

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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F.A.O. NO.49 of 2017

GHULAM DASTGIR SIDDIQUI and others

Versus

Mst. ELIZBETH and another

JUDGMENT

Date of hearing:	<u>03.06.2024</u>
Appellants by:	Mr. Muhammad Abdul Muqet Sh, Advocate.
Respondent No.1 by:	Sh. Usman Ullah Waleem, Advocate.
Respondent No.2 by:	Nemo.

MIRZA VIQAS RAUF, J. This appeal under Section 24 of the Cantonments Rent Restriction Act, 1963 (hereinafter referred to as “Act, 1963”) arises out of order dated 20th September, 2016, whereby the Additional Rent Controller, Chaklala Cantonment proceeded to dismiss the ejectment petition, filed by the appellants seeking eviction of the respondents.

2. Facts in brief forming background of this appeal are that the appellants claiming themselves to be the landlords of house No.342/6, Rafi Road, Tariqabad, Rawalpindi (hereinafter referred to as “rented premises”) moved a petition under Section 17 of the “Act, 1963” seeking eviction of the respondents on the grounds of personal *bona-fide* need, default in payment of rent and damage to the “rented premises”. The ejectment petition was resisted by the respondents, who submitted their reply, controverting not only rate of rent but the grounds of eviction agitated by the appellants. On receipt of reply from the respondents, the Additional Rent Controller, Chaklala

Cantonment proceeded to frame necessary issues to the following effect:

1. What is the rate of rent? O.P.Parties
2. Whether the suit property is required by the petitioners in good faith for their personal requirement? O.P.P.
3. Whether the respondents are rent defaulters? O.P.P.
4. Whether the respondents have damaged the suit property and have impaired its look, utility and have decreased its market value? O.P.P.
5. Whether the ejectment petition is not maintainable in view of preliminary objections raised by the respondents? O.P.R.
6. Relief.

3. After framing of above referred issues, Additional Rent Controller proceeded to record evidence of both the sides and then dismissed the ejectment petition through impugned order.

4. Learned counsel for the appellants contended that the appellants are the landlords of the “rented premises”, and have every right to get it vacated from the respondents on the grounds mentioned in the ejectment petition. Learned counsel submitted that though overwhelming evidence was produced by the appellants in support of the grounds of eviction but it has been discarded without assigning any lawful reasoning. Learned counsel argued with vehemence that the ejectment petition has been dismissed in an illegal and unlawful manner.

5. Conversely, learned counsel for respondent No.1 submitted that the appellants badly failed to prove the grounds of eviction in the ejectment petition. It is argued with vehemence that the ejectment petition was rightly dismissed. Needless to mention here that though due intimation was conveyed to respondent No.2 but she did not turn up.

6. Heard. Record perused.

7. The appellants being the landlords of the rented premises moved a petition under Section 17 of the “Act, 1963” seeking eviction of the respondents on three-fold grounds. Firstly; that the

respondents have committed default in payment of rent w.e.f. January, 2013, secondly; “rented premises” are required by the appellants for their personal *bona-fide* need and thirdly; that the respondents have caused damage to the “rented premises”. It would not be out of context to mention here that the rate of rent was claimed by the appellants as Rs.6000/- per month, which was seriously controverted by the respondents, while submitting their written reply wherein they asserted that in fact the rate of rent was Rs.1,200/- per month, and they have already paid all the due rent. As already noted hereinabove that from the divergent pleadings of the parties, multiple issues were framed. It is noticed that the Additional Rent Controller in the first instance decided issue relating to the rate of rent and held that the rate of rent is Rs.1,200/- per month. I have examined the evidence produced by both the sides to this effect and found no material whatsoever to differ with the findings of the Additional Rent Controller to this effect.

8. Issue No.2 relates to personal *bona-fide* need of the appellants. To this effect, appellant No.1 appeared as PW.1, however, during his cross examination he deposed as under:-

”اس علاقے میں جہاں جائیداد متدعو یہ واقعہ ہے متوسط طبقے کے لوگ رہتے ہیں۔ یہ درست ہے کہ میں اور میرا بھائی لاکڑتی سے شفٹ کر کے تلسہ چوک لالہ زار شفٹ کر گئے ہیں۔ ہماری موجودہ رہائش اچھی ہے۔ تقریباً کچھ عرصہ پہلے ہم نے تلسہ روڈ والی رہائش پر شفٹ کیا ہے۔ میرے کافی سارے کرایہ دار ہیں۔ مجھے یاد نہیں کہ میں نے کتنی درخواستیں بددلی اپنے مختلف کرایہ داروں کے خلاف گزاری تھیں۔ جن کے خلاف میں درخواست بے دخلیاں گزاریں ان کے نام عاشر اقبال اور الیاس اور اسلم ہیں۔ یہ درست ہے کہ میں نے مختلف کرایہ داروں کے خلاف درخواست بے دخلیاں گزاریں تھیں از خود کہا کہ اس میں کئی ریٹنٹ ڈیفالٹر تھے اور کچھ پریشان کرتے تھے۔ یہ درست ہے کہ جو درخواست بے دخلی میں نے گزاریں ان میں ذاتی ضرورت کی گراؤنڈ ہوگی۔ از خود کہا کہ کچھ درخواست بے دخلی ذاتی ضرورت کی بنیاد پر دائر کی تھیں۔ کچھ عرصہ ہوا ہے کہ میں نے اپنے کچھ کرایہ داروں کے خلاف بے دخلیاں دائر کرنی شروع کیں۔“

