

Judgment Sheet.

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT.

Case No. W.P.No.1913/2020

M/S Phipsons Company (Pvt.) Limited

Versus

Zahid Moyeen etc

JUDGMENT

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| Date of hearing | 11.7.2024 |
| Petitioner by | M/S Nadeemuddin Malik and H.M. Zeeshan Khan, Advocates. |
| Respondents by | M/S Malik Faisal Khalid, Malik Sahib Khan Awan and Qamar Zia Sandhu, Advocates. |

Abid Aziz Sheikh, J.-. This constitutional petition is directed against the final order dated 20.12.2017 and judgment dated 12.12.2019 passed by learned Special Judge (Rent) and Appellate Court respectively, whereby the ejectment petition filed by respondent No.1 (**respondent**) against the petitioner (**petitioner**) was allowed.

2. Relevant facts are that respondent being a Mutwalli of Ghulam Rasool Trust (**Trust**) filed ejectment petition on 30.1.2014 against the petitioner in respect of portion of the property (basement) measuring 16 marla situated at 60-Shahrah-e-Quaid-E-Azam,

Ghulam Rasool Trust Building, Lahore (herein after referred to as **rented premises**). The petitioner filed leave to contest application under section 22(2) of the Punjab Rented Premises Act, 2009 (**Act**), however, the same was treated beyond period of ten days by Courts below, nonetheless the ejectment petition was decided on merit and allowed by learned Special Judge (Rent) vide impugned final order dated 20.12.2017, which was also maintained by Appellate Court on 12.12.2019, hence this constitutional petition.

3. Learned counsel for the petitioner submits that petitioner appeared before the Court for the first time on 23.4.2014 and filed leave to contest application on 03.5.2014. He submits that first day of appearance i.e.23.4.2014 was required to be excluded while calculating period of ten days under section 22(2) of the Act in view of section 8 of the Punjab General Clauses Act, 1956 (**Act of 1956**), hence leave to contest application was within a period of ten days. He further submits that ejectment petition was filed by one Zahid Moyeen being a Mutwalli (**Mutwalli**) of the Trust and not by the Trust itself, hence he had no authority or locus-standi to file ejectment petition. In this context, he further explained that in the earlier round of litigation, three similar ejectment petitions were filed in year

1989, 1999 and 2000 but all those ejectment petitions were either filed by the Trust through its Mutwalli or by Mutwalli alongwith the Trust, hence this ejectment petition only by Mutwalli without any authority to file the same is not maintainable. He next argued that admittedly, the original lease with the Trust was for 10 years vide lease agreement dated 05.1.1962, however, on 27.3.1972, it was unanimously agreed that lease will be for 99 years and said mutual agreement was duly acknowledged by the then Mutwalli on 28.3.1972. He submits that though the respondent has denied the above assertion and claiming that lease was only for 10 years, however, this being a disputed question of fact could not be decided without grant of leave to contest and recording of evidence, hence impugned order and judgment is not sustainable.

4. Learned counsel for the respondent on the other hand submits that leave to contest application being beyond period of ten days was barred by time. He further submits that scheme was formulated for the management, control and administration of waqf properties of Trust through award dated 18.6.1989 and under the said award, Mutwalli is not only empowered to give on rent or lease out any property of the waqf but he is also receiving the rent and operating the bank

accounts of the Trust on behalf of the Trust, therefore, he falls within the definition of landlord under section 2(d) of the Act, hence can file the ejectment petition. On merit, he submits that the rented premises was handed over to the petitioner in year 1962 for period of 10 years, which expired in year 1972 and thereafter, lease was renewed from year to year basis till 2013 but thereafter, the lease was not further extended. Submits that no document was executed between the parties for 99 years perpetual lease. He submits that in the earlier ejectment petition filed in year 1989, the parties effected compromise on 29.5.1991 but it is nowhere specifically agreed in said compromise that lease is or was for period of 99 years. Further submits that in the subsequent ejectment petitions filed in year 1999 and 2000, petitioner filed written replies but never claimed that lease is for 99 years, hence it is afterthought and cannot be a ground for leave to contest the ejectment petition. Submits that notwithstanding the above factual position, in any case, the so called 99 years lease being not a registered document, will be treated on month to month basis after lapse of 11 months and therefore, ejectment petition was maintainable.

5. Arguments heard. Record perused.

6. Before touching merits of the case, I would like to decide the legal objection that whether the leave to contest application was within time or not. In this regard, it is admitted position on record that the ejectment petition by the respondent was filed on 30.1.2014, in which, the petitioner made its first appearance in the Court on 23.4.2014 and thereafter, filed leave to contest application on 03.5.2024. The petitioner under section 22(2) of the Act was required to file leave to contest application within ten days of the first appearance. Admittedly, if the day of first appearance i.e. 23.4.2024 is included to compute the period of ten days, leave to contest application is time barred, however, if the said day is excluded, then the leave to contest application is within a period of ten days. Now the core legal question is that whether the first day of appearance is to be excluded or not for computing the ten days limitation under section 22(2) of the Act.

