

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

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WRIT PETITION NO.4274 OF 2023

MUHAMMAD IRSHAD

Versus

KHAWAR SABTAIN and 2 others

JUDGMENT

Date of hearing: 20.11.2025

Petitioner by: Khawaja Muhammad Asghar
Farooq, Advocates.

Respondent No.1 by: Ch. Amjad Hassan Ali,
Advocate.

MIRZA VIQAS RAUF, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as “**Constitution**”) arises out of an ejectment application filed by respondent No.1 (hereinafter referred to as “**respondent**”) seeking eviction of the petitioner from shop No.21 situated in new Sabzi Mandi Talagang Road within the limits of Municipal Committee City Chakwal (hereinafter referred to as “**shop in question**”). The eviction was sought on the grounds of default in payment of rent and subletting. While resisting the ejectment proceedings the petitioner filed an application seeking leave to contest. Leave to contest was granted to the petitioner vide order dated 16th June, 2022 by learned Special Judge (Rent), Chakwal and from the divergent pleadings of the parties multiple issues were framed. After framing of issues evidence of both the

sides was recorded and finally ejectment application was dismissed vide order dated 5th June, 2023. Feeling dissatisfied, the **respondent** preferred an appeal before learned Additional District Judge, Chakwal, which was allowed through judgment dated 15th November, 2023, which is now impugned in the instant petition.

2. Learned counsel for the petitioner submitted that there exists no relationship of landlord and tenant interse the petitioner and **respondent**. He added that though overwhelming material was available to this effect but same was discarded without assigning any lawful reasoning. Learned counsel contended that even otherwise the **respondent** has badly failed to lead any cogent evidence to establish that the petitioner is occupying the **shop in question** as his tenant. Learned counsel further contended that in case of denial of relationship learned Special Judge (Rent) was right in his approach to dismiss the ejectment application. It is argued with vehemence that learned Additional District Judge without applying his independent judicious mind to the facts of the case allowed the appeal through the impugned judgment, which is not tenable at all.

3. Conversely, learned counsel for the **respondent** while defending the impugned judgment passed by learned Additional District Judge vehemently opposed this petition.

4. Heard. Record perused.

5. In order to get the **shop in question** vacated the **respondent** moved an ejectment application under Section 19 of the Punjab Rented Premises Act, 2009 (hereinafter referred to as "**Act, 2009**") on the grounds mentioned hereinabove. While resisting the ejectment application an application for leave to contest was filed by the petitioner in terms of Section 22 of the **Act, 2009** wherein he denied the relationship of landlord and tenant. The moot point thus involved in this petition is as to "**whether there exists any relationship of landlord and tenant between the parties?**"

6. Before advertizing to the core issue, it would be apposite to mention here that a respondent is precluded to resist the ejectment proceedings unless he obtains leave from the Special Judge (Rent). In the light thereof the petitioner moved an application under Section 22 of the **Act, 2009** seeking leave to contest. It evinces from the record that the petitioner in his application for leave to contest denied the existence of relationship of landlord and tenant in the following manner :-

