

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

C.P. No. S-385 of 2010

Petitioner : Jitendra through Parkash Kumar Advocate.
Respondents : Abdul Sattar & Others Through
Imada Ali R. Unar, Advocates
Date of hearing : 10.04.2023
Date of Judgment : 28.04.2023

JUDGMENT

Muhammad Junaid Ghaffar, J:- This petition impugns judgment dated 18.5.2010 passed in First Rent Appeal ("FRA") by Vth Additional District Judge, Hyderabad, whereby while allowing the FRA, judgment dated 18.8.2008 of the Rent Controller Hyderabad in Rent Application No.77 of 2005 through which the ejectment application of the Petitioner was allowed has been set-aside.

2. Learned Counsel for the petitioner has contended that the Appellate Court has erred in allowing the Appeal as the Respondents had admittedly defaulted in deposit of rent; that the petitioner inherited the property and after mutation in his name issued a notice on 14.12.2004 under Section 18 of the Sindh Rented Premises Ordinance, 1979, ("Ordinance"); that notwithstanding the denial of receiving any such notice, even after filing of the Rent Application and upon service, still no rent was ever tendered to the Petitioner; that the deposit of rent in Miscellaneous Rent Case No.143 of 1996 was also done after default had occurred, whereas, even after filing of the Rent Application, it was still deposited in the same account and MRC; hence, it is a case of admitted default and the learned Rent Controller had rightly passed the ejectment order; that in case of other tenants on same facts this Court has twice dismissed the petitions of the tenants against ejectment orders which was also maintained by the Supreme Court; hence, in view of the law¹ settled by the Courts, this petition merits consideration

¹ Mst. Yasmeen Khan v Abdul Qadir (2006 SCMR 1501); Raja Abdul Rauf v Habib Ahmed (PLD 2005 Karachi 416); Sardar Muhammad v Khwaja Muhammad Nazar (2004 CLC 289); Hameed v Jitendra (2010 CLC 561); judgment dated 9.10.2020 in CP No.S-574 of 2011 upheld in CPLA No:1269-K & Others vide order dated 09.12.2020

and be allowed after setting aside the impugned judgment of the Appellate Court.

3. Learned Counsel for Respondents has supported the impugned judgment and has contended that the Rent Application was time barred and hit by laches; that no default had been committed as the Rent was deposited in MRC No.143 of 1996; that the father of the Petitioner used to collect rent on lump sum basis collectively for various months and used to issue rent receipts on same date; that even otherwise during the alleged default period the Petitioner was not the owner and cannot claim any default for such period; that the Rent Application was filed by only one of the legal heirs, whereas, admittedly there are other owners who never alleged default; hence, the same was not maintainable; and therefore, in view of the law² settled by the Courts this Petition is liable to be dismissed.

4. Heard all learned counsel and perused the record. It appears that the Petitioner had filed Rent Application No.77 of 2005 primarily on the ground of default by setting up his case that even after a duly issued notice dated 14.12.2004 under Section 18 of the Ordinance, the Respondents had committed default, whereas, even prior to this they had defaulted since the year 1994, as for Rent of January 1994 onwards, MRC was filed for the first time in the year 1996. On the other hand, the Respondents contested the matter on the ground that the father of the Petitioner used to collect rent as and when he desired and then used to issue separate receipts for all the periods on one date. It was further contended that when no one approached them to collect rent after January 1994, they started depositing the rent in MRC No.143 of 1996. Though this narration of facts in the written statement appears to be an admitted default, at least in respect of the period as above; but since the petitioner, during this period was not an owner and no notice was ever issued under Section 18 of the Ordinance, this default, if at all, could not have been looked into in these proceedings filed by the Petitioner. Nonetheless, it appears to be a case that even after issuance of notice under Section 18 *ibid*; default had been committed, though such notice has not been acknowledged by the Respondent. Even then, if the filing of a Rent Application for ejection is taken as a notice for the purposes of Section 18 of the Ordinance, the Respondents have committed default inasmuch as it has not been denied on their behalf that never ever, any attempt was made to tender rent to the Petitioner after being served in the Rent Application; nor

² Abdul Aziz v Abdul Ghani (1986 SCMR 1857); Usman Ghani v Gulzar Ahmed (1987 CLC 1753); Zohra Bai v Standard Industries Ltd., (PLD 1994 Karachi 209); Saeeda Bano v Saima Silk Factory (1994 CLC 1894); Pakistan State Oil Company Ltd., v Sikandar A Karim (2005 CLC 3); Maderassa Darul Fazal Halani v Muhammad Ramzan Kashmiri (2005 CLC 83); Shakeel Ahmed v Muhammad Tariq Farogh (2010 SCMR 1925); Jehangir R Kakalia v VIIIth Additional Dist. Judge (SBLR 2014 Sindh 342); Sadia Awan v Daniyal Pervaiz (2007 SCMR 174)

any rent was deposited by way of a Rent Case in favor of the Petitioner. Their stance is that since rent was being deposited in favor of the father of the Petitioner, it would suffice and would not be a case of default. In fact, learned Counsel also made an attempt to argue that if at all, it was a case of technical default and not a willful default. This argument appears to be misconceived and is not supported by any law at least. Section 18³ provides that 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. Now the case of the Respondents is that firstly no such notice was ever received. And secondly, the rent was being deposited in the account of the Petitioner's father; hence, in that case there was no default on their part. This approach does not appear to be correct inasmuch it would render the provision of section 18 *ibid* as redundant, as it also applies to and caters to change of ownership on the basis of inheritance. If not, then the legislature would not have used the words "inheritance" in section 18 *ibid*. Therefore, this argument is without any legal basis and the Appellate Court was not justified in holding that in such case the delay can be condoned. There appears to be no such provision in the Ordinance to condone the delay or default on the part of a tenant.

