal heir Amin, it was averred that the eviction application filed by respondent No.1 was not maintainable as the demised premises were rented out to the petitioner on *pugri* ; both the flats were separate and distinct and as such one eviction application could not be filed in respect of both ; and, respondent No.1 used to receive the accumulated rent for several months in lump sums, receipts whereof were not issued by him. Both the parties led their evidence by producing their witnesses and documents in support of their respective claims. After evaluating the evidence of the parties

and hearing the arguments advanced on their behalf, the eviction application was held to be maintainable and was accordingly allowed, which order was maintained in the appeal filed by the petitioner.

3. Learned counsel for the petitioner has reiterated the objections raised by the petitioner in her written statement with regard to the maintainability of the eviction application filed by respondent No.1. It was submitted by him that both the learned Courts below have failed to appreciate that the eviction application could not be filed in respect of both the flats. The record shows that both the flats were collectively treated by the parties as demised premises which fact is apparent from the receipts of the money orders (pages 113 to 117) sent to respondent No.1 by the petitioner towards collective rent for both the flats. It may be noted that the petitioner's son / legal heir Amin had filed an application bearing MRC No.53/2019 before the Rent Controller seeking permission to deposit the rent in Court, wherein he had shown both the flats jointly as his residence. Moreover, it was not pleaded by him in his written statement that both the flats were rented out on different occasions or through separate agreements. Perusal of the rent case filed by respondent No.1 shows that the period of default alleged therein and the cause of action pleaded therein were the same in respect of both the flats. In view of this admitted position and in such circumstances, the above submission does not have any force.

4. The next submission of the learned counsel for the petitioner was that there was no default on the part of the petitioner in view of the old and settled practice between the parties whereby respondent No.1 used to receive from her the accumulated rent for several months in lump sums. He, however, was not able to show from the record any payment of rent for the disputed period, either on monthly basis or in lump sum. All the rent receipts referred to by him in support of his contention pertain to the period prior to the disputed period. He then referred to the aforesaid MRC No.53/2019 and the money orders sent in the year 2019 which are irrelevant to the issue at hand as they pertain to the period subsequent to the disputed period. It may be noted that Amin had prayed in his MRC No.53/2019 that he may be allowed to deposit in Court the accumulated rent for fifteen (15) years. This clearly shows that the rent for the disputed period was not paid by him, otherwise he would not have sought permission to deposit the rent for the entire disputed period of fifteen (15) years. Moreover, Amin had admitted in his cross-examination that he had paid the rent only up till June 2004 and since July 2004 he had not paid the rent either to the rent collector or to the landlord. His said admission was noticed by the Rent Controller and was recorded in the impugned order. From the prayer made by Amin in his MRC No.53/2019 and the admission made by him in his cross-

examination, it is clear that it was not his case before the Rent Controller that the rent for the disputed period was paid by him or by the petitioner, but receipts thereof were not issued by respondent No.1. On the contrary, it was an admitted position before the Rent Controller that the rent for the entire disputed period was not paid to respondent No.1.

5. The law on the question of the practice of making payment of the accumulated rent of several months consistently laid down by the Hon'ble Supreme Court is briefly discussed below :

A. In Mrs. Alima Ahmad V/S Amir Ali, **PLD 1984 SC 32**, the landlady had filed an eviction application against her tenant seeking his eviction on the ground of default in payment of the monthly rent. The tenant resisted the application by alleging that the landlady intentionally delayed the receipt of payment of rent from time to time and she used to receive the accumulated rent from him. The application was dismissed by the Rent Controller by holding that the landlady had failed to prove default on the part of the tenant ; the conduct of the landlady showed that she had been accepting the accumulated rent from the tenant sometimes in cash and sometimes through cheque, and therefore, there was no willful or deliberate default on his part nor could he be called a persistent defaulter. The appeal filed by the landlady was allowed by the first appellate Court by directing the tenant to vacate the demised premises within two months. However, the second appeal filed by the tenant before the High Court was allowed by holding that it is the statutory duty of a tenant to pay rent to the landlord, but if a landlord by his representation / conduct / omission leads to a tenant to believe that the time prescribed by law is not to be adhered to, and thereafter the landlord wishes to enforce the said provision strictly, in that event the landlord should first put the tenant to notice by serving a notice or otherwise to the effect that henceforth he should make the payment of rent regularly on monthly basis, or the ejection proceedings in such a case should be preceded with the service of a notice calling upon the tenant to clear the arrears of rent within a reasonable time specified therein ; and, any other view will result in the miscarriage of justice. The judgment of the learned High Court allowing the second appeal of the tenant in the above terms was assailed by the landlady before the Hon'ble Supreme Court.

