

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

BEFORE:

**Mr. Justice Muhammad Shafi Siddiqui**

(1)

C.P. No. S-165 of 2012

Dr. Fariduddin Qureshi & another

Versus

Syed Zammrud Hassan & others

(2)

C.P. No. S-210 of 2012

Mrs. Roshan Iqbal

Versus

Additional District Judge of Court No.1 & others

(3)

C.P. No. S-211 of 2012

Zubaida Khatoon & another

Versus

Additional District Judge of Court No.1 & others

(4)

C.P. No. S-212 of 2012

Saifuddin

Versus

Additional District Judge of Court No.1 & others

(5)

C.P. No. S-213 of 2012

Muhammad Aslam through legal heirs

Versus

Additional District Judge of Court No.1 & others

(6)

C.P. No. S-233 of 2012

Shaikh Imtiaz Ali & another

Versus

Syed Zammurad Hussain Zaidi & others

Date of Hearing: 11.01.2018

Petitioners in C.P.No.S- 165 of 2012: Through Mr. S.A. Jalib Advocate.

Petitioners in C.P.No.S- 210 to 213 of 2012: Through Mr. Ghulam Abbas Pishori Advocate

Petitioners in C.P.No.S- 233 of 2012: Through Mr. Muzammil Saleem Advocate.

Respondent No.1: Through Mr. Mahmood Habibullah Advocate a/w Mr. Muhammad Fahim Zia Advocate.

## J U D G M E N T

**Muhammad Shafi Siddiqui, J.**-This bunch of constitution petitions involve ejectment applications filed by respondents on the grounds of default, personal requirement and subletting. The ejectment applications were dismissed by Rent Controller however the orders were reversed by the appellate Court and the same were allowed hence the petitioners/tenants have filed instant petitions.

In brief the facts, which are necessary for the purposes of deciding the controversy involved in the cases, are that One Mrs. S. Tufail Hussain Zaidi was the owner of the property/building in which the rented shops are situated and Syed Zamarrud Hussain was a rent collector, who is also one of the legal heirs of Mrs. S. Tufail Hussain Zaidiy, who rented out the respective shops to the petitioners/tenants. In some of the cases after sad demise of original tenant the legal heirs in occupation became the statutory tenants and continued to pay rent to the landlord/rent collector.

The record reveals that after payment of rent for the month of August 2006 there was some dispute as to the payment and recovery of rent and hence the money order was sent on 18.10.2006, which is available at page 71 in CP No.S-165 of 2012 which was refused followed by a notice on behalf of the legal heirs of Mrs. Ruqqayya Begum (Late) widow of Syed Tufail Hussain Zaidi. This notice on behalf of the alleged legal heirs did not disclose the date of death of Mrs. Tufail Hussain Zaidi nor the names of the legal heirs, though it is admitted that the rent up till August 2006 was paid and it was also admitted that the rent for the month of September 2006 was offered through money order. However reason of refusal was because of endorsement/contents as to payment of Pugree on the money order was considered to be mala fide and hence the money order was refused.

In their notice they (respondents) have also disclosed in paragraph 2 that in fact shop was actually leased in the name of Mrs. Razia Begum and after her death legal heirs of deceased Mst. Ruqqayya became the lawful owner of the said shop. The notice of the alleged legal heirs of the owner was replied by the tenants as the contents were found to be vague and uncertain. The tenants demanded disclosure of the names of the legal heirs so that rent may be sent to them. They have also stated that since names of legal heirs were not disclosed they (tenants) would continue to deposit rent to the legal heirs through Syed Zamarrud Hussain. The reply of the tenant dated 13.03.2007 was followed by another notice dated 17.03.2007 from respondents which is also devoid of any information sought by the tenants for tendering the rent to the alleged legal heirs hence the tenants continued to deposit rent in the respective MRCs filed by them.

The alleged legal heirs then filed respective rent cases against the tenants for eviction on grounds of default, personal requirement and subletting in the month of April 2007 which kept pending for objections whereafter a statement in the month of September 2007 was filed by the respondents/applicants whereafter notices were issued. After service of notice the petitioners filed written statements in the month of November 2007 followed by MRC filed by tenants against the present set of legal heirs, as disclosed in the ejectment application hence there were two sets of MRCs filed by the respective tenants; one prior to the service of ejectment application and the other followed by service of ejectment application. It is the default in subsequent MRC which was considered by the appellate Court having not been followed by the requirement of Section 10(3) of Sindh Rented Premises Ordinance, 1979.

The subsequent MRCs filed by the respective tenants disclosed that previously they had been depositing rents in MRC and have already

deposited rent up to December 2007 and that the respondents have filed their respective rent cases under section 15 of Sindh Rented Premises Ordinance, 1979 stating themselves to be the sons/legal heirs of tenants, however tenants/petitioners have denied them to be the owners and landlords for want of knowledge as no notice under section 18 of Sindh Rented Premises Ordinance, 1979 was served. They pleaded that they have already deposited the rent in earlier MRCs, however, to avoid the default and out of abundant precaution sought permission from the Rent Controller to deposit the future rent w.e.f. January 2008 in the subsequent instituted MRC.

