

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI  
**Constitutional Petition No. S – 866 of 2021**

Date	Order with signature of Judge
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Petitioners : Muhammad Jahanzaib, through  
Ch. Muhammad Abu Bakar Khalil advocate

Respondent No.1 : Muhammad Tahir (deceased),  
through LR Nazeer Ahmed,  
through Ms. Nosheen Khan Tajjammul advocate.

Date of hearing : 07.09.2022.

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**ORDER**

**NADEEM AKHTAR, J.** – Rent Case No.1070/2015 was filed by the petitioner against one Muhammad Tahir for his eviction from Shop Nos.1 and 2, situated on Plot No.SB-8/11, Zaki Manzil, Empress Market, Saddar Karachi, (**‘demised premises’**) on the grounds of personal need and default in payment of the monthly rent. Vide judgment dated 18.03.2021, the rent case was allowed by the Rent Controller, however, First Rent Appeal No.63/2021 filed by the legal representative of the above named deceased opponent was allowed by the appellate Court vide impugned judgment dated 27.09.2021, against which the present constitutional petition has been filed by the petitioner.

2. The rent case was filed by the petitioner in November 2015. In the title of the rent case, the said Muhammad Tahir / opponent was shown as “deceased”. It appears that Nazeer Ahmed, the son and legal representative of the above named deceased opponent, was substituted in his place subsequently whereafter he filed his written statement in October 2017 wherein a specific objection was raised by him that the rent case was not maintainable as it was filed against a dead person. It was stated by him that his father / the above named deceased opponent had passed away in the year 2007. Perusal of the judgment of the Rent Controller shows that while allowing the rent case this fundamental question was not addressed or decided by him. However, this aspect was noticed and dealt with by the appellate Court by setting aside the judgment of the Rent Controller and dismissing the rent case.

3. It is contended by learned counsel for the petitioner that the petitioner was not aware of the fact that the opponent Muhammad Tahir was not alive when the rent case was filed by him, however, the defect, if

any, in the proceedings initiated by the petitioner stood cured when the legal representative of the deceased opponent was substituted in his place.

4. On the other hand, learned counsel for respondent No.1 contends that the rent case filed by the petitioner against a dead person was a nullity in the eyes of law and as such it ought to have been dismissed by the Rent Controller. It was further contended by her that the above defect could not be cured subsequently by impleading the legal representative of the deceased.

5. I have heard learned counsel for the parties and have also examined the material available on record and the law cited at the bar. The petitioner has not disputed that the rent case was filed by him against a dead person as he has claimed that he was not aware about the death of the deceased. It is not his case that the deceased was alive at the time of filing the rent case and the assertion about his death at the relevant time was false. Thus, it is an admitted position that the rent case was filed by him against a dead person. His only defense is that the defect, if any, in the proceedings initiated by him stood cured when the legal representative of the deceased was substituted in his place. I am afraid this contention cannot be accepted as the legal representative(s) of a deceased opponent / defendant / respondent can be brought on record only if the proceedings had been instituted during his lifetime and he dies after institution and during pendency of the proceedings. It is well-settled that a proceedings initiated against a dead person, as in the present case, is a nullity and such fatal defect therein cannot be cured subsequently by bringing his legal representatives on record. If any authority on this point is needed, reference may be made to Muhammad Yar (deceased) through L.Rs. and others V/S Muhammad Amin (deceased) through L.Rs. and others, 2013 SCMR 464, wherein the law on this point has been settled by the Hon'ble Supreme Court. The relevant passage of the above-cited authority is reproduced below for convenience and ease of reference :

*“3. Heard. Attending to the first question, the legal position by now is quite settled and explicit, in that, where a suit / lis is against only one defendant / respondent of the case, undoubtedly it shall be invalidly instituted being against a sole dead person (defendant) and shall be a nullity in the eyes of the law as a whole ; it shall be a still born suit / lis ; an altogether dead matter, which cannot be revived ; it shall, thus not merely be a defect which can be cured, rather fatal blow to the cause. However, the position shall be different where the lis is initiated against more than one defendants / respondents and out of them only one or few are dead, while the*

*other(s) is/are alive. In such a situation, it shall be a validly initiated suit / lis in respect of the respondent(s), who are alive, but invalid qua those who are dead. To cater for such a situation, it has been held in Malik Bashir Ahmed Khan and another v. Qasim Ali and 12 others (PLD 2003 Lahore 615) :--*

*“Obviously, if a suit has been filed against the only defendant, who was dead at the time of the institution, such suit shall be still born, non-existent, and a nullity in the eyes of law, therefore, it could not be merely defective and thus, could not be revived by impleading the legal heirs of the deceased defendant. The plaintiff in such a situation, subject to law, may have the option to bring a fresh suit against the heirs on the basis of the same cause of action.....”*

*The above is the apt and correct exposition of law and such judicial opinion of the Lahore High Court is upheld and approved in its letter and spirit and should be taken to be the view of this Court. Therefore, we are constrained to set aside that part of impugned judgment, which is contrary to the law enunciated in the noted dictum (PLD 2003 Lahore 614 supra).”*

6. In view of the specific objection raised by respondent No.1 in his written statement regarding the maintainability of the rent case on the ground that it was filed against a dead person, a point for determination ought to have been framed by the Rent Controller. However, as no point for determination was framed in this behalf, no findings were given in relation thereto by the Rent Controller and his judgment was completely silent with regard to this important and fundamental objection raised by respondent No.1.

7. As the rent case was filed by the petitioner admittedly against a dead person, the same, being void and a nullity in the eyes of law, was liable to be dismissed by the Rent Controller ; and, such fatal defect could not be cured subsequently by impleading respondent No.1 / legal representative of the deceased. By not dismissing the rent case, the Rent Controller failed to exercise the jurisdiction vested in him by law. In such circumstances, the judgment of the Rent Controller has been rightly set aside by the appellate Court by dismissing the rent case. The findings of the appellate Court, being in accord with the law, do not require any interference by this Court in its constitutional jurisdiction. Accordingly, the petition is dismissed with no order as to costs.

J U D G E