In appeal, the Larger Bench of five Hon'ble Judges of the Supreme Court was pleased to hold, *inter alia*, that the alleged practice of the attorney of the landlady of collecting accumulated rents was of no avail in explaining

the delays and defaults as held in Syed Waris Ali Tirmizi V/S Liaquat Begum, 1980 SCMR 601 ; the Rent Controller was clearly in error in holding that there was no persistent or willful default and in ignoring the law laid down in Syed Waris Ali Tirmizi (supra) ; the first appellate Court had rightly reversed the finding on default and discovering no mitigating circumstances, directed ejection of the tenant ; the learned High Court was under a misapprehension that it was a case of exercise of discretion by the Rent Controller, which was proper one, and the first appellate Court interfered in the exercise of that discretion and that such interference was unjustified, and hence merited interference in second appeal ; the law protects the tenants against eviction and enhancement of rent, thereby curtailing the plenary power of the landlord to deal with his property and tenant thereof ; if promptness in payment of rent with option to the tenant to deposit it with the Rent Controller is a condition precedent for enjoying such protection, it cannot be relaxed or diluted on the grounds of economic well-being, fairness or in the name of justice ; the tenant was clearly in default in paying or tendering the rent, there was no plausible explanation for such default, and therefore he was liable to ejection ; and, the learned High Court should not have superimposed a new procedure extraneous to the statute whose provisions were to be interpreted and applied. The appeal filed by the landlady was allowed with costs by the Hon'ble Larger Bench of the Supreme Court by directing the tenant to handover vacant possession of the premises to her.

- B. In M/S Pragma Leather Industries V/S Mrs. Sadia Sajjad, PLD 1996 SC 724, the authoritative pronouncement of the Hon'ble Larger Bench in Mrs. Alima Ahmad (supra) was followed by the Hon'ble Supreme Court by observing that the same directly deals with the question of practice of making payment of accumulated rent of several months, and further observing that such practice cannot negate the express provision of law.
- C. In Mst. Hajiani Aisha and others V/S Abdul Waheed, PLD 1989 SC 489, the Hon'ble Supreme Court was pleased to hold that it has been consistently held by the Hon'ble Supreme Court that the mere fact that the landlord accepts the rent from the tenant periodically does not mean that he does not desire or expect rent to be paid on time as required by law ; and, defense based on the ground of landlord receiving or collecting the rent at intervals of several months is not a good ground because the tenant is under a legal obligation to pay rent to the landlord and the landlord is not supposed to go and collect the rent from him.

D. In Messrs Tar Muhammad Janoo V/S Taherali, **1981 SCMR 93**, it was held by the Hon'ble Supreme Court that it is the duty of the tenant to pay or at least tender the rent to the landlord ; he cannot be allowed to plead that the landlord did not make any effort to collect the rent ; the mere fact that a tenant has made it a habit to not pay the rent regularly every month and the landlord has tolerated his default for some time and accepted the rent paid at irregular intervals, cannot in any way be deemed to have established a practice of payment of rent whenever the tenant pleases or affect the liability of the tenant to pay the rent unless the landlord comes and collect it, nor does it absolve the tenant from paying the rent every month ; and, the tenant cannot be allowed to take advantage of his own negligence or of his having taken advantage of deliberate non-payment of rent within time every month on the ground that the landlord has been accepting the same and argue that the same had given rise to a practice of irregular payment of rent.

E. In Messrs Abdul Razzaque Abdul Sattar V/S Abdul Shakoor and another, **1999 SCMR 519**, the earlier decisions in the cases of Messrs Tar Muhammad Janoo (supra), Pragma Leather Industries (supra) and Shezan Ltd V/S Abdul Ghaffar, **1992 SCMR 2400**, were reaffirmed by the Hon'ble Supreme Court that the practice of accepting accumulated rent or sending monthly rent bills by a landlord, in no way, absolves the tenant from discharging his statutory obligation of paying the rent under the provisions of rent laws.

6. In view of the law laid down by the Hon'ble Supreme Court, particularly the authoritative pronouncement by the Hon'ble Larger Bench in Mrs. Alima Ahmad (supra), it can be safely concluded that if the landlord accepts the accumulated rent from the tenant periodically or with intervals, it does not mean that he does not desire or expect rent to be paid within time by the tenant as required by law, or that he has waived his right to claim rent within time ; such practice by the landlord, in no way, overrides or negates the express provisions of law, nor can it absolve the tenant from discharging his statutory obligation of paying the rent to the landlord within time under the provisions of rent laws ; even the Court has no power to superimpose any new procedure or method for payment of rent extraneous to the statute ; it is the duty of the tenant to pay rent to the landlord within time as required by law through any of the modes prescribed by law, and it is not the duty of the landlord to collect rent from the tenant or to remind or chase him for payment of rent ; and, payment of the accumulated rent even once by a tenant would make him liable to eviction.

7. In the present case, it is an admitted position that the accumulated rent for a long period of fifteen (15) years (June 2004 to 2019) was not paid by the petitioner and/or Amin, her successor-in-interest / legal heir, and the accumulated rent for fifteen years was sought to be deposited in Court by Amin for the first time in the year 2019 through his MRC No.53/2019. It is also an admitted position that the petitioner had failed to produce any receipt before the Rent Controller showing payment of the rent for the disputed period. This shows that there was a clear, deliberate and willful default in payment of rent for the disputed period on the part of the petitioner. Therefore, the concurrent findings of the learned Courts below are in accord with the law laid down by the Hon'ble Supreme Court, and as such they do not require any interference by this Court.

8. Foregoing are the reasons of the short order announced by me on 18.10.2021, whereby this petition was dismissed with no order as to costs.

J U D G E