

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

**C.P. No.S-569 of 2017**

*Before: Mr. Justice Muhammad Shafi Siddiqui*

Muhammad Shahzad Ali	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-570 of 2017**

Muhammad Shahzad Ali	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-571 of 2017**

Muhammad Shakir Hussain	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-572 of 2017**

Muhammad Shakir Hussain	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-573 of 2017**

Muhammad Nadeem Afsar	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-574 of 2017**

Muhammad Nadeem Afsar	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-575 of 2017**

Muhammad Ghulam Mustafa Through Masood Ahmed	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-576 of 2017**

Ghulam Moinuddin Khan	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

**C.P. No.S-670 of 2017**

Ghulam Moinuddin Khan	-----	Petitioner
	Versus	
Syed Abid Ali & others	-----	Respondents

Date of Hearing:                      14.11.2017

Petitioner:                                Through Mr. Adnan Ahmed Advocate

Respondent No.1:                        Through M/s. Afaq Ahmed and Tauqeer  
Randhava, Advocates

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

**Muhammad Shafi Siddiqui, J:** These Bunch of cases involve identical question, hence are disposed of by a common order.

1. The respondent No.1 filed an applications under section 8 of the Sindh Rented Premises Ordinance, 1979 for determination of fair rent against different tenements, individual rent applications were filed, which were dealt with in accordance with law by issuing notices and summons to the tenants who filed their respective replies/written statements. Thereafter their evidences were recorded.

2. Learned Counsel for the petitioner has raised two points i.e. (i) that the respondent No.1 had no authority to initiate proceedings as being alleged Attorney and (ii) that there was no justification to enhance the rent as ordered by the Rent Controller and the appellate Court. The Rent Controller fixed the rent of shop at rate of Rs.5,000/- per month per shop. Some of the rent applications include three tenements which are being considered as three independent shops as the tenant is same.

3. Learned Counsel for the petitioner has made an attempt to undermine the authority of the Attorney by reading the relevant part of the Power of Attorney. He submitted that unless said Power of Attorney is duly registered or certified by the Consulate General of Canada, this cannot be acted upon. He submitted that it was claimed to have been notarized by a Judge/Notary Public for the province of Alberta hence it is not a lawful notarization or registration. It is contended that the Power of Attorney is required to be registered under section 33 of the Registration Act, 1908 read with Article 95 of the Qanun-e-Shahadat Order, 1984.

4. I have heard the learned Counsels and perused the material available on record.

5. Section 33 of the Registration Act, 1908 is for the purposes of Section 32 and only those Power of Attorneys are to be recognized which are subjective to the following test:

(a) -----

(b) -----

(c) If the principal at the times aforesaid does not reside in Pakistan a Power of Attorney executed before an authenticated by a notary public or any Court, Judge, Magistrate, Pakistan Consul or Vice-Counsel or representative of the Federal Government.

6. Perusal of Power of Attorney reveals that one Rohin Judge a Notary Public for the province of Alberta, Canada at the foot of this document, has attested the Power of Attorney. The presumption of this certificate is that it was signed before the Notary Public (Rohin Judge of province of Alberta). Though this was never a defence before the Rent Controller or before the appellate Court yet I have allowed the petitioner to urge this ground at this stage. There is nothing in the cross examination to show that this Power of Attorney was not signed before the Notary Public of province of Alberta. Article 95 of the Qanun-e-Shahdat Order, 1984 reads as under:

*“Art.95, presumption is attached to power of attorney to have been executed, authenticated by any authority to be genuine and true and was so executed and authenticated. Presumption was of regularity of official acts regarding execution and authentication of the power-of-attorney, which took the same as valid and effective under the provisions of Art.95 of Qanun-e-Shahdat, 1984. Presumption was that the document was power-of-attorney and duly executed an authenticated unless shown otherwise. Once the document was attested by the first Secretary of the Embassy of Pakistan, the same would construed as valid document.”*

7. Hence the only presumption, deducible in absence of any contrary evidence is that it was executed and authenticated in presence of

Notary Public who is one of the authority to authenticate the subject document i.e. Power of Attorney.

8. Insofar as the case of the petitioner on merits is concerned, apart from the affidavit-in-evidence of the Attorney of the landlord, two additional witnesses namely Syed Asif Ali and Zahid Ilyas were examined. Syed Asif Ali has produced tenancy agreement of Shop No.8 of the same building and deposed that he is paying rent @ Rs.15,000 per month and has deposited a security amount of Rs.300,000/-. Similarly the other witness also produced a rent agreement in respect of shop No.1 of adjacent building and deposed that he is paying Rs.45,000/- per month and security deposit of Rs.500,000/-. Both these witnesses went through cross examination but as far as the evidence of rent of similar premises in the same building or adjacent building within the same locality is concerned, is not disturbed. These facts were appreciated by the Rent Controller as well as the appellate Court. The petitioners have also filed their respective affidavit-in-evidences but it is only a statement that the rent of the premises of the vicinity is around Rs.1,000/- per month without any agreement of the adjacent shops or any shop in the same vicinity and locality. No error of misreading or non-reading of evidence is pointed out. The appellate Court has however modified the order of a lump sum rent by rent payable per square foot which is logical and justified.

9. In view of the above, the impugned order does not call for any interference hence the petitions are dismissed along with pending applications.

Above are the reasons for the short order dated 14.11.2017 whereby these petitions were dismissed.

Judge