

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

C.P No. S-992 of 2019

Date Order with signature of Judge

Hg/Priority Case.

1. For Hearing of CMA No.4463/2019
 2. For Hearing of Main Case.
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27th January, 2020

Mr. Muhammad Rafi advocate for the petitioner
Mr. Iftikhar Javaid Qazi advocate for respondent No.3.

This order would dispose of the captioned petition filed against the order dated 07.08.2019 passed in FRA No.19/2019, whereby the judgment dated 21.12.2018 passed in Rent Cases No.391 of 2017 were challenged. Through the impugned judgments the appellate Court (III-Additional District Judge, Karachi East) while upholding the judgments of the trial Court (V-Rent Controller, Karachi East), dismissed the FRA.

2. Succinctly the relevant facts of the case of respondent are that by virtue of registered sale agreement deed dated 23.09.2016 executed in favor of the respondent by the previous owner/landlady Mst. Rubina Rahim, the respondent is the true and lawful owner/landlord in respect of Ground + Two Storey Building constructed on lease hold Plots Nos. 943, 944 and 945-C in all measuring 315 Sq. Yards in Commercial Area, Block-2, PECSH, Karachi. It was the claim of the respondent, in rent case, that at the time of purchase of said property by the respondent from the previous owner, the appellant was already tenant in respect of Flat on 2nd Floor @ of Rs.1,000/- per month and the said premises was originally obtained by Mr. Sher Afgan Choudhry, after whose death the appellant being his widow became the tenant on the flat in question, hence the respondent issued notice U/s. 18 SRPO, 1979 dated 02.11.2016 to the appellant intimating her about the purchase of subject property by him with request to pay the arrears of rent and current rent to him as required by law, but instead of paying rent to the respondent, appellant sent the rent to previous landlady through Cheque No. 1333507677 dated 15.12.2016 which was returned to her by the previous owner's son alongwith covering letter dated 31.12.2016. After service of said notice U/s. 18 of SRPO 1979 dated 02.11.2016 appellant totally failed to pay

the rent to respondent. In another rent case No. 179 of 2017 filed by respondent against the appellant U/s. 8 of SRPO 1979, the appellant filed written statement through her attorney in which it was revealed that even after knowing about change of ownership regarding the demised premises in question, the appellant has contumaciously with malafide intention and ulterior motives deposited the rent in MRC, hence rent case was filed.

3. Heard learned counsel for the respective parties.

4. The core issue, involved in the matter, *primarily*, revolves round the compliance of Section 18 of the Ordinance, therefore, I find it appropriate to reproduce the same for ready reference. The same reads as:-

“18. Change in ownership.—*Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of subsection (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.”*

5. The plain reading of the above section, *prima facie*, shows that the burden to intimate change of **ownership** has been placed upon the successor. The second part of the above provision speaking about **not defaulting** is also indicative of the fact that mere change of ownership, unless properly intimated, shall not be a ground of default, if, the tenant proceed to pay rent to out-going **landlord**. It is also worth insisting that failure of such consequence has been confined to clause (ii) of subsection (2) of section 15 of Ordinance *only*. The reason for such logic is nothing but that an **owner** is always competent to sell out his / her rented property even without notice and consent of the person in possession thereof as **tenant**. It is never necessary for the **new purchaser** to continue with tenancy relation between tenant and earlier owner / landlord but can competently intend to seek possession on other grounds, provided by Section 15 of the Ordinance which, *too*, without pressing consequence of *default*. In short, the provision is *mandatory* for the **new owner** while liberal for the **tenant** hence the same needs to be interpreted as such. However, what can *safely* be concluded is that consequences for failure in paying rent could only be pressed if it is, *prima facie*, proved that the tenant *properly* got intimation of **change of ownership** which, I would add, would not be sufficient merely by saying / uttering that ‘**one has purchased or got title of subject property**’ but a little more i.e detail of mode of

change in ownership i.e specifying that how one acquired title as well that he wishes to indulge in status of **landlord** or otherwise?. It has been viewed in the case of Abid Ali v. Ghulam Moinuddin Khan 2012 CLC 143 as:-