"1۔ یہ کہ فقرہ نمبر 1 درخواست غلط ہے۔ درحقیقت شروع سے دوکان متدعویہ پر ظہور احمد ولد خان قوم جوئیہ سکنے محلہ رحمانیہ جہلم روڈ چکوال جہلم روڈ چکوال شہر بطور کرایہ دار کاروبار کر رہا ہے جس نے بعد ازاں ہمراہ مسئول علیہ مورخہ 14.07.2011 کو دوکان متدعویہ خضر حیات اصل مالک دکان متدعویہ سے بعوض مبلغ 10 لاکھ روپے خرید لی اور ظہور احمد و مسئول علیہ نے سودا کا کمیشن مبلغ 20,000 روپے سائل کے والد حاجی صابر حسین کو ادا کیا جس پر اس نے اپنی قلمی رسید لکھ کر دی اور اس طرح خضر حیات منہاس سے ظہور احمد مذکورہ بالا مسئول علیہ کازبائی معابدہ بیچ طے ہو گیا کہ خضر حیات منہاس بیرون ملک سے واپس پاکستان آئیں تو اس وقت رجسٹری بیچ بحق ظہور احمد مذکورہ و مسئول علیہ کرائیں گے اور بقیہ زرع مبلغ 8 لاکھ روپے وصول کریں گے۔ ظہور احمد مذکورہ اور مسئول علیہ نے رقم مبلغ 2 لاکھ روپے خضر حیات منہاس کو مورخہ 20.07.2011 بذریعہ چیک نمبری MCB-549506 بنک فروٹ منڈی برائج حاجی صابر حسین والد سائل کو دیا جس نے اپنے آپ کو خضر حیات منہاس اصل مالک کا اختار عام ظاہر کیا اور مذکورہ چیک خضر حیات منہاس کے اکاؤنٹ میں برائج MCB بنک چکوال سے لیش ہوا مگر بعد ازاں خضر حیات منہاس اصل مالک کی وفات کی وجہ سے اس کے بیٹے فرش حیات منہاس نے حاجی صابر حسین والد سائل سے ساز باز کر کے رجسٹرنے کرائی جس پر ظہور احمد مذکورہ اور مسئول علیہ نے دعویٰ تکمیل معابدہ مختص بابت دکان متدعویہ مورخہ 04.10.2012 کو سول کورٹ چکوال میں دائر کیا جو کہ تاحال عدالت عظمی میں زیر سماعت ہے اور تاحال اس کا حتیٰ ذیلہ نہ ہوا ہے جو کہ مورخہ 02.11.2020 کو مسئول علیہ اور ظہور احمد مذکورہ کے فاضل کو نسل کو اطلاع نہ ہونے کی بناء پر عدالت عظمی کے فاضل بیچ نمبر IV سے بوجہ عدم حاضری خارج ہوئی جس کی اطلاع ملنے پر فاضل کو نسل ظہور احمد مذکورہ و مسئول علیہ نے فوری طور پر درخواست CMA No.1261 سال 2021 عدالت عظمی میں دائر کر دی ہے جو کہ زیر سماعت عدالت عظمی ہے اور جس کا باقاعدہ نمبر بھی لگ چکا ہے۔ مصدقہ نقل اف درخواست ہذا ہے اور اس طرح دکان متدعویہ کے تائیں کا دعویٰ تاحال عدالت عظمی میں زیر سماعت ہے جس کا سائل کو بخوبی علم ہے جس کا قبل ازیں دعویٰ دلایا نے بھی سول کورٹ چکوال سے بروئے حکم مورخہ 12.03.2019 تائیں عدالت عظمی داخل دفتر ہو چکا ہے۔ سائل بھی یکے از مدعیویہ کے طور پر دعویٰ مذکورہ بالا تکمیل مختص معابدہ میں فریق ہے جس کی ملکیت اور رجسٹری بیچ نامہ مذکورہ دعویٰ میں متنازع ہے جو کہ دکان متدعویہ کا مالک ہے اور نہ ہی مسئول

علیہ یا ظہور احمد مذکور و دکان متند عویہ پر سائل کا کرایہ دار ہے نہ ہی دکان متند عویہ کا کرایہ بھی 10,000 روپے مقرر یا خضریات منہاس سے طے ہوا۔ مذکورہ دعویٰ میں سائل فریق ظہور احمد مذکورہ کو بطور قابض تسلیم کر چکے ہیں۔ جس میں وہ خرید سے قبل بطور کرایہ دار کاروبار تحت خضریات منہاس قابض ہے اور مورخہ 14.07.2011 کو خرید سے قبل مبلغ 1600 روپے ماہوار کرایہ ادا کرتا تھا اور یہی کرایہ تقریباً ساری مارکیٹ کا تھا جو کہ اصل مالک وصول کرتے تھے۔ سائل کا دعویٰ دلاپائے بھی عدالت سے داخل فترت ہو چکا ہے جبکہ عدالت عظمی سے حتیٰ فیصلہ تاحال نہ ہوا ہے۔ عدم پیروی میں خارج کی گئی CPLA کی بحالی کے لیے درخواست اندر میعاد عدالت عظمی میں دائر کردی ہوئی ہے جس کو Entertain کرتے ہوئے اس کا نمبر 1261 سال 2021 بھی لگ چکا ہے اور اس طرح تائل کا دعویٰ تاحال زیر تصفیہ ہے۔ مسئول علیہ نے کبھی بھی دکان متند عویہ میں کاروبار نہ کیا ہے بلکہ شروع سے ہی ظہور احمد دکان متند عویہ میں بطور کرایہ دار کام کر رہا ہے جس کو سائل سابقہ دعویٰ تکمیل معاہدہ مختص میں تسلیم بھی کر چکا ہے اور اب مسئول علیہ و ظہور احمد مذکور کے درمیان، خرید اور دیگر معاملات کی نسبت باقاعدہ تحریری معاہدہ بھی بر الشام پیپر مورخہ 12.07.2017 کو ہو چکا ہے جس کا سائل کو بھی بخوبی علم ہے اس کے باوجود محض مسئول علیہ کو ہر اس کرنے کی خاطر درخواست دی گئی ہے جو کہ قابل اخراج ہے۔"

On the basis of above stance of the petitioner leave was granted to him vide order dated 16th June, 2022.

