

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

**C.P No. S-488 of 2019**

[Muhammad Yaseen versus Mst. Khair-un-Nisa & Ors]

**C.P No. S-489 of 2019**

[Muhammad Rafique since deceased through his LRs versus Mst. Khair-un-Nisa & Ors]

**C.P No. S-752 of 2019**

[Muhammad Jawaid Moten versus Mst. Khair-un-Nisa & Another]

**C.P No. S-753 of 2019**

[Muhammad Jawaid Moten versus Mst. Khair-un-Nisa & Another]

**C.P No. S-754 of 2019**

[Muhammad Jawaid Moten versus Mst. Khair-un-Nisa & Another]

Mr. Muhammad Humayoon Khan, advocate for petitioners in C.Ps No.S-488 & 489 of 2019

Mr. Muhammad Saleem Qureshi, advocate for petitioner(s) in C.Ps No.S-752, 753 & 754 of 2019 and for respondent No.1-A in C.Ps No.S-488 & 489 of 2019

Mr. Shamsuddin Memon, advocate for respondent No.1 in all petitions

Mr. Allah Bachayo Soomro, Additional A.G Sindh

Date of hearing: 12.09.2022

Date of order: 26.9.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** This single order will decide the fate of all the captioned petitions, as all these petitions are interlinked to each other. In C.P Nos. S-488 & 489 of 2019 petitioners, who are tenants, have impugned the judgments dated 11.05.2019 passed by Appellate Court/learned II<sup>nd</sup> Additional District Judge Hyderabad in First Rent Appeal Nos. 17 & 18 of 2018, whereby the orders for eviction, passed by learned Rent Controller have been maintained. Whereas in C.Ps No.S-752, 753 & 754 of 2019 petitioner, being one of the legal heirs, has challenged the orders dated 26.08.2019 passed by learned Rent Controller in Miscellaneous Rent Applications No.311, 312 & 313 of 2012, whereby his applications for withdrawal of his rent share have been dismissed while in the same orders applications of respondent No.1 for withdrawal of rent have been allowed.

2. I have considered the submissions of learned counsel for the parties and perused the record. It will be appropriate to first look into the factual aspect of the case at hand so that the application of law laid down in the orders/judgments which were relied upon by the learned Counsel for the petitioners could be judged.

3. Facts of the matter in nutshell are that one Muhammad Siddique had rented out Shops No.4, 5, 14 & 15 bearing property No. D/42-2371/72 situated in

Mehboob Cloth Market, Resham Bazar Hyderabad (**Demised Shops**) to tenants (who are petitioners in C.Ps No.S-488 & 489 of 2019). After the death of said Muhammad Siddique in the year 2003 tenants started paying rent to his widow respondent No.1 Mst. Khair-un-Nisa; however, in the year 2012 the tenants started depositing rent in the Court of learned Rent Controller concerned through Miscellaneous Rent Applications No.311, 312 & 313 of 2012. Thereafter, respondent No.1 Mst. Khair-un-Nisa filed Rent Applications No.247 & 248 of 2013 for eviction of tenants. The said applications were allowed by learned Rent Controller vide orders dated 03.07.2015, against which tenants preferred Rent Appeals; however, the same were dismissed vide judgments dated 11.05.2019, hence C.Ps No.S-488 & 489 of 2019 have been preferred.

4. During the above proceedings one of the legal heirs of late Muhammad Siddique namely Muhammad Jawaid Moten, who is the petitioner of C.P Nos. S-752, 753 & 754, had filed applications in Miscellaneous Rent Applications No.311, 312 & 313 of 2012 for withdrawal of his 20% share in rent. Respondent No.1 widow Mst.Khair-un-Nisa also filed applications in aforesaid Miscellaneous Rent Applications for withdrawal of total deposited rent by the tenants and vide orders dated 26.08.2019 the applications filed by legal heir Muhammad Jawaid Moten were dismissed whereas the applications of widow Mst. Khair-un-Nisa were allowed, hence legal heir Muhammad Jawaid preferred C.Ps No.S-752, 753 & 754 of 2019.