"... So above section makes mandatory on the part of the new owner to serve a notice under registered post upon his tenant and if the latter, upon the receipt of such notice, pays rent due within thirty days from the date when the intimation should, in normal course, have reached the tenant he shall not be deemed to have defaulted. Since it is a beneficial provision, designed and intended for the benefit of tenants, it is to be construed liberally so that it may suppress the mischief aimed at, and may advance remedy. In my view a notice in terms of above section is mandatory even when a transfer of ownership pertains to a partial interest. It may be observed that if a new owner of a premises fails to serve above notice on his tenant and if the latter, without having knowledge of the transfer of ownership continues to pay rent to his previous landlord, he shall not be liable to pay rent to the new owner for the period, for which the tenant might have paid rent to the previous owner. (Reference can be made to 1992 SCMR 2400).

Thus, it is safe to conclude that proof of service of notice or proper *intimation* from specific time / date is *mandatory*, if the ejectment is being ordered and such *point* must receive a proper response from the Rent Controller else the liberal aspect of the provision may fail. Having said so, now it would be conducive to refer relevant portion of order passed by the learned trial court, which reads as under:

"Both the parties attorneys have brought their evidence on record and during the evidence of attorney of opponent he has made admissions that since about two or above years the opponent lady is residing out of country and he do not know whether the opponent has sent the rent to the previous owner/landlady vide cheque No. 1333507677 dated 15.12.2016, after receiving the legal notice dated 02.11.2016 of applicant. The attorney of opponent has also admitted that previous owner/landlady returned the cheque dated 15.02.2016 to the opponent by saying that she has sold out the demised premises/plots and thereafter the opponent sent the rent to applicant Habibullah on 23.02.2017. The attorney of opponent has also admitted that he come in knowledge that applicant Habibullah has purchased the demised property/building and they met him twice and informed about purchasing the demised property/building. The attorney of opponent has also admitted that he has not filed any MRC/Application in court only against applicant for depositing the rent.

From the evidence came on record, it is proved that the opponent/her attorney were came into knowledge in the first week of January 2017 when the cheque No. 133350777 dated 15.12.2016 of opponent was returned by the previous landlord through TCS on

02.01.2017 to the opponent informing her about the change of ownership and the applicant and his attorney twicely met with the attorney of applicant informing him about the change of ownership but the attorney/opponent did not offer them to receive the monthly rent and filed the MRC No. 48/2017 in this court on 25.03.2017 against the applicant/attorney and previous owner which amounts default in payment of rent. As per law, when the tenant/opponent came into knowledge about the change of ownership he/she is liable to tender rent directly to new landlord within 30 days from the date of knowledge or receiving the legal notice but in this case the opponent has not tendered the rent within the period of 30 days and committed willful default in payment of monthly rent. The previous owner's son sent the letter dated 31.12.2016 to the opponent alongwith her cheque dated 15.12.2016 informing her in the letter that the demised property/building is sold and direct the opponent to contact the new owners for such matter and this already been communicated to her so please follow this for any of your future dealings but instead of that the opponent did not contact the applicant/attorney herself/himself for offering the rent in person to them within the period of 30 days and tendered the rent through money order on 23.02.2017 after passing of 30 days period which amounts default in payment of rent'.

6. The conclusion of default appears to be , *prima facie*, based on admission of meeting with new purchaser as well that of return of cheque by previous owner. Since, there is no denial that rent was later deposited through MRC in names of new and old owners hence it was required to be proved that such depositing was later than prescribed period of **30 days**. This aspect appears to have not been attended by the learned Rent Controller where the parties were to prove their stands.

7. Thus, to keep the interests of either parties protected, without going into a controversy with regard to factual aspect of service of notice (receipt of intimation), I am of the view that it would meet the ends of justice to remand the matter back to Rend Controller to properly appreciate this aspect of the matter on available evidence. The parties may lead evidence to such an extent, if they so desire. Accordingly, instant petition is allowed, orders of both courts below are set-aside. Case is remanded back to trial court with direction to decide the case within two months.

J U D G E