

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 1962 of 2018

Date	Order with signature of Judge
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Petitioners : Muhammad Younus and Mst. Qasma Begum,
through Sheikh M. Mushtaq Advocate

Respondent No.1 : Mansoor Ali, deceased through his legal
representatives Saima, Mustufa Marvi, Jazer Marvi
and Nasreen, through Mr. Murtuza Hussain
Advocate.

Respondents 2 to 6 : Mst. Nazima Begum, Mst. Zainab Parveen,
Sarfraz Hussain, Muzaffar Hussain and
Mst. Sabra Begum, called absent.

Date of hearing : 17.12.2021.

ORDER

NADEEM AKHTAR, J. – Rent Case No.870/2012 was filed by respondent No.1 against the petitioners for their eviction from Shop No.A-2 situated in the building constructed on Plot No.21, S.B.7, Zaib-un-Nisa Street, Saddar Bazar Quarters, Karachi, (**‘demised premises’**) on the grounds of personal need, default in payment of the monthly rent and utility charges, illegal additions and alterations in the demised premises and subletting. The rent case was allowed by the Rent Controller vide order dated 25.04.2017 by directing the petitioners to hand over the vacant and peaceful possession of the demised premises to respondent No1 within thirty (30) days. First Rent Appeal No.225/2017 filed by the petitioners against the order of their eviction was dismissed by the appellate Court vide judgment dated 17.05.2018. The concurrent findings of the learned Courts below have been impugned by the petitioners through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. It was the case of respondent No.1 before the Rent Controller that he was the rent collector and one of the co-owners of the demised premises ; one Akhtar Hussain was the tenant of the demised premises at a monthly rent of Rs.3,000.00 excluding water, conservancy and other charges payable by him in advance by the tenth day of each month ; the said Akhtar Hussain (**‘deceased’**) passed away during the subsistence of the tenancy ; petitioner No.1 was the son-in-law and petitioner No.2 was

the daughter of the deceased ; during the life time of the deceased, petitioner No.1 used to do business with him in the demised premises and also used to deal with matters pertaining to the tenancy of the demised premises including the payment of rent and other dues on behalf of the deceased ; after the demise of the deceased, petitioner No.1 continued with the tenancy and paid rent and water and conservancy charges to respondent No.1 ; in July 2003, petitioner No.1 asked respondent No.1 to change the receipt of tenancy from the name of the deceased to his name, which was declined by respondent No.1 as other legal heirs of the deceased had informed him about their dispute with the petitioners and some litigation was pending between them ; and, upon the respondent No.1's refusal, petitioner No.1 refused to pay the rent and water and conservancy charges to him from July 2003 onwards. It was alleged by respondent No.1 that the petitioners had committed default in payment of not only the monthly rent and water and conservancy charges, but also the electricity charges due to which a disconnection notice had been issued by KESC. It was further alleged by respondent No.1 that petitioner No.1 had made illegal alterations and additions in the demised premises without his consent by dividing the same into two portions and had sublet one of the portions to a third party despite his protests. It was claimed by respondent No.1 that the demised premises were required by him to establish a business for his son Juzer Mansoor Ali who was dependent on him.

3. In their joint written statement, it was admitted by the petitioners that respondent No.1 was the rent collector, however, it was stated by them that they had no knowledge that he was also one of the co-owners of the demised premises. It was also admitted by them that the deceased was a tenant of the demised premises. The rate of monthly rent was not disputed by them, however, it was claimed by them that the water, conservancy and other charges were included in the monthly rent. It was stated by them that after the demise of the deceased, the tenancy rights of the demised premises devolved upon his daughter / petitioner No.2 from whom respondent No.1 started receiving the rent etc. The allegation of default was denied by them by stating that they had offered the monthly rent to respondent No.1 in August 2003, but he refused to accept the same and asked them to vacate the demised premises ; in view of such refusal by respondent No.1, petitioner No.1, on behalf of petitioner No.2, sent the monthly rent to respondent No.1 for the months of July and August 2003 through a money order on 01.09.2003, but the same was also refused by respondent No.1 ; and thereafter, the rent was deposited by petitioner No.2 before the Rent Controller in Miscellaneous Rent Case No.1122/2003 (**'MRC'**). The allegations of illegal alterations and additions

and subletting were also denied by the petitioners. Likewise, the respondent No.1's claim regarding his personal need was also denied by them by alleging that it was not bonafide.