7. In order to prove his case, the **respondent** produced his special attorney as AW1 whereas Tariq Mehmood and Sohail Abid were also examined as AW2 & AW3, respectively. The **respondent** also produced multiple documents in addition to the oral account. From the analysis of the evidence it is evident that the **respondent** has successfully discharged the initial onus. On the contrary, the petitioner himself put his appearance in the witness box as RW1 and submitted his affidavit as Exhibit-R1 whereas he examined Faizan Ashraf and Muhammad Latif as RW2 & RW3. Both the said witnesses produced their affidavits as Exhibit-R2 & Exhibit-R3, respectively. The petitioner also tendered certain documents in the shape of Exhibit-R4 to Exhibit-R11 & Mark-R1, respectively.

8. It is admitted position on the record that original owner of the **shop in question** was Khizar Hayat from whom the **respondent** purchased it through registered sale deed (Exhibit-

A10). It is the stance of the petitioner that he alongwith Zahoor Ahmad purchased the **shop in question** through agreement to sell but while appearing in the witness box he deposed as under :-

"---- دکان متذکرہ میں نے چوہدری خضر حیات سے سال 2009 میں کرایہ پر حاصل کی تھی۔ از خود کہا کہ جب میں نے بیانہ دیا تھا اس سے 2/3 سال پہلے کرایہ پر لی تھی۔ یہ غلط ہے کہ از خود والی بات، جھوٹ پر مبنی ہے۔ یہ غلط ہے کہ چوہدری خضر کی وفات کے بعد نہیں اسکی اولاد کا کرایہ دار بن گیا۔ از خود کہا کہ چوہدری خضر کی وفات کے بعد ہم نے ملکیت کا کیس لڑنا شروع کر دیا اور اپنی اولاد کو کرایہ نہ دیا۔ یہ درست ہے کہ چوہدری خضر کی اولاد فرخ وغیرہ نے میرے خلاف کرایہ کی ریکورڈ کا کیس دائز کیا ہوا ہے۔ یہ بھی درست ہے کہ سال 2015 میں جب دکان متذکرہ میں سائل نے بذریعہ رجسٹری خرید کی اس سے لے کر اب تک کرایہ کی ریکورڈ کا دادعویٰ سائل نے ہمارے خلاف دائز کیا ہوا ہے۔ چوہدری خضر میرے خیال میں سال 2012 میں فوت ہوا تھا۔۔۔ میں نے آج تک مدعا کی رجسٹری بابت خرید دکان متذکرہ کو روپیہ ۱۰۰۰ پار ٹمنٹ یا سول عدالت میں چیلنج نہ کیا ہے۔۔۔"

From the extract of the statement of petitioner, it is clearly evident that though in his application for leave to contest, he took the stance that the **shop in question** is in the occupation of Zahoor Ahmad being tenant but in his statement, he clearly conceded that in fact he is occupying the shop and initially it was obtained on rent from the original owner. In view of this stance of the petitioner, it is established that he entered into the **shop in question** being tenant under the original owner namely Khizar Hayat. In this backdrop when the **respondent** purchased the **shop in question** from the original owner, he stepped into his shoes and thus, for all intents and purposes, became the landlord. Needless to observe that once a tenant is always a tenant.

9. So far contention of learned counsel for the petitioner that no notice under Section 30 of the **Act, 2009** was given to the petitioner regarding transfer of ownership; suffice to observe that mere fact that no separate notice was served upon the petitioner qua the change of ownership would not be sufficient to equip him with a valid defence to resist the ejectionment application. Filing of an ejectionment application itself is a notice to the tenant. Guidance in this regard can be sought from *PIR MUHAMMAD MANJH versus*

NAVEED IQBAL MALIK and 2 others (2017 MLD 418) wherein it is held that :-

“7. Adverting to the point No.(i), it is observed that the respondents No.1 & 2 in their ejectment petition specifically asserted that they had sent a notice to the petitioner regarding change of ownership which remained unattended, however, in his application for leave to contest, which was granted and the same was treated as written reply in terms of Section 23 of “The Act, 2009”, the petitioner denied any such notice. To this effect issue No.2 was framed by the learned Special Judge (Rent) and onus of proof was placed upon the respondents. Admittedly the tenancy between the parties was not registered in conformity with the provisions of “The Act, 2009” and the respondents No.1 & 2 have deposited fine in the Government treasury in terms of Section 9 of “The Act, 2009”, so that their ejectment application should become entertainable. As per stance of respondents No.1 & 2, the suit premises was purchased by them through registered sale deed bearing No.378 dated 01st of October, 2012 (Exhibit-A7) from Muhammad Moazzam and the petitioner was occupying the premises as tenant under the previous owner. As the tenancy had expired so they informed the petitioner to vacate the suit premises as they do not want to continue the tenancy. They also sent a legal notice (Exhibit-A2) confirming their intention but the same was not responded, rather the petitioner instituted a civil suit against the previous owner without impleading respondents No.1 & 2 as party. The respondents No.1 & 2, however, moved an application under Order I Rule 10 of The Code of Civil Procedure (V of 1908) which was allowed and consequently they were made party in the said suit. It is evident from the record that notice (Exhibit-A2) was duly served upon the petitioner through registered acknowledgment due dated 08th of March, 2013 which was tendered in evidence as Exhibit-A3. This aspect was even affirmed by the petitioner himself by way of a suggestion to respondent No.1, when he appeared as AW1 in the following manner :-