I have heard the learned counsel appearing for the parties and perused the material available on record.

All the rent cases were filed on the ground of default and personal requirement however Rent Case No.721, 718 and 723 of 2007 (CP No.165, 210 and 233 of 2012), are also on the ground of subletting, in addition to default and personal requirement.

Rent Case No.721 of 2007 (C.P. No.S-165 of 2012) was filed for Shop No.4 on the ground of the personal requirement of applicant/respondent No.3 Syeda Anwar Fatima as she wanted to settle her grownup children in the demised premises and to accommodate her daughter who is MBBS doctor.

Rent Case No.718 of 2007 (C.P. No.S-210 of 2012) was filed for Shop No.1 on the ground of personal requirement of applicant/respondent No.1 Syed Zamarrud Hussain for his son Abbas Haider to run photo shop photographing therein.

Rent Case No.719 of 2007 (C.P. No.S-211 of 2012) was filed for Shop No.2 on the ground of personal requirement of applicant/respondent No.1 Syed Zamarrud Hussain for his son Mubashir Haider to run book/stationary shop.

Rent Case No.720 of 2007 (C.P. No.S-212 of 2012) was filed for Shop No.3 for personal requirement of applicant No.2/ respondent No.4 Syed Khilat Hussain Zaidi as he intended to operate homeopathic clinic as part time homeopathic doctor.

Rent Case No.722 of 2007 (C.P. No.S-213 of 2012) was filed for Shop No.5 as applicant No.3/respondent No.5 Syeda Yasmeen Fatima Zaidi required the same for her son Syed Shoukat Hussain to run general store therein.

Rent Case No.723 of 2007 (C.P. No.233 of 2012) was filed for Shop No.6 required by applicant No.4/respondent No.3 Syeda Yasmin Fatima being widow as she intended to start business of artificial jewellery therein.

In all the rent cases Syed Khilat Hussain Zaidi filed his affidavit-in-evidence and deposed for self and on behalf of rest of the applicants as attorney for whom the premises were required wherein the contents of the ejectment applications were supported by statement on oath. He was subjected to cross-examination by the petitioners/tenants.

Insofar as the case of personal requirement is concerned, short order was announced in open Court and the order of the appellate Court was maintained as there is no substantial questions as to the disentitlement of the respondents/applicants were raised. Even no element of mala fide was attributed or established.

In Rent Case No.721 of 2007 (CP No.165 of 2012) Attorney of applicant No.2 was questioned that Dr. Abida Fatime had not run her clinic before, is immaterial as she may have remained an employee elsewhere before she had taken a decision of operating a private clinic of her own. Similarly registration with Pakistan Medical & Dental Council, which was expired in December 2008, is also immaterial to

disentitle her from operating her own clinic as the same could have been restored as an extension/restoration had already been applied.

Similarly in Rent Case No.720 of 2007 (CP No.S-212 of 2012) the shop was required by Syed Khilat Hussain for himself to run homeopathic clinic and it is immaterial that he was an employee elsewhere. It is also immaterial that he has not practiced homeopathy since 1992. Such personal ground is otherwise not shattered in the cross-examination as one may opt to decide to practice a profession at a later stage and as such he is not disentitled for a belated exercise of his decision of his homeopathic practice. The certificate of registration with the National Council of Homeopathy attached is otherwise not challenged by the petitioners/tenant.

Similarly the premises required by Syed Zamarrud Hussain to set up business for his unemployed son namely Abbas Haider is also not seriously objected/shattered. The opponent/petitioner's counsel has suggested in the cross-examination that witnesses' brother namely Zamarrud Hussain has five sons and two daughters and the sons are jobless. Abbas Haider for whom the premises was required is a graduate and jobless and the suggestion that he does not require the premises in good faith was specifically denied by the witness.

In Rent Case No.721 of 2007 (CP No.S-165 of 2012) the respondents' witness has specifically asserted the personal requirement to be for establishment of clinic for the daughter of respondent No.4 which assertion could not be shaken during cross-examination. Even in cross-examination the petitioners have taken a new plea that respondents want to raise construction of a high-rise building which was specifically denied. Hence, the stance of respondent was consistent and had gone unshaken.

In Rent Case No.719 of 2007 (CP No.S-211 of 2012) the attorney of Syed Zamarrud Hussain filed his affidavit-in-evidence for personal need of another son Mubashir Haider to run business of book shop and stationary and no material questions to disentitle him from his bona fide requirement was raised.

In C.P. Nos.S-165 and 233 of 2012 the landlords/respondents have also raised ground of subletting which was accordingly answered in paragraph 30 and 28 respectively of the impugned judgment. As to a specific ground of subletting, the appellate Court reached the findings.