It is thus an admitted position on the record that previously, the appellants filed various ejectment petitions against their tenants on the same ground and obtained possession in terms of the eviction order.

9. There is no cavil that it is prerogative of the landlord(s) to choose any of his/their property who in his/their estimation would meet his/their requirements but at the same time, ground of personal *bona-fide* need cannot be made basis for eviction of the tenant(s) when it is established on the record that the landlord(s) has/have already got vacated the other properties from his/their tenant(s) on the same ground in the near future. It is also established on the record that appellants have shifted their residence from Laal Kurti to Tulsa Chowk Lalazar just before filing of ejectment petition and they did not plead that the accommodation where they are residing is insufficient for their need. The appellants thus failed to prove that the “rented promises” is required for their personal *bona-fide* need.

10. Adverting to the ground of default in payment of rent, it is noticed that to this effect, issue No.3 was framed by the Additional Rent Controller. While appearing as PW.1, the appellant No.1 categorically asserted that the respondents have defaulted in payment of rent w.e.f. January, 2013. Though this assertion is refuted by the respondents in their reply but they have failed to discharge the onus. It is trite law that when the landlord(s) seek(s) eviction of his/their tenant(s) on the ground of default in payment of rent, he/they has/have to only assert the factum of default supported by affidavit and the onus then would shift upon the tenant(s) to prove that he/they has/have not defaulted in payment of rent. It is noticed that in order to rebut the stance of the appellants, respondent No1 appeared as R.W.1 as sole witness in support thereof. In addition rent receipt (Exhibit-P2) was made part of record.

11. Adverting to the validity and authenticity of receipt of rent (Exhibit-P2) it is noticed that same was brought on record through the statement of counsel and it is heavily relied by the Additional

Rent Controller, while deciding the issue against the appellants. In the case of Mst. AKHTAR SULTANA versus Major Retd. MUZAFFAR KHAN MALIK through his legal heirs and others (PLD 2021 Supreme Court 715) the Supreme Court of Pakistan outlined the true import of the relevant provisions of the Qanun-e-Shahadat Order, 1984 dealing with the relevancy and admissibility of the documentary evidence. The relevant extract from the same is reproduced below : -

“(i) Relevant and admissible evidence

10. The Qanun-e-Shahadat, 1984 ("Qanun-e-Shahadat") governs the law of evidence in our country. The expression "relevancy" and "admissibility" have their own distinct legal implications under the Qanun-e-Shahadat as, more often than not, facts which are relevant may not be admissible. On the one hand, a fact is "relevant" if it is logically probative or disprobative of the fact-in-issue, which requires proof. On the other hand, a fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied. What is to be understood is that unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. Thus, a "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a particular mode(s) before it can be admitted as evidence, by the provisions of the Qanun-e-Shahadat. As far as the latter is concerned, and that too relating to documents, admissibility is of two types: (i) admissible subject to proof, and (ii) admissible per se, that is, when the document is admitted in evidence without requiring proof.

(ii) Mode of proof

11. Mode of proof is the procedure by which the "relevant" and "admissible" facts have to be proved, the manner whereof has been prescribed in Articles 70-89 of the Qanun-e-Shahadat. In other words, a "relevant" and "admissible" fact is admitted as a piece of evidence, only when the same has been proved by the party asserting the same. In this regard, the foundational principle governing proof of contents of documents is that the same are to be proved by producing "primary evidence" or "secondary evidence". The latter is only permissible in certain prescribed circumstances, which have been expressly provided in the Qanun-e-Shahadat.

12. What is important to note is that, as a general principle, an objection as to inadmissibility of a document can be raised at any stage of the case, even if it had not been taken when the document was tendered in evidence. However, the objection as to the mode of proving contents of a document or its execution is to be taken, when a particular mode is adopted by the party at the evidence-recording stage during trial. The latter kind of objection cannot be allowed to be raised, for the first time, at any subsequent stage. This principle is based on the rule of fair play. As if the objection regarding the mode of proof adopted has been taken at the appropriate stage, it would have enabled the party tendering the evidence to cure the defect and resort to other mode of proof. The omission to object at the appropriate stage becomes fatal because, by his failure, the party entitled to

object allows the party tendering the evidence to act on assumption that he has no objection about the mode of proof adopted.

