

before proper forum i.e **Civil Court** because only an affirmative answer to question, regarding existence of such relationship, can vest jurisdiction in Rent Controller. An answer in negation shall always be sufficient for dismissal / rejection of application before Rent Controller. Guidance is taken from the case of Afzal Ahmed Qureshi v. Mursaleen 2001 SCMR 1434 wherein it is held as:-

“4. ... In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that “the issue whether relationship of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith”. PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact that ‘ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties’.”

5. In the instant matter, since the question regarding existence of such relationship has *concurrently* been answered therefore, it would be conducive to make a direct referral to findings of appellate Court, which in rent jurisdiction, is the *final* authority which is:-

“On perusal of Sub-lease Ex. P/4 of Appellant, it appears that the trustees of trust Haji Muhammad Abdullah Abbas namely Abdullah Haji Muhammad Abbas, Sheikh Abdullah Jalil Bin Muhammad, Abdullah Haji Abbas, Haji Ahmed Muhammad and Ahmed Haji Abdullah through attorney Muhammad Moosa sold out said property to Appellant. Further appears that before said sub-lease there was conveyance deed in favour of trust through trustees in respect of said property and thereafter, the said registered sub-lease was executed in favour of Appellant. It may be seen here that on first page of said Sub-Lease neither the CNIC numbers of trustees are mentioned, nor the date or register number of conveyance deed in the name of Trustees is mentioned, even it does not show that the attorney Muhammad Moosa was registered attorney of said Trustees.

On perusal of record of rights produced by official witness at Ex. Cw/1/C reveals the said property was entered in the name of Muhammad Abdullah Abbas Charitable Trust through its aforementioned trustees Abdullah Haji Muhammad Abbass, Abdullah Jalil Bin Muhammad,

Abdullah Haji Abbass, Ahmed Muhammad and Ahmed Haji Abdullah, by purchase of Rs.1,20,000/- under R.D. No. 671 dated 20/06/1949 and as per custodian order vide application dated 28/02/1950 and there is no mentioned of any conveyance deed in favour of trustees as mentioned in said Sub-lease Ex. A/4.

Moving on, the judgment in FRA No.475/2017 passed by this court on 02.12.2017 reveals one Abdul Gaffar had also purchased 680 Sq.Yards of said trust property similarly from said trustees through its same attorney Moosa by way of registered Conveyance Deed dated 17/01/2014 subsequent to purchase of Appellant, against this, on the complaint of one Masood Qureshi the inquiry was held by anti-corruption department.

The inquiry report taken from judgment of FRA No.475 of 2917(2017) is hereby reproduced as under:-

“I have gone through the statements mention above and as well as the record secured from the Mukhtirkar office Saddar Town and Micro filming Saddar Town Karachi, it is transpired that the property No.31/1 sheet No.LR-8 lawrance Quarters admiring 1296 Sq yards was Hindu property there after same was purchased by Haji Abdullah Abbas and others for Abbasi Charitable Trust vide RD No.671 dated 20.06.49 vide settlement custodian order No.660/49 dated 28.02.30, thereafter the said property was forfeited by the Deputy collector vide his order No.5866 dated 19.11.33 in the year 1960. The original extract copy is shown at No.438. The said properties forfeited by the Govt. and thereafter it has not been manipulated the photo copy of the said extract in the name of Abdullah Haji Muhammad Abbas & others and shown themselves as purchasers in sum of Rs.120000/- on 24.04.2006 and then Moosa Baloch has prepared forged general power of attorney in his name vide registration No.208 dated 06.02.90 and then their names and made such fraud and committed fraud with the renties who are already in the possession of the said property and Moosa and others fake deed lease time to vacate the said property hence they liable for offence of cheating fraud, manipulation of Govt. record and preparation of forged lease deeds. Hence, sub registrar Azizullah Balch have mad forged lease deeds in the name of above named land mafias.

RECOMMENDATION:

It is suggested that this matter be placed before ACC-II Karachi for seeking approval to register case against.

1. The then Sub-Registrar Azizullah Baloch retired.

2. Muhammad Moosa Baloch (PP)
3. Khurram (PP)
4. Dilshad (PP)".

It is important to note here that names as given in inquiry report such as Dishad, is Appellant in the titled appeal and Muhammad Moosa Baloch, was attorney who transferred the demised premises through registered Sub-Lease in favour of Appellant and inquiry report further reveals the involvement of Appellant, attorney Muhammad Moosa from whom the Appellant purchased trust property, in the commission of forgery in preparation of power of attorney and committed fraud.

Bare reading of the referred contents of plaint of Suit No.2290/2017, it is clear that the said property is under adjudication before Honorable High Court of Sindh at Karachi as attorney Muhammad Moosa has prayed for judgment and decree that he was legally authorized vide General Power of Attorney dated 06.02.1990 to execute Sub-Lease and so also declaration that said attorney Muhammad Moosa executed indenture of sub-lease in the name of Muhammad Khurram son of Muhammad Ashiqeen and Dilshad Ahmed son of Rasheed Ahmed (appellant in title appeal) being authorized and in accordance with law and the private defendants has no any concerned or entitlement/right or character in property Survey No.31/1, Survey Sheet No.LR-8, measuring 1296 Sq. Yds. Lawrence Road, Lawrence Quarters, Karachi (where the demised premises is situated)".

6. *Prima facie*, the title is in serious dispute; not only this but no rent is shown to have been paid to the earlier landlord or present petitioner, therefore, relationship was never established. In addition to this, learned counsel for respondent No.1 also filed statement along with order dated 18.10.2018, passed by this Court, which speaks that:-

*"All these constitution petitions have been filed against the concurrent findings of the trial court that the relationship of landlord and tenant does not exist. **Learned counsel for the petitioners himself has filed Civil Suit No.2290/2015 in which the petitioners seek declaration of their title on the property.** The very fact that the property seems to have owned by a registered trust and it has been sold by attorney of the Trust cast very various legal doubts in the transaction in favor of the petitioners. The petitioners are, therefore, already before the Civil Court seeking declaration of their ownership meaning thereby that the title of all the petitioners is still under clouds. **Therefore, merely by sending notice under Section of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979), the relationship of landlord and tenant is not established.** The respondents/tenants are depositing rent in the name of the previous owners. Apparently the issue of default has neither been decided by the trial court nor the issue of default can*

be tried unless the petitioners become the absolute owners of the property. These petitions are, therefore, dismissed since the civil suit of the petitioners is pending. However, after the decision on the title they may issue fresh notice of Section 18 of SRPO, 1979 to the tenants and seek remedy in accordance with law.

With the above observations all the above petitions are disposed of alongwith pending application(s)''.

7. From above, it is quite evident that though petitioner is claiming ownership of subject matter property on the basis of registered deed and the petitioner's plea was declined by both the courts below while contending that property relates to the Trust and inquiry is pending with Anti-Corruption. With regard to order dated 18.10.2018 passed by this court learned counsel for the petitioner contended that issue relates to the ground floor of the premises whereas, petitioner is owner of upper floors. Such plea is of no help because position regarding dispute is one and same. Even otherwise, it is suffice to add that ownership *alone* is never sufficient to prove status of **landlord** which, legally, got its own requirement. The issue, as adjudicated by both courts below, while referring Suit No.2290/2015 as well plea taken by the parties in their evidence is not open to an exception.

8. It is added that captioned petitions fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same are contrary to evidence or against the basic of principles of rent jurisdiction. Since counsel for the petitioner has failed to point out any material illegality in the orders passed by the Courts below, hence, instant petitions are dismissed alongwith pending applications.

Office to place copy of this judgment in all connected petitions.

J U D G E