In C.P. No.233 of 2012 the petitioner No.2 in his cross-examination though denied that the shop was let out to another by petitioner No.1 but he stated that he only looked after in his absence. He is stated to be looking after business since 12/13 years and has admitted that the petitioner No.1 is residing in America and is driving a taxi there. Hence, there was sufficient evidence available to reach to the conclusion that in fact it was case of subletting as made out by the applicants/ respondents.

Similarly in CP No.165 of 2012 sufficient material was available to reach same conclusion.

The next point that requires consideration is the ground of default. I have given the facts earlier. It is not disputed that the rent was being collected by rent collector Zamarrud Hussain who is also one of the legal heirs and respondent in these petitions. It is also a matter of record that rent up to August 2006 was paid to the rent collector whereafter the rent was tendered to the rent collector through money order in the month of October 2006. It was endorsed at the back of the money order that the tenant is remitting rent for the month of September 2006 as the rent collector has not come to collect the rent despite telephonic conversation. The said money order was refused by

the rent collector on the ground that the endorsement on the money order disclosed the shop to be on Pugree basis.

When enquired by the petitioners/tenants about the legal heirs whose names were not disclosed in the first notice dated 18.11.2006, the reply thereto was again silent. The reply was made on 17.03.2007 in respect of a query letter dated 13.01.2007. The rent was deposited in Court in different MRCs such as MRC No.825 of 2006 etc. on 02.12.2006. The rent of four months was deposited. The default that is claimed for the month of September 2006 onward by a notice dated 18.11.2006 is not made out since the rent for the month of September 2006 was due on 10<sup>th</sup> of the following month and was payable within 60 days thereafter i.e. 10.12.2006 and the rent was deposited in MRC after it was offered to the rent collector through money order before 10.12.2006 i.e. on 02.12.2006 hence no default is made out as far as rent for the month of September 2006 onward is concerned.

The rent was deposited in the name of deceased Mrs. Tufail Hussain Zaidi through rent collector Zamarrud Hussain as the names of legal heirs were not disclosed hence it was a bona fide attempt for depositing rent in the name of rent collector who was collecting rent on behalf of Mrs. Tufail Hussain Zaidi. Though it came to the knowledge of the petitioners that Mrs. Tufail Hussain Zaidi had expired but since list of the legal heirs was not provided to the tenants they had no option but to deposit the rent through the rent collector which they did.

The point that requires consideration is whether the petitioners were justified in depositing rent in subsequent MRCs without following the recourse as provided under section 10(3) of Sindh Rented Premises Ordinance, 1979 which reads as under:-

*“10. Payment of rent.-(1) The rent shall, in the absence of any date fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than*



*the tenth of the month next following the month for which it is due.*

*(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.*

*(3) Where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or, be deposited with the Controller within whose jurisdiction the premises is situate.*

*(4) The written acknowledgment, postal money order receipt or receipt of the Controller, as the case may be, shall be produced and accepted in proof of the payment of the rent;*

*Provided that nothing contained in this section shall apply in the cases pending before the Controllers on the commencement of this Ordinance.”*

The notice of ejectment application was served disclosing the legal heirs, which ejectment application was filed by four applicants who were the legal heirs of Mrs. Tufail Hussain Zaidi. The only reason assigned earlier by the petitioners for not depositing the rent in the names of the legal heirs or at least to have offered rent to the legal heirs is that the names were not disclosed in the notice issued on 18.11.2006 or in the subsequent reply of 17.03.2007. However, the notice of the ejectment application provides an answer to this query. The ejectment application remained pending under Court objection for a considerable period whereafter a statement was filed by respondents in September 2007 followed by a notice issued to the petitioners whereafter they filed their written statements in November, 2007. On having knowledge of the legal heirs they (petitioners) attempted to tender rent to the respondents by directly filing the MRC instead of offering it first to the legal heirs. They (tenants) were under the obligation to have offered rent to the legal heirs who were then disclosed to them in the ejectment application, either personally or through money order, and on its refusal by all of them, they could have then availed the benefit of depositing rent in MRC.

The provisions of section 10(3) of Sindh Rented Premises Ordinance, 1979 are specific, unambiguous and mandatory. Hence, the subsequent MRC was not followed by prerequisites i.e. offering rent to the landlords/all legal heirs and it was rightly held by the appellate Court that it was not a lawful tender. They (petitioners) may have deposited the rent for the year 2007 bona fide as the names were not disclosed. I am inclined to consider the first deposit upto December 2007 as bona fide tender however what prevented the petitioners to have offered rent to all the legal heirs, at least w.e.f. January 2008 onwards when they acquired knowledge of legal heirs. The filing of the MRCs without first offering it to legal heirs, either personally or through money order, is thus not a lawful tender and it was rightly held as such, by the appellate Court.

In view of the above ejectment applications have already been allowed on the ground of personal requirement vide short order 11.01.2018 whereas on the ground of default and subletting finding of appellate Court requires no interference. Petitions are accordingly dismissed.

Dated: 06.02.2018

**Judge**