”درست ہے کہ نوٹس 07.03.2013 کو جاری کیا گیا تھا۔“

This leaves no doubt that due compliance was made to Section 30 of “The Act, 2009”. Even otherwise non-compliance of Section 30 does not entail any penal consequences, having adverse effect upon the competency of ejectment petition. This Court in the case of “Nadeem Zafar and others v. Muhammad Ismaeel and others” (PLD 2012 Lahore 178), while dilating upon the implication of Section 30 of “The Act, 2009” observed as under:-

“6. The examination of this provision of law reveals that it is consisted upon the two parts. In the first place, it requires that a written intimation shall be sent to the tenant informing him about the new ownership and secondly he shall also apply to the Rent Registrar for entering his name in the register as the landlord of the premises. Under sub section (2) of the Section, Rent Registrar, after receiving the application of the new landlord, shall inform the tenant through a notice about the transfer .of the ownership of the premises and the tenant shall not be, deemed to have defaulted in the payment of the rent if the rent due is paid or tendered to the new landlord within a period of 30 days

from the date when the notice should in normal course have reached the tenant. It is nowhere provided in either part of section if no notice either to tenant or to Rent Registrar is sent whether ejectment petition would be liable to be dismissed. Although in section the word "shall" has been used, but it appears that the intention of the legislature while enacting this provision of law could be that the cases of the parties should not be thrown out of the court on the basis that notice of change of ownership has not been sent. This intention of the legislature is also evident from the preamble of the Act ibid which reads as under:--

"Whereas it is expedient to regulate the relationship of landlord and tenant, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for connected matters." (emphasis provided).

Thus it follows that purpose of enactment is to provide expeditious remedy in rent matters but it does not allow expeditious disposal at cost of technicalities.

7. In view of this legal position of the law as well as rules of interpretation the word "shall" used in section shall be read as "May". This interpretation of the Section finds further support from the other facts that the question of default in the payment of rent is to be determined by the court after recording the evidence of the parties or in , cases where the default is evident from the record or in case where relationship of landlord and tenant is denied by the parties. This determination has to be undertaken even if no notice as required is sent. The purposes of the enactment of this section is to regulate and register the new landlord so that the dispute of denial of tenancy could be avoided which was a consistent practice when the repealed law was in the field. In those cases the ejectment petition remained pending in the court for years for determination of title of the landlord. Keeping in view this expediency and mechanism provided for expeditious disposal of the rent matter, it is held that ejectment petitioner may not be non suited on the ground that he did not send intimation regarding new ownership either to the tenant or to the Rent Registrar, particularly, when tenant had notice of the same when ejectment petition is instituted against him."

Reference to the above effect can also be made to Hafiz MUHAMMAD SHAHID NAWAZ versus Hafiz MUHAMMAD SAEED (2010 CLC 1941). The relevant extract from the same is reproduced below :-

"7.....The appellant's contention that respondent has never served any notice with regard to the change of ownership, is not maintainable, as filing of the ejectment petition is a sufficient notice of change of ownership in favour of the respondent, whereafter the appellant is not entitled to raise such an objection. This view has been supported by Syed Azhar Imam Rizvi v. Mst. Salma Khatoon (1985 SCMR 24), the relevant extract of which is as under:

".....It is also not correct that after admission by the petitioner that he had received a copy of the ejectment application in 1978 wherein the factum of sale in favour of the respondent had clearly been mentioned, he was

entitled to any other formal notice under section 13-A. The receipt of the copy of the ejectment application and knowledge gained thereby would constitute due notice and it will have to be treated as substantial compliance of section 13-A of the Ordinance...."

The same view was further reiterated by this Court in the case of Lt. Gen. (Retd.) MUHAMMAD AFZAL NAJEEB versus Mst. AYSHA KHANNA through General Attorney (PLD 2010 Lahore 56).

10. The petitioner is seeking writ of certiorari in terms of Article 199(1)(a)(ii) of the **Constitution**, which has a very limited scope. The petitioner, in order to persuade the Court to exercise the extraordinary jurisdiction, have to demonstrate that the order or judgment under assailance is either without lawful authority or suffers with material illegalities. The petitioner has failed to point out any perversity or material irregularity in the impugned judgment, warranting exercise of constitutional jurisdiction by this Court.

11. The nutshell of above discussion is that this petition is devoid of any merits, as such it fails and is accordingly **dismissed** with no order as to costs.

**(MIRZA VIQAS RAUF)
JUDGE**

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**