4. As the present respondents 2 to 6, being the legal representatives of the deceased, were impleaded by respondent No.1 in his rent case as proforma respondents, no relief was prayed for by him against them, nor did they appear before the Rent Controller. In view of the divergent pleadings of the parties, points for determination were settled by the Rent Controller on all the grounds urged by respondent No.1 for the eviction of the petitioners as all such grounds were disputed by them. Respondent No.1 examined himself and his son Juzer Mansoor Ali for whom the demised premises were sought by him. Whereas, the petitioners examined their attorney / son Muhammad Javid. Both the parties also produced documents in support of their respective contentions. After evaluating their evidence and hearing the arguments advanced on their behalf, all the points for determination were decided against the petitioners and accordingly the rent case filed by respondent No.1 was allowed by the Rent Controller. Being aggrieved with the order of their eviction, the petitioners filed an appeal which was dismissed by the appellate Court.

5. I have heard learned counsel for the parties and have carefully examined the material available on record. I shall first deal with the ground of default in payment of the monthly rent and utility charges urged by respondent No.1 for seeking eviction of the petitioners. In his eviction application, respondent No.1 had categorically alleged default with effect from July 2003, and the default with effect from July 2003 was specifically retreated by him in his deposition and cross-examination. In paragraph 3 of their written statement, it was claimed by the petitioners that the rent was offered to respondent No.1 by petitioner No.1 in the month of July 2003, but he refused to accept the same ; in the month of August 2003, petitioner No.1 tried to persuade respondent No.1 to receive the rent, but he again refused ; on 01.09.2003, petitioner No.1 sent a money order to respondent No.1 towards the rent for the months of July and August 2003 which was also refused by the latter ; and, in view of the persistent refusal by respondent No.1, the rent was deposited with the Rent Controller in MRC.

6. A perusal of the respondent No.2's MRC available at page 301 shows that she had alleged therein that respondent No.1 had visited the demised premises in July 2003 and had asked her to enhance the monthly rent from Rs.3,000.00 to Rs.10,000.00 which demand was refused by her. This alleged visit and demand by respondent No.1 in July 2003 were not

pleaded by the petitioners in their written statement nor were they disclosed by them in their evidence. Moreover, it was alleged by petitioner No.2 in her MRC that she attempted to tender the rent to respondent No.1 in August 2003 and then in September 2003, but respondent No.1 refused to accept the same on both occasions. She did not allege in her MRC that the rent was offered to respondent No.1 in July 2003 when he refused to accept the same. Whereas, in their written statement it was alleged by the petitioners that the rent was offered to respondent No.1 in July 2003, which appears to be an afterthought. It may be noted that in the written statement there was no mention about the attempt allegedly made by the petitioners to tender the rent in September 2003. The above discrepancy in the stance of the petitioners regarding the first attempt made by them to tender the rent is crucial as respondent No.1 had categorically alleged default by them with effect from July 2003. It is significant to note that petitioner No.2 had prayed in her MRC filed on 23.09.2003 to allow her to deposit the rent only for the months of August and September 2003, and not for the month of July 2003 ; and, pursuant to the order passed by the Rent Controller in her MRC, an amount of Rs.6,000.00 was deposited by her on 24.09.2003 towards the monthly rent for the months of August and September 2003. This clearly shows that she never tendered or deposited the rent for the month of July 2003. Thus, there was a clear default by petitioner No.2 for the month of July 2003.

7. If it is assumed that the rent for the month of July 2003 was included in the amount deposited by petitioner No.2 on 24.09.2003, which is not the case as noted above, even then petitioner No.2 had committed default for the month of July 2003 as, in the absence of an agreement, she was required under Section 10(1) of The Sindh Rented Premises Ordinance, 1979, (**'the Ordinance'**) to deposit the rent for the said month latest by 10.09.2003. The statements of account in respect of the amounts deposited by petitioner No.2 in her MRC produced by her witness as Exhibits O/6 and O/7 reflect that, except for a few deposits, all other deposits were made by her after the tenth day of each calendar month. Because of such delay on her part, it was held by the Rent Controller that default was committed by her even after filing of MRC. It may be noted that no point for determination was settled by the Rent Controller as to whether the water, conservancy and other charges were included in the monthly rent or not. In any event, such question became irrelevant as petitioner No.1 committed default in tendering the admitted monthly rent of Rs.3,000.00, whether inclusive of the above charges or not.