5. It further appears in that in respect of the same demised premises, and in identical facts the tenants of the Petitioner had defaulted and a same plea was taken in the case of Hameed⁴ and a learned judge of this Court by following the dicta laid down in the case of Muhammad Yousuf & Habib Bank Limited⁵ held that even when notice sent under S.18 of Sindh Rented Premises Ordinance, 1979, is not dispatched or if dispatched is not actually received by tenant initiation of rent proceedings in Court become sufficient notice to the tenant with regard to change of ownership and the tenant is liable to tender rent directly to new landlord within 30 days of receipt of notice of legal proceedings. Therefore, this argument of the Respondents Counsel is misconceived and is hereby repelled. It further appears that in some other litigation in respect of the same premises against some other tenants, a similar issue came before a single judge of this Court in CP No.

³ 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.

⁴ 2010 CLC 561

⁵ 1986 SCMR 951

⁶ 2001 SCMR 678

S-574 of 2011 and other connected matters (*Abdul Rehman Rajput v District Judge*) wherein the two Courts below had decided the matter against the tenants. The contention of the tenants was repelled vide judgment dated 09.10.2020 against which leave⁷ was refused by the Supreme Court. The relevant finding is as under:

13. On the point of default in payment of rent, it is now well-settled that even when Notice under section 18 of the Sindh Rented Premises Ordinance is not dispatched, or if dispatched, is not received by the tenant, the initiation of rent proceedings in Court is in itself a Notice to the tenant about the change of ownership. And, the tenant is liable to tender rent directly to the new landlord within thirty (30) days of the receipt of notice of the legal proceedings. In the case of *Muhammad Yousuf Vs. Mairajuddin* reported in 1986 SCMR 951, it was held that if the notice about the change of ownership was not served, this by itself would not amount to the absence of a relationship of landlord and tenant. The eviction application itself is to be treated as notice and if rent is not tendered directly to the new landlord within the statutory period of 30 days of the knowledge of change of ownership then the tenant becomes liable for eviction. In the case of *Habib Bank Limited Vs. Sultan Ahmed* reported in 2001 SCMR 678, the tenant acquired knowledge about the transfer of ownership in favour of a new landlord on two occasions i.e. when the application under Order I rule 10, C.P.C. was filed, and, secondly, when the landlord instituted an ejectment application against the tenant and despite knowledge of change of ownership through such proceedings, rent was not tendered to the new landlord. In such circumstances, it was held that it was a case of willful default in payment of rent making tenant liable for eviction. Therefore, this Court in its constitutional jurisdiction finds no legal justification to interfere in the concurrent findings of both the Courts below.

6. Insofar as the argument that only one legal heir had filed the rent proceedings is concerned, the same is also not tenable as general rule of law has been that a co-sharer can file ejectment proceedings against a tenant without impleading other co-sharers as the wisdom behind such principle is that, co-sharer acts on behalf of and represents the interest of all the co-owners of the property⁸.

7. As to exercise of any discretion in this Constitutional jurisdiction in conflicting findings of the Courts below wherein the Appellate Court has overturned the finding of the Rent Controller, it would suffice to observe that finding of Appellate Court in conflict with the finding of trial Court can only be discarded if it is not based on correct appreciation and analysis of the evidence; is contrary to the material on record; and arbitrary or perverse on the face of it. All these requirements are fulfilled in this particular case as the learned Appellate Court has even held that "if there is delay in the payment of rent on the part of tenant but the same can be condoned⁹". This, with respect is totally against the spirit of law and the Ordinance under consideration as there is no such provision conferring any jurisdiction to the

⁷ CPLA Nos. 1269-K of 2020 and others dated 9.12.2020. (Review also stands dismissed on 4.2.2022)

⁸ Muhammad Hanif v Muhammad Jamil Turk (2002 SCMR 429)

⁹ (typed page 5 of the order)

Appellate Court to condone any default in this manner. This has even been done without advertng to any such material on record.

8. Learned Counsel for Respondents has also placed reliance on the case of *Hirjibhai*¹⁰; *Pakistan State Oil*¹¹ and *Reckitt & Colman*¹²; to argue that if at all this was a case of technical default and not willful default. With respect these cases do not support his case in any manner; rather go against the case of Respondents inasmuch as it has been held in these cases that since a dead person cannot receive any rent, any deposit in his account is not justified; more so when the tenant has been made aware of the new landlord¹³. This, resultantly is not a case of any technical default (which otherwise does not find mention in the Ordinance) as contended, as the conduct of the Respondents in the present case does not entitle them to even otherwise seek refuge thereof.

9. In view of hereinabove facts and circumstances, this Court is of the view that it is a fit case to exercise jurisdiction in the matter so as to correct the wrong committed by the Appellate Court. Accordingly, while allowing this petition the impugned judgment of the Appellate Court dated 18.05.2010 is hereby set-aside and the judgment of the Rent Controller is restored. Let a writ of possession be issued by the concerned Court within 60 days from the date of this judgment. Office to communicate this order to all concerned.

10. Petition stands allowed in the above terms.

Dated: 28.04.2023


JUDGE

Ahmed/Pa