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JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Case No.FAO No.83/2016

Muhammad Ali Versus Iftikhar Hussain etc.

J U D G M E N T

Date of Hearing:	04.11.2024
Appellant by:	Malik Tahir Mahmood, Advocate.
Respondent No.1 by:	Mr. Tahir Malik, Advocate.
Respondent No.2 by:	Proceeded against <i>ex-parte vide</i> order dated 21.12.2022.

Anwaar Hussain J. Through this single judgment, the present as well as connected appeal, bearing FAO No.84/2016, filed under Section 24 of the Cantonments Rent Restriction Act, 1963 (“**the Act**”), are simultaneously being decided as in both the cases the landlord-respondent No.1 (“**the respondent**”), substantial evidence brought on record, and the legal question put forth before this Court for determination, are the same. Moreover, the rented premises, i.e., shops in occupation of the appellants, are part of the same building.

2. The present appeal is directed against the impugned ejectment order dated 21.06.2016 passed in eviction petition filed by the respondent against the appellant, under Section 17 of the Act. Similarly, the connected appeal bearing FAO No.84/2016 is also directed against order of even date i.e., 21.06.2016 passed in eviction petition filed by the respondent against the appellant of the connected appeal, namely, Muhammad Yousaf Khan and respondent No.2 therein, namely, Malik Khalid Mehmood. In present appeal, Ch. Muhammad Ishaq has been also arrayed as respondent No.2 (respondent No.3 in connected appeal).

3. By way of factual background, it has been noted that the respondent claimed that he, alongwith his brothers, purchased property, bearing No.877, 877-1 to 877-4 situated at *Misrial Road, Dhoke Syedan, Rawalpindi* (“**the property**”) through registered sale deeds bearing documents No.713, 714 and 715 all dated 16.02.1993, which comprises of various shops and one of the said shops bearing No.CB-877/2 is in occupation of the present appellant as tenant who stopped making payment of monthly rent since December, 2011 whereas shop bearing No.877/4 is in occupation of the appellant of the connected appeal. As regards the appellant of connected appeal, the respondent claimed that he entered into the rent agreement with respondent No.2 therein/Malik Khalid Mehmood, who agreed to handover possession of the rented premises to the respondent in October, 2012 but the needful was not done and the rent was not paid after October, 2012 while subletting the rented shop to the appellant of the connected appeal, i.e., Muhammad Yousaf Khan. The above-mentioned facts constrained the respondent to file two separate eviction petitions against the appellants.

4. The eviction petitions were contested by the appellants raising preliminary objections, *inter alia*, denying relationship of landlord and tenant. In particular, the appellants claimed that they are tenant of present respondent No.2, namely, Ch. Muhammad Ishaq son of Ch. Muhammad Sadiq. It was also contended by the appellants that there was civil litigation pending adjudication, regarding the ownership of the property, between the respondent and one Nouroze Khan and above referred Ch. Muhammad Ishaq. Out of the divergent pleadings, two issues including that of relief were framed in both the eviction petitions. The primary issue was existence of relationship of landlord and tenant between the parties. It is imperative to observe that the eviction petitions were filed by the respondent himself, however, during the pendency of the eviction petitions, he proceeded abroad and one Haji

Lal Hussain (PW.1) appeared as attorney, on behalf of the respondent, on the basis of special power of attorney (Exh.P1) who, *inter alia*, produced his affidavit as Exh. P2, rent agreement as Exh.P3, attested copies of sale deeds as Exh.P4 , Exh.P5 and Exh.P6, copies of mutations as Exh.P7, photocopy of *Jamabandi* as Exh.P8, attested copy of notice issued by Highway Authority as Exh.P9, photocopies of property tax issued by Cantonment Board as Exh.P10, attested copy of decision by the Rent Controller Court passed in case titled “Iftikhar Hussain v. Liaqat Ali etc.” as Exh.P11, attested copy of appeal before the High Court and orders as Exh.P12, attested copy of the decision of Supreme Court as Exh.P13, attested copy of Execution Petition and orders as Exh.P14, attested copy of civil suit and decision of the Court in case titled “Muhammad Ishaq etc. v. Nouroze Khan etc” as Exh.P15, attested copy of suit and order of the Court in case titled “Ch. Muhammad Ishaq v. Muhammad Ali etc.” as Exh.P16, attested copy of suit and order of the Court in case titled “Ch. Muhammad Ishaq etc. v. Nouroze etc.” as Exh.P17, attested copy of suit and orders of the Court in case titled “Nouroze Khan etc. v. Iftikhar Hussain Janjua etc.” as Exh.P18, photocopy of assessment form as Exh.P19 and photocopies of bills of property as Exh.P20. Conversely, the present appellant appeared as RW.1 and produced his affidavit as Exh.R1. He also produced above referred Ch. Muhammad Ishaq as RW.2, who submitted his affidavit as Exh. R2.