5. Mr. Muhammad Humayoon Khan, learned counsel representing the tenants in C.Ps No.S-488 of 489 of 2019 argued that respondent No.1 Mst. Khair-un-Nisa had filed rent applications for eviction of tenants on two grounds i.e default and personal bonafide use. He submits that ground of personal bonafide use was not proved. So far as the ground of default is concerned, he submits that Mst.Khair-un-Nisa is not the landlord of tenants, as initially the rent agreement was signed by one Mst. Hanifa, who was the mother of late Muhammad Siddique and after the death of Mst. Hanifa, Muhammad Siddique used to receive the rent, and subsequently after the death of Muhammad Siddique his son Muhammad Munaf used to receive the rent till August 2012. He further argued that thereafter on account of dispute arising between the legal heirs of Muhammad Siddique the tenants started depositing the rent before learned Rent Controller through afore-referred Miscellaneous Rent Applications; as such there is no default on part of tenants, as alleged. He argued that on one hand respondent Khair-un-Nisa had filed applications for withdrawal of rent, deposited by the tenants, before the learned Rent Controller, which itself is an admission that tenants are not the defaulters; however, on the other hand, she has malafidely filed applications for eviction of tenants on the ground of default. He lastly submits that after the death of Muhammad Siddique no notice under Section 18 of Sindh Rented Premises Ordinance, 1979 was issued by respondent No.1 Mst. Khair-un-Nisa and had directly filed the rent case. He lastly prayed that impugned orders/judgments passed by

learned Courts below may be set aside, as tenants are not defaulters and proceedings for partition of demised property are pending adjudication between the legal heirs. In support of his arguments, he relied upon certain case laws i.e. 1989 CLC Lahore 1505, 1990 AC Lahore 41, PLD 2004 Karachi 17, 2004 CLC SC J&K 432, 1990 MLD Karachi 388, PLD 1969 Karachi 123, 1995 MLD Lahore 45, 1996 CLC Lahore 161, PLD 1964 Lahore 448, PLD 1982 Karachi 71, 1989 MLD Karachi 2166, 1989 AC Peshawar 777, PLD 1969 Lahore 16, 1968 SC 230, 1995 CLC SC J&K 1541, 1999 CLC Karachi 1663, 1988 MLD Karachi 1587, PLD 1967 SC 530, 1986 SCMR 441. Learned counsel also relied upon Article 95 of Qanoon-e-Shahadat, Section 33(1)(a) of Registration Act, Order 3 Rule 2(a) CPC, Section 10(3) and 21 Rule (3) of the SRPO, Order 6 Rule 14 & 15 read with Order 3 Rule 1 CPC, Order 41 Rule 27 CPC and Order 20 Rule 4 CPC, to substantiate his above point of view.

6. Mr. Muhammad Saleem Hashmi, learned counsel representing the petitioner in C.Ps No.S-752, 753 & 754 of 2019 submits that after the death of Muhammad Siddique the demised property devolved upon all the legal heirs, as such, the petitioner is one of the legal heirs is entitled to his share in rent; however, his applications for withdrawal of his rent share have been dismissed while applications of widow Mst. Khair-un-Nisa has been allowed. He next submits that petitioner has also filed F.C Suit No.03 of 2010 for partition of demised property, which was partly allowed vide judgment dated 11.08.2015 and appeal arising thereof is pending adjudication before the learned Appellate Court; however, learned Rent Controller, without waiting for the outcome of said appeal dismissed the applications of petitioner for withdrawal of his share in rent while at the same time allowed the applications filed by widow Mst. Khair-un-Nisa, as such impugned orders are illegal and unlawful, hence same may be set aside and petitioner Muhammad Jawaid Saleem may be declared entitled for payment of his rent share, deposited by the tenants before learned Rent Controller.