8. There is another aspect of this case viz. whether or not petitioner No.2 was entitled or justified in law to tender the rent to respondent No.1

through money order and or to deposit the same in Court. Sub-Sections (1) and (3) of Section 10 of the Ordinance prescribe the time and mode, respectively, of payment / tender of the monthly rent by the tenant. Under Sub-Section (3) *ibid*, the tenant would be entitled to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller only when the landlord had refused or avoided to accept such rent from him. A plain reading of Sub-Section (3) *ibid* shows that the refusal or avoidance by the landlord in accepting the monthly rent from the tenant is a condition precedent for entitling the tenant or justifying him to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller. It is well-settled that the tenant shall not be entitled in law to deposit the rent with the Rent Controller without first offering / tendering the same directly to the landlord and only when, upon such offer / tender, the landlord had refused or avoided to accept the rent from him ; and, the burden to prove the tender of rent to the landlord and the refusal or avoidance by the landlord in accepting the rent from him shall lie upon the tenant.

9. In the present case, the petitioners had alleged that respondent No.1 had refused to accept the rent in July 2003 and had also refused to accept the money order sent to him on 01.09.2003. The burden to prove the first refusal by respondent No.1 was not on the petitioners as respondent No.1 had admitted such refusal in his cross-examination. However, the burden to prove the second refusal by respondent No.1 had shifted upon the petitioners as the former had specifically denied that any money order was sent to him or was refused by him. In support of their allegation regarding the second refusal by respondent No.1, their witness had produced the receipts of money order as Exhibits O/5-A and O/5-B. There was no endorsement by the postman concerned on any of the said exhibits that respondent No.1 had refused to accept the money order, nor was the postman concerned examined by the petitioners. Due to this reason, respondent No.1 did not get the opportunity to cross-examine the postman concerned in order to rebut the petitioners' claim regarding his alleged refusal. In the absence of the above, the petitioners could not be deemed to have discharged the burden, which was squarely upon them, to prove the tender of rent through money order prior to depositing the same with the Rent Controller, or that respondent No.1 had refused to accept the money order. Thus, the petitioners had failed in discharging the burden in order to prove the alleged second refusal by respondent No.1. Accordingly, the condition precedent prescribed in Section 10(3) *ibid* for entitling the tenant or justifying him to deposit the monthly rent with the Rent Controller was not fulfilled by the petitioners, and as such the rent could not be deposited by them with the Rent Controller.

10. In the above context, I may refer to Muhammad Asif Khan V/S Sheikh Israr, **2006 SCMR 1872**, wherein the Hon'ble Supreme Court was pleased to hold, *inter alia*, that there was no evidence in the cited case with regard to refusal of the landlord to accept the rent so as to provide authority or justification to the tenant to deposit the rent in Court, and there being no evidence to that effect, the tenant could not absolve himself from being a defaulter for the relevant period ; and, it was mandatory for the tenant to bring sufficient and reliable evidence on record that the landlord had refused to accept the rent so as to entitle him for deposit of rent in Court. I may also refer to Abdul Malik V/S Mrs. Qaiser Jahan, **1995 SCMR 204**, wherein it was held, *inter alia*, by the Hon'ble Supreme Court that it has to be seen that while depositing the rent in Court, there has been refusal or avoidance on the part of the landlord, and further that the conduct of the tenant is not contumacious or malafide to harass the landlord.

11. The next ground urged by respondent No.1 for the eviction of the petitioners was that the demised premises were required by him for establishing a business for his son Juzer Mansoor Ali who was dependent on him. This ground was specifically pleaded by him in his eviction application and was reiterated by him in his evidence. This claim of respondent No.1 could not be dislodged by the petitioners as in his cross-examination only general and vague questions were put to him that another building was owned by him and he was carrying on business therein. No specific question was put to him with regard to the business he intended to set up in the demised premises for his dependent son. In addition to respondent No.1, his above named son had also appeared in the witness box and had categorically deposed that he was working with his father / respondent No.1 in his hardware shop and had gained sufficient experience in such business and was fully competent to run his own independent business. He had also deposed that the demised premises were required for him by his father so that he may establish his own business therein, and that the demised premises were suitable for his business requirements. It is significant to note that not a single question was put to the respondent No.1's above named son / witness in his cross-examination about the business that respondent No.1 and his son intended to establish in the demised premises, or that the son was already doing such business at some other premises. Thus, the petitioners had failed in discharging the burden to prove that the personal need claimed by respondent No.1 was not genuine and or bonafide.

