

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition Nos. S – 607, 608 & 609 of 2019

Date	Order with signature of Judge
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27.10.2022 :

Syed Muhammad Yahya, Advocate for the petitioners
a/w Mrs. Rukhsana Yahya Advocate.

Mr. Muhammad Ali Lakhani, Advocate for respondent No.2.

NADEEM AKHTAR, J. – Rent Case Nos. 391/2016, 392/2016 and 393/2016 were filed by respondent No.2 Abdul Hameed Mayet against the petitioners Mehmood Asghar, Mst. Nasreen Mehmood and Abdul Hameed Asghar seeking their eviction from ground, mezzanine and first floors of the building constructed on Plot No.25-C, Survey Sheet No.35-P/1, Commercial Area ‘C’, Block 2, P.E.C.H.S., Karachi (**‘demised premises’**) on the grounds of personal need and unauthorized alterations in the demised premises. An additional ground of subletting was alleged in Rent Case No.393/2016. The rent cases were allowed by the Rent Controller by separate judgments, all dated 14.12.2018 ; and, First Rent Appeal Nos.15/2019, 16/2019 and 17/2019 filed by the petitioners against the orders of their eviction were dismissed by the appellate Court vide separate judgments, all dated 12.04.2019. The petitioners have impugned the concurrent findings of the learned Courts below through these Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973,

2. On 13.09.2022, the following order was passed in these petitions :

“The eviction applications filed by respondent No.2 seeking eviction of the petitioners in all these petitions on the grounds of personal need, subletting and impairing the utility of the demised premises were allowed by the Rent Controller and the appeals filed by the petitioners were dismissed by the appellate Court. It is an admitted position that the demised premises are owned by a trust viz. Laher Muslim Charitable Trust, however, the eviction applications were filed by respondent No.2 in his personal name claiming to be the attorney of the “owner”. It was not pleaded by him in his eviction applications that he was a trustee of the said trust. In their written statements, the petitioners raised a specific objection regarding the locus standi of respondent No.2 and the maintainability of the eviction applications. However, point for determination was not settled by the Rent Controller in this behalf and as such no evidence was led by any of the parties on this point nor was there any finding on this point in the impugned judgments of the Rent Controller. It is my tentative view that this

fundamental question ought to have been framed and decided by the Rent Controller and by not doing so he failed in exercising the jurisdiction vested in him by law. Learned counsel for respondent No.2 requests for time to assist the Court on this point on the next date of hearing and also to seek instructions. By consent, adjourned to 19.09.2022 at 11:00 a.m.”

3. Learned counsel for respondent No.2 concedes that the demised premises are owned by Laher Muslim Charitable Trust (**'trust'**). It is contended by him that respondent No.2, who is one of the trustees of the trust, was duly authorized by the trustees to file eviction proceedings against the petitioners. In support of this contention, reliance was placed by him on a General Power of Attorney dated 28.10.2014 executed in Johannesburg, South Africa, by three trustees of the trust in favour of respondent No.2 and a resolution in his favour passed in a meeting of the trustees. It is further contended by him that said Power of Attorney was executed and the resolution was passed by the trustees by virtue of the power and authority vested in them by the registered Deed of Settlement dated 08.11.1950 whereby the trust was created. It is urged by him that the eviction proceedings were filed by respondent No.2 on behalf of the trust, however, this fact was not specifically mentioned by him in the eviction applications. It is further urged by him that such omission on the part of respondent No.2 was inconsequential as under the law, proceedings on behalf of the trust can be initiated or filed by a trustee in his personal name and capacity. Learned counsel submits that the rent cases filed by respondent No.2 were maintainable in law as well as on facts. In support of his contention, learned counsel placed reliance on Yousaf and another V/S Muhammad Zubair and another (PLD 1986 S.C. 154), Standard Vacuum Oil company V/S Mir Laik Ali and others [PLD 1962 (W.P.) Karachi 727], The Dearul Uloom Naieemia Trust V/S Munir Ahmed (1984 CLC 3483) and Okhai Memon Jama Masjid Trust and another V/S IIIrd A.D.J. Karachi (Central) and others (2007 YLR 2083).

4. On the other hand, it is contended by learned counsel for the petitioners that respondent No.2 was not competent to file the eviction applications as no resolution authorizing him in this behalf was filed by him along with the applications ; a resolution was filed by him for the first time in his evidence before the Rent Controller which could not be admitted in evidence ; the said alleged resolution was fake and fabricated as the date and place of the meeting of the trustees and the names of the trustees who allegedly attended the meeting and passed the resolution were not disclosed therein nor was it signed by any of them ; the alleged resolution was signed only by respondent No.2 who was purportedly the beneficiary thereof ; and, in any event, the alleged resolution did not authorize respondent No.2