5. In connected appeal bearing FAO No.84/2016, Haji Lal Hussain attorney of the respondent appeared in the witness box as PW-1 and submitted attested photocopy of special power of attorney as Exh.P2. He also produced rent agreement as Exh.P3, affidavit for rent agreement as Exh. P4, photocopy of sale deed No.713 as Exh.P5, copy of sale deed No.714 as Exh.P6, copy of sale deed No.715 as Exh.P7, Fard as Exh.P8, photocopy of Fard as Exh. P9, photocopy of Notice

issued by Highway Authority as Exh. P10, copy of bill of house tax and conservancy charges for the year 2008/09 as Exh.P11, photocopy of decision in case titled “Iftikhar Hussain v. Liaqat Ali etc.” as Exh.P-12, appeal and decision of High Court as Exh.P13, photocopy of decision of the Supreme Court as Exh.P14, photocopy of decree as Exh.P15, photocopy of civil suit titled “Ch. Muhammad Ishaq etc v. Nouroze Khan” as Exh.P16, photocopy of civil suit and decision titled “Ch. Muhammad Ishaq v. Muhammad Ali etc.” as Exh. P17, photocopy of civil suit titled “Muhammad Ishaq etc. v. Nauroze Khan” as Exh.P18, photocopy of civil suit titled “Nauroze Khan v. Iftikhar Janjua” as Exh.P19, photocopies of assessment form as Exh.P20, photocopy of electricity bill as Exh.P21, photocopy of electricity bill as Exh.P22, photocopy of sui gas bill as Exh.P23, better statement as Exh.P24 and photocopy of property tax as Exh.P25. Conversely, the appellant of the connected case appeared as RW-1 and produced photocopy of rent agreement as Mark-A, photocopy of sale deed as Exh. R3, Rent agreement as Exh.R4, sale deed as Exh.R5, attested copy of suit for declaration as Exh.P6 and attested copy of application submitted to District Judge, Rawalpindi for re-admission as Exh.R7.

6. Insofar as the eviction petition filed against the present appellant is concerned, during the course of recording of the evidence, the Additional Rent Controller got forensic examination of the rent agreement (Exh.P3) executed between the appellant and the respondent, and it was verified that the thumb impression on the rent agreement is that of the appellant, which led the Additional Rent Controller to conclude that the relation between the appellant and the respondent existed and accordingly, the impugned ejectment order was passed. In connected appeal bearing FAO No.84/2016, the Additional Rent Controller allowed the said eviction petition while observing that the documentary evidence of the respondent suggests that the

respondent has been paying taxes of the property (of which the rented premises are part); that the electricity meter of the premises is in the name of the respondent; and that during the cross-examination, the appellant gave evasive replies to the questions pertaining to the relationship of landlord and tenant, tax and utility bills showing his ignorance about the status of the rented premises.

7. Learned counsel for the appellant, *inter alia*, contends that the impugned order(s) are sketchy and have been passed without adverting to the evidence available on record. The main emphasis has been laid on the point that the entire evidence in support of the respondent cannot be taken into account as the special attorney, namely, Haji Lal Hussain who appeared on behalf of the respondent, in both the ejectment petitions, had no power to prosecute the eviction petitions or lead evidence and hence, the superstructure built thereon is not sustainable.

8. Respondent No.2, namely, Ch. Muhammad Ishaq has already been proceeded against *ex-parte*, *vide* order dated 21.12.2022, however, it has been noted that the said respondent was not a party before the Additional Rent Controller, in the eviction petitions filed against the present as well as the appellant of connected appeal; and only appeared as witness (RW.2), in both the cases, in favour of the appellants. During the proceedings before this Court, request was also made on behalf of the appellant(s) to delete the name of said respondent/Ch. Muhammad Ishaq from the array of the parties. Respondent No.2, namely, Malik Khalid Mehmood in connected appeal has also been proceeded against *ex-parte* on 08.02.2022.

