

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-953 of 2012 alongwith CP.Nos.S-893/2012, 936/2012, 954/2012,
1010/2012, 1011/2012 & 1012 of 2012.

Date _____ Order with signature of Judge _____

03rd December 2020.

Mr. Khursheed Ahmed Qureshi, advocate for petitioner in CP.No.S-936, 953 & 954 of 2012.

Mr. Waqas Ahmed Khan, advocate for petitioner in CP.No.S-1010/2012, 1011/2012 & 1012/2012.

Mr. Muhammad Jamil, advocate for petitioner in CP.No.S-893/2012.

Mr. Shahan Karimi, advocate for respondent No.1 in all CPs.

Salahuddin Panhwar,J:- By the dint of this judgment, I intend to decide the controversy in all captioned petitions between landlady and tenants.

2. Respondent (landlady) filed eviction applications on the plea that she purchased the property in 1976, served notices under Section 18 of Sindh Rented Premises Ordinance 1979 to the tenants in 2004, despite service tenants failed to pay the rent directly or through court, hence, they committed default.

3. Learned counsel for the landlady has relied upon case laws reported as 2000 CLC 1841, 1998 MLD 394 [Karachi], 2012 YLR 2892, 1972 SCMR 561, PLD 2009 SC 45 and 2007 YLR 164. He refers Article 114 of Qanoon-e-Shahadat Order 1984 as well as he has referred definition of "tenant", according to the learned counsel tenants have not disputed title of the landlady, therefore, they were bound an under obligation to pay the rent of the demised premises.

4. In contra, learned counsel for the petitioners contends that notices were not in pursuance of section 18 of SRPO, and objected on the word "*encroacher*" was mentioned not as a tenant, even there was no demand by the new owner (landlady) with regard to payment of rent including quantum and period of rent. Further, learned counsel for the petitioners has relied upon an unreported judgment dated 11.06.2018 of this Court passed in C.P.No.S-922/2012 (*Capri Autos, Motorcycle Dealers vs. Dr. Masuma Hasan & others*), which according to

them is on same subject matter wherein this Court has decided issue in favour of tenants.

5. Heard and perused the record.

6. It would be conducive to refer relevant paragraphs No. 12 & 13 of that judgment, which are that:-

“12. Let us now peruse the two legal notices issued from the counsel on behalf of applicant/respondents. The contents of the legal notices without prejudice to the fact as to whether they were served, are reproduced as under:-

“Notice dated: June 8, 2004.

We act for Dr. Masuma Hasan (Our “Client”) who is the owner of Plot No. AM-360, Akbar Road, Karachi (the “Property”).

You are in occupation of a shop in the Property, where you are trading under the name and style of Capri Autos. You are occupying the said shop illegally and are an encroacher.

On behalf of our Client, we require you to inform us within three (3) days of the date of this Legal Notice in what capacity you are in occupation of the shop.”

“Notice dated: August 13, 2004.

We act for Dr. Masuma Hasan (Our “Client”) who is the owner of Plot No. AM-360, Akbar Road, Karachi (the “Property”).

You are in occupation of a shop in the Property, where you are trading under the name and style of Capri Autos. You are occupying the said shop illegally and are an encroacher.

Vide Legal Notice dated June 8, 2004, we had required you to inform us within three (3) days of the date thereof in what capacity you are in occupation of the shop. Our client has received no rent from you and you have not responded to our aforesaid Legal Notice. You are now required to vacate the premises in your possession within fifteen (15) days of the receipt by you of this Legal Notice. In the event of your failure to comply, we have instructions to institute appropriate legal proceedings.”

“13. Even in these notices the applicant/respondent has considered the tenant/petitioner as trespasser/encroacher yet the application was maintained. It was inquired in terms of paragraph 3 of the first legal notice as to in which capacity the petitioner/opponent was occupying the shop in question. These notices are silent as far as “change of ownership” is concerned. The applicant/respondent is only claimed to be owner of the premises in question in the notice without reference of any date. These notices do not disclose the quantum of rent and the period of default.”

7. I am not going to dispute with regard to receiving of notice(s) under Section 18 of SRPO by the tenants, as claimed by the landlady, however, what needs to be *legally* remembered is that it is never the *title/heading* but the contents of a document, as a whole which carry weight. Here, it would be appropriate to refer Section 18 of the Ordinance which 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.”

8. The plain reading of above provision makes it clear that it *first* puts the new owner of a premises (already under tenancy/rent) to intimate the ‘**tenant**’ about such change. After service of such notice, the section speaks about obligation of ‘**tenant**’ that if, on service of such notice, the rent is paid within thirty days from date of intimation the plea of ‘*default*’ would not be available for ‘**new owner**’. In short, for this provision, the ‘**new owner**’ not only shall recognize *earlier* tenancy but shall ask the ‘*tenant*’ to pay ‘rent’ to him for pressing the plea of ‘*default*’, as available within meaning of Section 15(2)(ii) of Ordinance which reads as:-

“(ii) the tenant has failed to pay rent in respect of the premises in his possession within, fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of which agreement, within sixty days after the rent has become due for payment;

9. Now, it can *safely* be concluded that plea of ‘*default*’ shall never be available against an ‘**encroacher**’ but against a ‘*tenant*’ only, therefore, there is weight in arguments of learned counsel for the petitioners that word “*encroacher*” is mentioned as well quantum of amount or demand of rent is not there, hence, they were not in knowledge that landlady is new owner of this

property and that they are bound to pay the rent to her. Besides, landlady claims that she purchased the property in 1976, but she issued notice in 2004, this shows that someone else was receiving the rent of entire period and tenants' plea is that one master Bashir Ahmed was receiving rent on behalf of landlady which, too, shows acquiescence on part of the landlady (respondent) to such an extent. Reliance is place on the case of Mst. Kulsoom Naz v. Dr. Itifaq Hussain & another 2012 SCMR 177 wherein at relevant page-180, it is observed as:-

.... The respondent / landlord admittedly withdrawing rent from the office of the Rent Controller regularly since 1996 and not alleged default, if any, committed by the appellant and for the first time filed the Rent Case in the year 2003. The respondent despite having knowledge of deposit of rent for the month of October, 1995 in January, 1996 did not raise any objection and instead of filing ejectment proceedings on the ground of default filed Rent Case No.201 of 1996 for the enhancement of rent and for the first time filed ejectment application after seven years cannot claim ejectment on the ground of default as apparently he has waived his right in that respect on the principle of acquisition / waiver by his conduct. Respondent No.1 relied upon the case of Badruddin (supra where this Court held that the landlord even on the basis of time barred rent would be entitled to file ejectment case on the ground of default is not applicable to the facts of this case, whereas in the case is Haji Qasim (supra) High Court of Sindh had not accepted deposit of rent in Miscellaneous Rent Case as a valid tender instead of depositing the rent in compliance of tentative rent order passed by the Rent Controller.

Accordingly, in view of unreported judgment and in view of my findings with regard to notice of section 18 of SRPO and definition of words "encroacher" and "tenant" all captioned petitions are allowed, resultantly, eviction applications are dismissed. Such dismissal, however, shall not prejudice the right of the landlady to repeat the application on *fresh* grounds, if become available to her by resort to legal procedure.

J U D G E

Sajid