IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-1311/2019

Petitioner	:	Allahdad Niazi, through Mr. Tajammul H. Lodhi and Mrs. Nausheen Tajammul, advocates.
Respondents	:	Samiullah Niazi and others, through Mr. Muhammad Arif, advocate for respondents No.1 to 3.

Date of hearing : 09.03.2021.

Date of announcement : 18.03.2021.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Petitioner has impugned order dated 14.02.2019 of learned Rent Controller concerned allowing ejectment application of respondent No.1 and order dated 11.11.2019 of appellate court dismissing the appeal against that order.

2. Case of the petitioner is that petitioner's wife is sister of respondents No.1 and 2 and daughter of respondent No.3; demised premises was handed over by her father for her dwelling house hence petitioner with his family is in occupation as legal heir of respondent No.3. Learned counsel for petitioner has emphasized over the judgment which shows that respondent No.3 has purchased demised premises from Khaliq Dad Khan. He has relied upon 1994 SCMR 572.

3. Whereas case of the respondents No.1 and 2 is that the property was rented out to the petitioner – their brother-in-law, that petitioner failed to pay the rent within time. Learned counsel for respondents has relied upon 1984 SCMR 953, 1999 SCMR 2384, 1987 CLC 635.

4. I have perused the record as well Orders of both courts below.

5. Before attending the merits of the case, it is worth adding here that "the issue whether relationship of landlord and tenant exits between the parties is one of jurisdiction and should be determined first because an answer in negation shall always be sufficient in bringing the matter out of the domain of 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 exits 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".

Thus, it needs not be reiterated that such dispute must always be attended *carefully* and no *implied* presumption is allowed to believe existence of such relationship unless it is not disputed that ***'induction into premises was that of tenant'*** or where the landlord (applicant), *prima facie,* proves existence of such relationship by producing reliable evidence in shape of agreement; payment of rent etc**.** In the instant matter, the petitioner is husband of sister of respondent nos.1 & 2 while

daughter of respondent no.3, who while categorically denying the existence of relationship of landlord and tenant, pleaded that in-fact it was not his induction but that of his wife by her father as her share. Such plea logically carries weight unless rebutted properly by landlord, particularly when the sale deed shows share of Mst. Bahishtan Bibi – mother of petitioner's wife whereas. In such eventuality, the *initial* burden was always upon the respondents / applicants to prove that such induction was not in the manner, as claimed but as **'tenant'**. In this regard, the reliance has rightly been made on the case of *Umar Hayat Khan v. Inayatullah Butt* 1994 SCMR 572**.**

Having said so, at this juncture it would be conducive to refer the adjudication by the trial court in point No.1 as under:-

> "On this point it is the case of the applicant that opponent is residing on --- portion of house **which is their property and title documents are also in the name of applicant and his family including mother and brother**. It is further the case of applicant that opponent is husband of his sister and he has been residing as tenant on First Floor, of House No.F-15, Sheet No.27, Model Colony, Malir, Karachi of the house and was paying monthly rent to applicant and paid rent till July, 2017, thereafter he has stopped to pay rent, moreover the applicant requires said portion of house for his personal bonafide use. The applicant in his evidence has fully supported the contents of ejectment application and produced documents in support of his claim, the applicant was cross examined by the learned counsel for opponent but except the defense that opponent is husband of sister of applicant therefore he is residing in portion of said house and said portion of house is given to his wife as her share through private settlement. Thereafter the opponent was given so many opportunities but he has failed to lead any evidence in support of his defense, consequently his side was closed, so nothing has come on record to rebut the evidence of applicant.
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> The plea taken by the opponent has no value in the eyes of law as firstly he failed to lead any evidence, secondly there is no proof about any private

settlement about share of his wife from the properties left by her deceased father. **Even otherwise the wife of opponent has not come forward to claim her share at any forum as evident from record**. Be that it may, if the wife of opponent is entitled for any share from the inherited property of her father, she may avail the remedy available to her according to law, but as far as the contention of opponent to reside in portion of house in question is concerned which too without any evidence is of no avail and cannot be considered in any annals of law.

I have heard learned counsel for the applicant and have gone through the relevant material brought on record. Learned counsel for applicant relied upon the case of **Mst Samina Begum …V.S Muhammad Ali reported in 1991 MLD page No.1084,** where it has been held as under:-

> **(b) Sindh Rented Premises Ordinance (XVII of 1979)-- Ss. 15 & 19-----**Written statement filed by tenant, could not be taken as a piece of evidence by itself nor documents filed alongwith written statement could be taken as a piece of evidence without being proved by somebody competent to testify---- Necessary for parties to step into witness box or to produce witnesses so that they could be tested on the touchstone of cross-examination.

I am in full agreement with above case law which is fit in this case as such this case is also of like nature as opponent has failed to lead any evidence, therefore mere filing of written statement cannot be considered. There is no rebuttal and denial on the part of opponent. Since the opponent has failed to defend the case and her absence is fatal to his case as the opponent did not lead evidence, therefore in absence of any material or defense, the assertions of applicant incorporated in affidavit and documents filed by applicant have gone unchallenged and un-rebutted. **It is settled principle of law that unchallenged evidence cannot be discarded without any reasonable exception on contrary*;*** therefore, I have no other alternate except to believe the version of the applicant. I am of humble opinion that the applicant has established bona fide need by entering into Witness Box and corroborated his version on oath before this court, which is not challenged. On this point I seek guidance from **2001 SCMR 1197**, wherein the Hon'ble Supreme Court of Pakistan has been pleased to hold as under:-

> "---**S. 15---Bonafide personal need of landlord---Proof---Statement of landlord on oath---Effect---Where the statement on oath was quite consistent**

> **with his averment made in the ejectment application and the same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on oath would be considered sufficient for acceptance of the ejectment application---Conclusion drawn by High Court being unexceptionable did not call for interference".**
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> For what has been discussed above, I am of the view that applicant has successfully established his case, therefore the point No.1 is replied in affirmative."

6. *Prima facie,* the learned Rent Controller appears to have been much influenced because of absence of the petitioner / opponent but entirely failed that denial of relationship had come on surface therefore, proper determination of such **'issue',** being directly relating to jurisdiction, was always material. I would add take no exception to legal position regarding proof of *bona fide personal need* but worth to add that this shall always come after an *affirmative* answer to question of existence of relationship between parties as ***landlord and tenant*** which, *legally,* can't be presumed as existing without proof by the landlord once it is denied by claimed tenant. Further, admittedly respondent no.3 is no more alive; tenancy is disputed but not a single receipt or proof has been submitted to substantiate that rental income was paid but mere failure of petitioner / opponent in leading evidence has been taken as sufficient proof of existence of relationship, which, I would add, can't be stamped as right approach. Learned trial Judge while considering the evidence of applicants as un-rebutted, allowed eviction application; in similar fashion the appellate court endorsed that Order which, *legally,* can't be stamped. Both courts failed to adjudicate question of relationship properly. Accordingly, instant petition is allowed; impugned Orders are set aside; case is remanded

back for de-novo trial. Petitioner shall be competent to file affidavit in evidence and lead evidence as well. Trial court shall decide the matter preferably within six months.

J U D G E

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