9. Conversely, learned counsel for the respondent supported the impugned findings with the averment that even if the special power of attorney (Exh.P/1) is found defective, the same is not fatal to the case of the respondent as the said special attorney, namely, Haji Lal Hussain was also holding another power of attorney of the respondent having

all the powers to act on behalf of the respondent in respect of the property although said separate power of attorney was not brought on record.

10. Arguments heard. Record perused.

11. The nub of the matter is to examine whether the evidence led and got recorded by the special attorney, namely, Haji Lal Hussain has any evidentiary value, keeping in view the contents of the special power of attorney (Exh.P1), therefore, it will be appropriate to first examine how the power of attorney is to be interpreted and then, analyze the contents of the special power of attorney (Exh.P/1).

12. There is no cavil with the proposition that a power of attorney and/or the extent of powers conferred thereunder should be construed strictly. In the same vein, such strict interpretation is to be confined to such power of attorney only where the same runs counter to the interest of the principal. However, where the issue involves accretion of right of the principal, the same may be interpreted to the advantage of the principal. The Supreme Court of Pakistan in case reported as “Qadir Bakhsh and 10 others v. Kh. Nizamuddin and 4 others” (2001 SCMR 1091) held as under:

“19. ...Generally, in interpreting the power of attorney, it is ignored that it has two aspects: (i) the power to do something on behalf of the principal which is generally beneficial to him and (ii) the power to exercise the discretion depriving the principal of his right to his assets, properties etc. The part of the power of attorney which tends to accretion of the right to the properties and assets to the principal may not be interpreted in stringent terms for instance to file a suit or appeal as has been clearly laid down in the power of attorney in the instant case authorizing the attorney to file suit/action either civil or criminal or to defend them if filed against the principal and to pursue it from the lower Court to the High Court. In the instant case the attorney has been authorized even to sell, bequeath the immovable property of the pre-emptors. Such a right tends to deprive the principal of his valuable rights in the

immovable property. If the attorney has been given that much power there is no earthly reason as to why he should be deemed to be deprived of the power to file suit or appeal on behalf of his principal.”

(Emphasis supplied)

Seeking guidance from the *ratio* laid down in case of Qadir Bakhsh supra, this Court is of the opinion that where a person is authorized by the principal (the respondent in the present case) to act as an attorney or an agent in respect of his property forming subject matter of the suit specified therein and the scope of such authority is described in an instrument, any incidental action of such attorney or agent is lawful. Similarly, in certain cases, the provisions of the Contract Act, 1872 (“**the Act, 1872**”), *inter alia*, Section 197 are relevant, which confer the powers on the principal (the respondent in the instant case) to ratify acts of an agent, not expressly conferred on the agent and such a ratification can be either express or implied when the same is beneficial to the principal. Section 197 of the Act, 1872 reads as under:

“197. Ratification may be expressed or implied. –
Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.”

13. Having above legal position in sight, in respect of how a power of attorney is to be construed, it will appropriate to browse the contents of the special power of attorney (Exh.P/1), which reads as under:

"مختار نامہ خاص"

منکہ افتخار حسین ولد راجہ حشمت علی ساکن بھاٹہ، ڈاکخانہ خاص تحصیل گوجر خان ضلع راولپنڈی کا ہوں۔ یہ کہ من محلف کے مقدمات ہائے جات بعنوان (1) نوروز خان بنام افتخار حسین وغیرہ، بعدالت جناب مختار احمد گوندل صاحب ایڈیشنل ڈسٹرکٹ جج راولپنڈی (2) محمد اسحاق وغیرہ بنام افتخار حسین وغیرہ بعدالت جناب رضا اللہ خان صاحب سول جج راولپنڈی، (3) محمد اسحاق بنام افتخار حسین وغیرہ بعدالت جناب محمد نعیم صاحب سول جج راولپنڈی، (4) افتخار حسین بنام لیاقت علی وغیرہ بعدالت جناب فیاض الحسن صاحب سول جج راولپنڈی اور (5) ایک درخواست بعنوان "افتخار حسین بنام لیاقت علی وغیرہ" بعدالت جناب عمران یعقوب صاحب سول جج راولپنڈی میں زیر سماعت ہیں، من محلف بیرون ملک روانہ ہو رہا ہے، اس لیے