13. It is also important to note that the objection as to "mode of proof" should not be confused with the objection of "absence of proof". Absence of proof goes to the very root of admissibility of the document as a piece of evidence; therefore, this objection can be raised at any stage, as the first proviso to Article 161 of the Qanun-e-Shahadat commands that "the judgment must be based upon facts declared by this Order to be relevant, and duly proved". In other words, when the Qanun-e-Shahadat provides several modes of proving a relevant fact and a party adopts a particular mode that is permissible only in certain circumstances, the failure to take objection when that mode is adopted, estops the opposing party to raise, at a subsequent stage, the objection to the mode of proof adopted. However, when the Qanun-e-Shahadat provides only one mode of proving a relevant fact and that mode is not adopted, or when it provides several modes of proving a relevant fact and none of them is adopted, such a case falls within the purview of "absence of proof", and not "mode of proof"; therefore, the objection thereto can be taken at any stage, even if it has not earlier been taken.

(iii) Evidentiary value

14. Once a fact crosses the threshold of "relevancy", "admissibility" and "proof", as mandated under the provisions of the Qanun-e-Shahadat, would it be said to be admitted, for its evidentiary value to be adjudged by the trial court. The evidentiary value or in other words, weight of evidence, is actually a qualitative assessment made by the trial judge of the probative value of the proved fact. Unlike "admissibility", the evidentiary value of a piece of evidence cannot be determined by fixed rules, since it depends mainly on common sense, logic and experience and is determined by the trial judge, keeping in view the peculiarities of each case."

12. To the above effect guidance can also be sought from MANZOOR HUSSAIN (deceased) through L.Rs. versus MISRI KHAN (PLD 2020 Supreme Court 749) wherein the Supreme Court of Pakistan held as under :-

"4. Before parting with this case we would like to comment on a related matter. Copies of the acknowledgement receipt (exhibit P4), aks shajarah kishtwar (exhibit P2), registered post receipt (exhibit P3), mutation (exhibit P5) and jamabandi for the year 2000-2001 (exhibit P6) were produced and exhibited by the pre-emptor's counsel, but without him testifying. We have noted that copies of documents, having no concern with counsel, are often tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying, especially in the province of Punjab. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. However, there are exceptions with regard to facts which need not be proved; these are those which the Court will take judicial notice of under Article 111 of the Qanun-e-Shahadat Order, 1984 and are mentioned in Article

112, and facts which are admitted (Article 113, Qanun-e-Shahadat Order, 1984).

5. The acknowledgement receipt was stated to have been signed when the envelope said to contain the Talb-i-Ishhad notice was purportedly received by the respondent. However, the respondent had not admitted receipt of the said notice, therefore, the acknowledgement receipt (exhibit P4) could not be stated to be an admitted document and did not constitute an admitted fact. Therefore, delivery to and/or receipt by the respondent of the notice had to be established. We also note that in this case the said counsel had furnished copies of all five documents (exhibits P2 to P6), which were produced by him. The Qanun-e-Shahadat Order, 1984 explicitly sets out the documents which must be produced in original, which in the present case would be the registered post receipt (exhibit P3) and acknowledgment receipt (exhibit P4), and photo copies, that is secondary evidence, could only be produced as permitted; and as regards extracts of official records, that is, the aks shajarah kishtwar (exhibit P2), mutation (exhibit P5) and jamabandi (exhibit P6), certified copies thereof had to be tendered in evidence. In not observing the rules of evidence unnecessary complications for litigants are created, which may result in avoidable adverse orders or in the case being remanded on such score, which would be avoided by abiding by the Qanun-e-Shahadat Order, 1984.”

The above principles were even reiterated by this Court in the case of NATIONAL COMMAND AUTHORITY through D.G. SPD, Rawalpindi and others versus ZAHOOR AZAM and others (2024 CLC 1).

13. Though rigors of the Qanun-e-Shahadat Order, 1984 cannot be pressed into service with full force in the proceedings before the Rent Controller but cardinal principles regulating the procedure for recording of evidence cannot be kept aside totally.

14. The Additional Rent Controller founded his conclusion exclusively relying upon rent receipt (Exhibit-P2) which was not admissible at all and was only an anecdotal piece of evidence.

15. From the discussion made hereinabove, I am of the considered view that the appellants remained successful in proving that the respondents committed default in payment of rent. It is an oft repeated principle of law that if the landlord(s) plead(s) multiple grounds for eviction of the tenant(s) and if he/they fail(s) to prove one or more of such ground, the eviction order can be rested on any one of the recognized grounds which the landlord(s) ultimately succeeded to establish.

16. For the foregoing reasons, this appeal is **allowed** and while setting aside the impugned order dated 20th September, 2016 the ejectment petition is **accepted**. The respondents are directed to hand over the vacant possession of the “rented premises” to the appellants within **thirty (30) days** from today with no order as to costs. Record of the Additional Rent Controller, Chaklala Cantonment be remitted back.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**