7. Mr. Shamsuddin Memon, learned counsel appearing on behalf of respondent No.1 widow Mst. Khair-un-Nisa has argued that after the death of Muhammad Siddique tenants started paying rent to widow Mst. Khair-un-Nisa till 2012; however, thereafter they in connivance with petitioner Muhammad Jawaid Moten started depositing the rent before learned Rent Controller, though neither widow Mst. Khair-un-Nisa refused for receiving the rent nor any notice, before depositing the rent, was issued to her, which is sufficient to prove their malafide, as such learned lower Courts have rightly decided the matter of eviction. As for as orders passed in Miscellaneous Applications are concerned, he argued that after the death of Muhammad Siddique petitioner Muhammad Jawaid had filed Suit for partition and rendition of accounts which was decided and by that judgment, he was required to render accounts of Shops, of which he was acquiring rent. He also further argued that these are the second applications, on which impugned orders have been passed and before this petitioner Muhammad Jawaid had also filed applications for withdrawal of his rent share wherein certain orders were

passed by learned Rent Controller whereby he was required to render accounts in respect of Shops of which he was acquiring rent; however, instead of complying with the said orders he filed second applications, which are not maintainable and have rightly been dismissed by learned Rent Controller. He lastly prayed for dismissal of all captioned petitions. He relied upon the cases of Sardarzada Zafar Abbas and others v. Syed Hassan Murtaza and others, **PLD 2005 SC 600**.

8. Learned AAG also supported the impugned orders / judgments and prayed for dismissal of petitions on the analogy that merely deposit of rent in the office of rent controller by the tenant, on the pretext of legal notice, and in absence of any proof of refusal by the landlord, would not be a valid tender in the eyes of law. Prima facie, the contention of respondent landlord is correct which is in consonance with the law laid down by Hon'ble Supreme Court of Pakistan in the case of Muhammad Asif Khan v. Sheikh Israr, **2006 SCMR 1872**.

9. So far as the aforesaid default on the part of petitioner-tenants are concerned, it is well-settled that if a landlord by sharp practice creates a default, the Rent Controller in such a case may hold that there is no willful default on the part of tenant concerned warranting the grant of ejectment and this Court would be justified not to interfere with the above finding. However, in the instant case concurrent finding on the question of default is in the affirmative against the petitioners, which cannot be said to be contrary to the evidence on record or violative of any legal principle. As far as other issues are concerned, learned Rent controller has taken care of the same; and the appellate Court concurred with the view of learned Rent Controller. The question of personal bonafide needs subject premises, in principle, the sole testimony of landlord is sufficient to establish his/her personal bona fide need; and, if the statement of landlord on oath is consistent with his/her averments made in the ejectment application, he/she shall be entitled to the relief provided under SRPO, 1979. On the aforesaid proposition, I am guided by the decision rendered by Honorable Supreme Court in the case of Muhammad Hayat v. Muhammad Miskeen Through Allors & Ors, **2018 SCMR 1441**.

10. In the instant case, the Petitioners/tenants have failed to rebut the evidence of landlord on this point. As far as the case of petitioner in C.Ps No.S-752, 753 & 754 of 2019 is concerned, learned trial court has already taken care of the share issue and it is for the landlords of the subject premises to decide in accordance with law, thus at this stage, no interference is required through Constitutional Petitions as this court would not be in a position to say for and against so far as their respective share in the subject properties is concerned; and, no prejudice shall be caused to the shareholders, through these proceedings.

11. After going through the reasons given by the Courts below, on the issue of personal bonafide necessity of landlord/applicant in the rent cases, I do not find that the findings suffer from any error of law and I do not find that any substantial question of law is involved in the present proceedings to upset the decisions

discussed supra, therefore, the judgments relied upon by the learned Counsel for the petitioners have no application to the facts of the case.

12. In light of the above facts and circumstances of the case, I hereby maintain the concurrent findings of two courts below and, dismiss the instant Petitions along with listed application(s) with direction to the Petitioners/tenants to vacate the subject premises and hand over its vacant and peaceful possession to the private Respondent/landlord within sixty (60) days from the date of receipt of this judgment. In case of failure, petitioners shall be evicted from the subject premises without any notice with police aid.

**JUDGE**

Karar\_Hussain/PS\*