مقدمات مذکورہ بالا کی پیروی کرنے سے قاصر ہوگا، لہذا من محلف اپنی جانب سے الحاج لال حسین ولد سردار خان ساکن بھاٹہ، ڈاکخانہ خاص تحصیل گوجران ضلع راولپنڈی (شناختی کارڈ نمبر 7-1449313-37401) کو مختار خاص مقرر کر کے اختیارات دیتا ہوں کہ مختار خاص مذکور منجانب من مظہر کے مذکورہ کیس کی پیروی کرے۔ دعویٰ وجواب دعویٰ دے، دعویٰ واپس لے کر جدید دعویٰ دے، کسی ڈگری یا حکم کا اجراء کرے، رسید دیوے اور داخل کر اوے ہر قسم کا بیان دیوے، مختار خاص مذکور عدالت ہائے دیوانی، یادگیر محکمہ جات قائم کردہ حکومت پاکستان میں دائر ہو کر دعویٰ کی پیروی کرے، جواب دہی از عدالت ابتدائی تا عدالت عالیہ ہائی کورٹ، سپریم کورٹ، عدالت عظمیٰ کرے، درخواست ہر قسم دیوے، بیان و بیان حلفی دیوے، عرضی دیوے، جواب دعویٰ داخل کرے، وکیل و ایڈووکیٹ مقرر کرے، اپیل نگرانی۔ رٹ وغیرہ دائر کرے، کاغذات متعلقہ داخل کرے، ثبوت پیش کرے، تصدیق کرے، حکام مجاز کے روبرو پیش ہووے گواہان گزار کرے، معائنہ مشل کرے، نقول حاصل کرے، حکم انتاعی حاصل کرے، ڈگری اجراء کرائے، زر ڈگری وصول کرے، قانونی کارروائی کرے، چھاپہ شدہ فارم، کورٹ فیس، اسٹامپ وغیرہ خرید کرے، اسٹامپ وغیرہ ریفرنڈ کرائے، الغرض کہ جس طرح چاہے دعویٰ جات دیوانی کی پیروی وغیرہ کرے، مقدمات جات وغیرہ کی بابت جملہ اختیارات جن کا ذکر اوپر ہوا ہے یا رہ گیا ہے اور جو بھی آج تک من محلف کو حاصل ہیں یا آئندہ ہو سکتے ہیں مختار خاص مذکور کو بھی حاصل ہونگے، نیز مختار خاص مذکور کا جملہ ساختہ پر محلف کو قبول ہوگا۔ لہذا مختار نامہ خاص ہذا بقائے ہوش و حواہ خمسہ برضا و رغبت و ثبات عقل بلا جبر و اکراہ از خود سند لکھ دیا ہے سندر ہے۔ المرقوم مورخہ 12 نومبر 2013ء"

(Emphasis supplied)

Perusal of Exh.P-1 indicates that Haji Lal Hussain was appointed as special attorney on 12.11.2013. There is no doubt that, in recitals of the special power of attorney (Exh-P/1), titles of five different pending civil cases, pertaining to the property belonging to the respondent, have been mentioned and no reference has been made to the eviction petitions from which the present and connected appeal have emanated. However, this Court cannot lose sight of the fact that the eviction petitions, out of which present appeals have emanated were filed on 27.11.2013 and was allocated case No.ARC-68/2013 and case No.ARC-67/2013, respectively. Certainly, in such an eventuality, the detail of future litigation cannot be reflected in the said document-Exh.P/1. There is also no denial to the fact that the cases reflected in the special power of attorney pertain to the property of which the rented premises are the part.