7. The above legal question has already been examined by this Court in case titled Abdul Karim vs. Shakeel Ahmad etc (2012 CLC 261) and held that in view of section 8 of the Act of 1956, the first day of appearance will be excluded for computing the period of ten days. In the aforesaid case, the first appearance

before the Court was 05.9.2008 and the leave to contest application was filed on 15.9.2008. However, this Court held that in view of section 8 of the Act of 1956, the first day shall be excluded, hence leave to contest application was within ten days. The relevant part of the judgment is reproduced hereunder:-

“The submission of learned counsel for the petitioner is equally not convincing in view of section 8 of West Pakistan General Clauses Act, 1956 which provides the exclusion of the first day in calculating the period of limitation. This provision more particularly is applicable to the statutes to which the Limitation Act, 1908 is not applicable. If the time of 10-days prescribed for filing leave application is counted according to the provisions of section 8 then the application filed by the respondent on 15-9-2008 is well within time. The word “within” has been used in different other special statutes also; the interpretation for calculating time period shall be governed by provisions of General Clauses Act, 1956. Keeping in view this beneficial interpretation of section 8 of Act (supra) this Court is of the view that the application filed by the respondent for contesting the ejectment petition was within the statutory period”.

Similarly in case of Mst. Saima Zameer vs. Muhammad Javed Iqbal (2017 CLC 1695), recovery suit was filed under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) and as per Appendix-B of Form-IV of CPC, the leave to appear and defend was to be filed within ten days of the service of the summons. In said case, the service was effected on 15.4.2011 whereas the application for leave to appear and defend was filed on 25.4.2011, however, this Court held that in view of

section 8 of the Act of 1956 and section 9 of General Clauses Act, 1897 (**Act of 1897**), the day of service will be excluded from computing the period of ten days. Relevant extract from the judgment is reproduced hereunder:-

“The service of summons in summary suit is effected through summons available in the Appendix 'B' of Form IV of the C.P.C. It is mentioned that "within 10 days from the service" the defendant has to obtain leave to appear and defend the suit. As the service was effected on 15.04.2011, therefore, within 10 days means excluding 15.04.2011 and the last date for obtaining the leave to appear and defend was 25.04.2011, therefore, the application for leave to appear and defend the suit has been filed within the prescribed period of limitation. To strengthen this legal position, it is necessary to reproduce the language of Section 9 of the General Clauses Act, 1897 as well as Section 8 of the West Pakistan General Clauses Act, 1956, respectively, as follows:-

"9. Commencement and termination of time.--- (1) *In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".*

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulation made on or after the fourteenth day of January, 1887."

"8. Commencement and termination of time.-- *In any West Pakistan Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time to use the word "to".*

It is clear that within 10 days from the service means that day of service be excluded from

computing the period of 10 days, therefore, the time provided for filing an application for leave to appear and defend the suit was till 25.04.2011 when the day of service i.e. 15.04.2011 is excluded from computing the period of 10 days”.

In the case of Babar Jahangir and another vs. Nadir Ali (2022 YLR 570), the same view was also expressed by Sindh High Court in respect of leave to contest application filed in suit under Order XXXVII CPC. The relevant text of the judgment is reproduced hereunder:-

“The service of the summons in the summary suit is effected through summons available in the Appendix ‘B’ of Form IV of the C.P.C. It is mentioned that “within 10 days from the service” the defendant has to obtain leave to appear and defend the suit. As the service was effected on 16.3.2018, copy of the same is available on record, therefore, within ten days means excluding 16.3.2018 at lest the date of obtaining of leave to appear and defend was 26.3.2018, therefore, the application for leave to appear and defend the suit has been filed within the prescribed period of limitation”.

The Supreme Court in case of Raja vs. Tanveer Riaz and others (PLD Supreme Court 466), while computing the period of 30 days for deposit of zar-e-some under section 24 of the Preemption Act, 1991 excluded the day on which order directing the pre-emptor to make the deposit was passed, in view of section 8 of the Act of 1956.

8. In view of above discussion and case law, there is no manner of doubt that application for leave to contest

filed by the petitioner was within statutory period of ten days prescribed under section 22(2) of the Act, hence was not barred by time.

9. Notwithstanding the above legal position, it is noted that leave to contest application filed by the petitioner was not dismissed merely being time barred, rather same was discussed and decided on merits, hence there is no need to remand the case, rather this Court can adjudicate that whether the petitioner is entitled for leave to contest the ejectment petition on merits. In this regard, the perusal of leave to contest application shows that it is not disputed that petitioner is tenant of the Trust, however, the main contentions of the petitioner is that ejectment petition has not been filed by the Trust but by Mutwalli, who is not authorized to file ejectment petition and secondly vide correspondence dated 27.3.1972 and 28.3.1972 with the then Mutwalli (Ch. Muhammad Afzal), the lease was extended for 99 years which will now expire in March, 2071, hence the ejectment petition is premature.