12. It is well-settled that if the statement made on oath by the landlord is consistent with the averments made by him in his ejectment application and neither is his statement shaken nor is anything brought in evidence to contradict his statement, it would be sufficient for the grant of his ejectment application ; all that the landlord has to show is that he required the demised premises of a particular tenant for his personal use and the choice was his as to the suitability of the demised premises which he required for his personal use, and that his need is reasonable and bonafide ; the landlord has the complete option to choose from any one of the several tenements occupied by the tenants in order to avail of the ground of personal need ; and, the landlord himself would determine in what way, subject to law, he wants to utilize his premises after eviction of the tenant. In my humble opinion, respondent No.1 had successfully discharged his burden in proving that his personal need was reasonable, genuine and bonafide, and the petitioners had failed in dislodging his claim or in proving him wrong.

13. The next ground urged by respondent No.1 for the eviction of the petitioners is that they had made illegal alterations and additions in the demised premises without his consent by dividing the same into two portions and had sublet one of the portions to a third party despite his protests. In this context, it may be noted that after passing of the impugned order by the Rent Controller whereby the rent case of respondent No.1 was allowed and the petitioners were directed to vacate the demised premises, one Malik Palam Khan filed an application under Section 12(2) CPC in the said rent case for setting aside the order of eviction passed therein. The said application was dismissed by the Rent Controller and the appeal filed by the said Malik Palam Khan before the appellate Court was also dismissed. Against the concurrent findings of the Courts below, he then filed Constitutional Petition No.S-1391/2019 before this Court which was dismissed as withdrawn vide order dated 17.12.2021 passed therein in view of the statement made on his behalf on that date that he intended to avail his remedy by initiating appropriate proceedings before the competent forum for recovery of damages against the present petitioner No.1 and respondent No.1.

14. In his above mentioned constitutional petition, the said Malik Palam Khan had claimed that he was inducted as a sub-tenant of the demised premises by the present petitioner No.1 against payment of a huge amount of Rs.12,500,000.00 as *pugree* ; and, in support of this assertion, he had filed and relied upon an agreement dated 26.01.2009 executed in this behalf by him and petitioner No.1, as well as several receipts issued in his favour by petitioner No.1. Though it was stated by him in his said

petition that respondent No.1 had given his consent to the above arrangement, but it was specifically alleged by him that he was inducted as a sub-tenant by petitioner No.1. It may be noted that respondent No.1 was not confronted in his cross-examination by the petitioners with the suggestion that he had consented to the subletting although he had made a specific allegation of subletting against the petitioners. It was further stated by Malik Palam Khan in his said petition that after becoming a sub-tenant, he established his business in the demised premises in the name and style of 'Modern Dubai Blanket House'. In his cross-examination, it was claimed by the witness of the petitioners that the above named business was owned by petitioner No.1 which was not registered, nor did petitioner No.1 pay any income tax in respect thereof. It was denied by him that the said business was registered in the name of Malik Palam Khan, however, it was admitted by him that Malik Palam Khan was his partner in the said business and was working with him. The above facts, particularly the admission made by the petitioners' witness, was sufficient to establish subletting of the demised premises.

15. Regarding the illegal alterations and additions in the demised premises alleged by respondent No.1, it was stated by the petitioners' witness that he did not remember that originally the demised premises did not have two portions, and voluntarily stated that it was now one shop. The petitioners, on the one hand, were not able to dislodge the respondent No.1's allegation regarding illegal alterations and additions, and on the other hand, were not able to prove that the demised premises had more than one portions when it was let out to the deceased. Thus, the burden to prove the allegation of illegal alterations and additions, which had shifted upon them as they were not able to dislodge the respondent No.1's allegation, could not be discharged by the petitioners.

16. After thoroughly examining the record and all the aspects of the case as discussed above, I am of the firm view that the concurrent findings of the learned Courts below are balanced, well-reasoned and in accord with the evidence on record. Therefore, the impugned concurrent findings of fact do not require any interference by this Court in its constitutional jurisdiction. Accordingly, the petition is dismissed with costs throughout.

J U D G E