The said power of attorney clearly envisages that the principal (i.e., the respondent) conferred the power to the special attorney, i.e., PW.1, to pursue the cases mentioned therein (05 civil suits) and also appear before the other Departments/Offices established by the Government of Pakistan (دیگر محکمہ جات قائم کردہ حکومت پاکستان) and/or other Competent Authorities (دیگر مجاز حکام). The Rent Tribunal-office of the Additional Rent Controller is a *quasi-judicial* Authority, established under the Act, comprising of an Executive Officer appointed by the Government of Pakistan, to resolve the disputes regarding the rent in respect of the demised premises situated in Cantonments of Pakistan. In this manner, it appears that the special power of attorney was not defective or limited, so as to curtail the power of the special attorney to act on behalf of the respondent for the purpose of watching his interest in respect of the property (of which the demised premises are part) and appear before the Additional Rent Controller, Cantonment to prosecute eviction petitions and lead evidence. In the present case, the eviction petitions were filed by the respondent himself whereafter the special attorney contested the same and the present appeals emanating therefrom remained pending for more than 11 years. The respondent never revoked and/or challenged the authority of the special attorney to represent him in the eviction petitions who is also defending the impugned orders passed by the Additional Rent Controller in these appeals, through counsel appointed by the special attorney. This is clearly a ratification of the special power of attorney executed by the respondent in favour of Haji Lal Hussian, to represent the respondent before the Additional Rent Controller, if not expressly but by the conduct. It does not lie in the mouth of the appellant to assail and/or challenge the special power of attorney. In this manner, the argument that the evidence led and got recorded by the special attorney, namely, Haji Lal

Hussain on behalf of the respondent, has no evidentiary value is misconceived and hence, discarded.

14. Adverting to the merits of the case, in present appeal, perusal of the record reveals that the documentary evidence brought on record by the respondent side are either public documents (sale deeds) or decisions of various Courts in favour of the respondent, which depict that he is owner of the property that includes the rented premises. The tenancy agreement was brought on record as Exh.P3 and the appellant outrightly denied affixation of his thumb impression, which proved otherwise, therefore, the Additional Rent Controller was justified to hold that the denial of the appellant regarding relationship was contumacious. It is settled principle of law that if relationship of landlord and tenant is denied by the respondent in an eviction petition, which subsequently proves to be false and concoction, he cannot be allowed to prove that he is not a defaulter as default in such a situation is in-built. This in itself reflects adversely on the appellant and his conduct who denied affixation of his thumb impression and denied execution of the tenancy agreement which stance turned out to be false.

15. Insofar as connected appeal is concerned, perusal of record reveals that the appellant therein could not establish that above referred Ch. Muhammad Ishaq was his landlord as against the fact that ownership of the respondent, which is established by the record. In case titled “Shajar Islam v. Muhammad Siddique and 2 others” (PLD 2007 SC 45), the Supreme Court of Pakistan held that if a person proves his title *qua* the rented premises and the occupant of the same cannot come up with a better title, then the latter is liable to be evicted. The *ratio decidendi* laid down in case of Shajar Islam supra is squarely applicable to the facts of the present case as the respondent has admittedly brought on record registered sale deeds in his favour whereas the appellant of the connected appeal failed to bring on record

any document to prove the stance that Ch. Muhammad Ishaq was owner of the rented premises under whom the appellant claims to be tenant.

16. The matter can be examined from another angle. It is case of the appellants that they are tenants under Ch. Muhammad Ishaq who admittedly lost civil litigation to the respondent. The appellants failed to bring on record any document or decision of Court of competent jurisdiction to establish that the respondent is not owner of the property of which rented premises are part. Furthermore, there is nothing on record to indicate that said Ch. Muhammad Ishaq made any effort to become party to the eviction petitions and oppose the same and only opted to appear as witness of the appellants. Even before this Court, said Ch. Muhammad Ishaq was arrayed as respondent No.2 in present appeal but he has shown no interest to contest the same. In fact, he was proceeded against *ex-parte* on 21.12.2022. It runs against the human conduct and logic that the title of the property owned by him (in present case, Ch Muhammad Ishaq), is obliquely under challenge and the possession thereof is under threat to be taken by his adversary (the respondent) in civil litigation through the initiation of the eviction proceedings but he remains aloof from the proceedings and does not make any effort to become party to the *lis* rather opts to enter the witness box merely as a witness and even has not assailed the impugned orders passed by the Additional Rent Controller. Holistically considered, these facts further substantiate that the denial of relationship of landlord and tenant by the appellants was self-contradictory and proven to be false, and hence, cannot be countenanced.

17. Despite arguing the case at length, learned counsel for the appellants has not been successful to point out any illegality, irregularity, misreading/non-reading of evidence or procedural impropriety in the impugned orders. No interference is warranted. As a

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corollary, both the appeals in hand have no merits. The same are accordingly **dismissed**.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting.

Judge

Akram