10. I have carefully examined above contentions on merits. So far as the maintainability of ejectment petition by Mutwalli is concerned, admittedly, the waqf properties were dedicated by Ch. Ghulam Rasool under the waqf deed dated 29.10.1917. However,

subsequently, the dispute and difference arisen between the parties with regard to the control, management and supervision of the waqf properties and consequently, the arbitration was carried out between respective parties and arbitration award (**arbitration award**) was passed on 18.6.1989. Under the aforesaid arbitration award, the Mutwalli inter-alia has the following powers:-

Powers of Mutwalli.

(b) The Mutwalli shall have the powers to engage Vakil, Advocate or a Mukhtar for the conduct of cases for and against the property made waqf.

(d) That it would be in the competency of the Mutwalli of each unit to give on rent and lease out any property/properties for any period of time as he may deem fit and proper for the benefit of the waqf.

From the above clauses of arbitration award, it is manifest that Mutwalli is not only empowered to engage counsel for the conduct of cases for the waqf property but he would also be competent to lease the property of the waqf. Beside above, the present Mutwalli (Zahid Moyeen) is not only receiving the rent from the petitioner on behalf of Trust (as evident from the petitioner letter dated 25.9.2008) but he is also authorized by the Trust to operate bank account of the Trust where the said rent is being deposited. Under section 15 of the Act, the “landlord” may seek eviction

of the tenant on various grounds mentioned therein. The term “landlord” is defined under section 2(d) of the Act which means owner of premises and includes a person entitled or authorized to receive rent in respect of the premises. In view of the above factual and legal position, notwithstanding the fact that property is vested in the Trust, the Mutwalli being authorized to lease out the property and also receiving rent fall within the definition of landlord and could file ejectment petition.

11. Regarding the next contention of the petitioner that lease was extended for period of 99 years vide petitioner’s offer dated 27.3.1972 acknowledged and responded by the then Mutwalli on 28.3.1972, suffice it to note that though respondent has vehemently denied the said assertion and claimed that lease was not further extended after 13.7.2013, however, even for the sake of argument if it is accepted that lease period was extended for period of 99 years, the said lease agreement being admittedly not a registered instrument as required under section 17(d) and 49 of the Registration Act, 1908 (**Registration Act**) read with section 107 of the Transfer of Property Act, 1882 (**Transfer of Property Act**), shall deem to be a lease from month to month basis terminable on part of lessor or lessee by 15 days notice.

12. The above legal position has been settled by Supreme Court in Habib Bank Limited vs. Dr. Munawar Ali Siddiqui (1991 SCMR 1185) where it is held as under:-

“ At this juncture, it may be pertinent to deal with the question, whether a lease in perpetuity can be created by a lease agreement, and if not, what rights the petitioner acquired under the lease agreement in issue. In this behalf, it may be pertinent to refer to section 107 of the Transfer of Property Act, 1882, and sections 17(d) and 49 of the Registration Act. Above section 107 of the former Act inter alia provides that a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can only be made by a registered instrument, whereas section 17(d) of the latter Act requires compulsory registration of a lease of the nature covered by section 107 of the former Act. Section 49 of the latter Act provides for effect of non-registration of documents required to be registered as follows:--

"No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall-

(a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property, or

(b) confer any power to adopt, unless it has been registered."

It may be advantageous at this stage to refer to the case of Darbarilal Mudi and others :v. Raneegano Coal Association Ltd., reported in AIR 1944 Patna 30, in which a Division Bench of the Patna High Court held that a permanent lease, which has not been created by a registered instrument, is void under the provisions of section 107 and the tenancy is under section 106 deemed to be a lease from month to month terminable either on the part of the lessor or the lessee by 15 days notice. We are, therefore, of the

view that the lease agreement, the copy of which has been filed with the above petition for leave, is not a legal document of the nature, on the basis of which the petitioner could have acquired lease in perpetuity”.

In this context, reliance is also placed on Supreme Court judgments tilted Govt. of Sindh etc vs. Muhammad Shafi etc (PLD 2015 SC 380) and Mirza Book Agency etc vs. Additional District Judge etc (2013 SCMR 1520) and judgments of this Court in Star Holdings vs. Dr. Nishat Afza Qureshi (2019 CLC 909), Messrs IRIS Communications (Pvt.) Ltd vs. Ahmad Khalid (2019 MLD 772) and Israr Hussaain vs. Imtiaz Ahmad Sheikh etc (2024 CLC 486).

13. It is also pertinent to note that though under section 5(3) of the Act, the Rent Registrar shall enter the particulars of the tenancy in a Register and also affix his official seal on the tenancy agreement, however, under section 5(4) of the Act, this entry will not absolve the landlord or tenant of the liability to register the tenancy agreement under the law relating to the registration of documents. Therefore, the law settled in aforesaid judgments and the effect of the non-registration are applicable to all the rent deeds even after the promulgation of the Act.

14. In view of above discussion, though Courts below have wrongly held that application for leave to contest

was not within the prescribed period of ten days, hence to that extent, impugned orders are not sustainable, however, on merits, no ground for leave to contest is made out hence ejectment petition was lawfully allowed against the petitioner.

15. For what has been discussed above, this petition being meritless is **dismissed.**

(Abid Aziz Sheikh)
Judge

Approved for Reporting.

Judge