to file the rent cases as it was only in respect of the transfer and registration of the demised premises. It is pointed out by him that the attorney / witness of respondent No.2 had admitted in his cross examination that the date of the meeting of the trustees was not disclosed in the alleged resolution and it was only for the limited purpose of transfer / registration of demised premises. It is also contended by him that the eviction applications were signed, verified and filed on behalf of respondent No.2 by his attorney Muhammad Imran Naqvi on the basis of a General Power of Attorney executed in his favour by the former ; the said General Power of Attorney was *ultra vires* the Deed of Settlement as the demised premises were disclosed therein as the property of respondent No.2 and not that of the trust ; and therefore, even the alleged attorney of respondent No.2 had no authority to sign, verify and or file the eviction applications. It is urged by the learned counsel for the petitioners that respondent No.2 did not have any *locus standi* to file the eviction applications in his own name and personal capacity, and his alleged attorney did not have the authority to sign, verify and or file the same on his behalf.

5. It is further urged by learned counsel for the petitioners that the above defects were fatal to the proceedings, however, despite specific objection raised in this behalf by the petitioners in their written statements, the Rent Controller did not appreciate the same and the appellate Court did not rectify the error committed by the Rent Controller. During the course of hearing on 13.09.2022, the possibility of remanding these cases to the Rent Controller was considered and learned counsel for the parties were provided an opportunity to address the Court regarding the maintainability of the eviction applications. Learned counsel for the petitioners insists that the concurrent findings of the learned Court below are liable to be set aside by this Court by allowing these petitions instead of remanding the matter to the Rent Controller. On 21.09.2022, CMA No.5524/2022 was filed by the petitioners praying that the cases should not be remanded as they will be seriously prejudiced in case of remand. After seeking instructions from the petitioners in view of order passed on 13.10.2022, a statement dated 25.10.2022 has been filed today on their behalf stating that they do not wish to press their aforesaid application which is accordingly dismissed as not pressed.

6. Perusal of the eviction applications shows that they were filed by respondent No.2 in his own name and not on behalf of the trust by pleading therein that he was “the lawful attorney of the owner” of the demised premises ; it was not disclosed or pleaded by him that the demised premises were owned by the trust and or he was the landlord ; the name of the trust was not even mentioned anywhere in the applications ; and, it was pleaded by him that the entire demised premises were required by him for his personal use to start the business of a boutique as they were

“most suitable” for such business. In their written statements, a preliminary legal objection was raised by the petitioners that the eviction applications were not maintainable as respondent No.2 could not file the same in his personal name and capacity, and also as he did not have the authority to do so on behalf of the trust. The allegations regarding the unauthorized alterations in the demised premises and subletting and the claim of personal need made by respondent No.2 were denied by the petitioners. In view of the divergent pleadings of the parties, points for determination were framed by the Rent Controller on the points of the alleged unauthorized alterations, subletting and personal need, and also whether the relationship of landlord and tenant between the parties existed or not. As observed in the order dated 13.09.2022 passed in the present petitions, no point for determination was framed by the Rent Controller regarding the maintainability of the eviction applications despite the preliminary legal objection raised by the petitioners.

7. The findings rendered by the Rent Controller on the point of relationship of landlord and tenant between the parties show that the said point was decided by the Rent Controller in favour of respondent No.2. The question whether or not respondent No.2 had the authority to file eviction applications on behalf of the trust or to file the same in his personal name and capacity was not touched or discussed in his said findings by the Rent Controller. Thus, the said question remained unanswered due to the non-framing of a point for determination in this behalf and due to this reason, the material evidence on this point could not be brought on record by the parties. Indeed an additional issue can be framed at the appellate stage and the parties can be allowed by the appellate Court to adduce additional evidence in appeal, but such an exercise could be undertaken by the appellate Court and not by this Court in these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In its constitutional jurisdiction under Article 199, this Court can look into the legality or otherwise of the proceedings before lower Courts and the orders and judgments pronounced by them or any jurisdictional defect therein. In view of the preliminary legal objection raised by the petitioners in their written statements, the Rent Controller was duty-bound to frame a point for determination regarding the maintainability of the eviction applications and to decide this fundamental question before deciding the other points. By not doing so, the Rent Controller failed in exercising the jurisdiction vested in him by law. The cases relied upon by learned counsel for respondent No.2 are distinguishable, particularly the case of Yousaf (supra) as in the said case the *Mutawalli* of the trust had filed proceedings claiming to be the landlord ; whereas in the instant cases, the eviction proceedings were filed by respondent No.2 as the attorney of the owner of the demised premises and he did not claim or plead that he was the landlord.

8. In view of the above discussion, the impugned judgments are hereby set aside and these cases are remanded to the Rent Controller with direction to frame a point for determination regarding the maintainability of the eviction applications in view of the preliminary legal objections raised by the petitioners in their written statements, and to decide the cases afresh within three (03) months strictly in accordance with law. The parties shall be provided an opportunity to adduce fresh / additional evidence only in relation to the said new point for determination, and all other points shall be decided on the basis of the evidence already on record. These petitions and the applications pending therein are disposed of in the above terms with no order as to costs.

J U D G E