

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.820 of 2019

Muhammad Azhar and others.

Versus

Additional District Judge-VII, West, Islamabad and others.

Writ Petition No.2189 of 2019

Muhammad Faisal Ahmad and another.

Versus

Additional District Judge, West, Islamabad and others.

Petitioners By : Sardar Arshad Mahmood Khan, Advocate
(in Writ Petition No.820 of 2019).
Mr. Fiaz Ahmad Anjum Jandran, Advocate
(in Writ Petition No.2189 of 2019).

Respondents By : Mr. Fiaz Ahmad Anjum Jandran, Advocate
for respondents No.2&3 (in Writ Petition
No.820 of 2019).
Sardar Arshad Mahmood Khan, Advocate
for respondents No.3 to 9 (in Writ Petition
No.2189 of 2019).

Date of Hearing : 11.10.2019

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as Writ Petition No.2189 of 2019 as common questions of law and facts are involved.

2. The facts, in brief, are that the petitioners being legal heirs of one Obaid-ur-Rehman, who was co-owner of the property known as Gul Plaza, F-10 Markaz, Islamabad filed an eviction application against respondents No.2 and 3 (the Petitioners in Writ Petition No.2189 of 2019). The said eviction application was resisted by respondents No.2 and 3. It is pertinent to observe that a petition was filed on the basis of default in payment of rent, personal bona fide need and expiry of the lease agreement. The application was allowed in favour of the petitioners on the question of default in payment of rent and expiry of the lease agreement. The petitioners filed an appeal before the Appellate forum and respondents No.2 and 3 also preferred an appeal. The appeal filed by the petitioners was dismissed and the one filed by respondents No.2 and 3 was allowed, vide consolidated judgment dated 14.02.2019.

3. Learned counsel for the petitioners, *inter-alia*, contended that the petitioners are based overseas and the eviction application was filed through their attorney namely, Muhammad Arshad Khan, which is a valid document; that the relationship between the petitioners and respondents No.3 is admitted, whereas respondent No.2 is a sub-lessee of respondent No.3; that even if the parties were unable to prove the written lease agreement between the parties but the relationship stands admitted, the tenancy was to be treated as periodic tenancy, which stands terminated when the petition for eviction is filed; that there is no proof that respondent No.2 is paying the requisite rent, hence there is default on his part; that the petitioners required the property for personal bona fide need.

4. Learned counsel for respondents No.2 and 3 (the Petitioners in Writ Petition No.2189 of 2019), *inter-alia*, contended that the respondents are only aggrieved of judgment dated 14.02.2019 to the extent of findings by the learned Appellate Court that there is a relationship of landlord and tenant between the

parties. It was submitted that the petitioners/respondents No.2 and 3 are not the tenants under the legal heirs of Obaid-ur-Rehman and rather are the tenants of one Muhammad-ur-Rehman, who acted through his attorney Afzaal Khan. It was submitted that in cross-examination, the attorney Muhammad Arshad Khan admitted that he never received rent. It was further contended that the eviction application has been filed incompetently as Muhammad Arshad Khan does not have the requisite authority. Learned counsel took the Court through the evidence in order to establish that the grounds for eviction have not been substantiated and proved by the alleged landlord. Reliance was placed on cases reported as "*Anees Haider Vs. Raja Maqsood Hussain*" (**PLD 2011 Lahore 273**), "*Muhammad Faisal Ahmed, etc. Vs. Rent Controller West Islamabad, etc.*" (**Civil Petitions No.4861 & 4862 of 2017**), "*Abdul Samad Khan and 5 others Vs. Jamshed and 7 others*" (**2015 MLD 1642**), "*Mst. Khurshid Begum and 6 others Vs. Chiragh Muhammad*" (**1995 SCMR 1237**), "*Mst. Anwari Begum through Attorney Vs. Mst. Asghari Khanum and 7 others*" (**2009 MLD 1279**), "*Mst. Akhtar Fatima through Legal Heirs and another Vs. Bakhat Rafee Shah and another*" (**PLJ 2015 Lahore 1153**) and "*Mst. Nasira Afridi Vs. Muhammad Akbar*" (**2015 MLD 171**).

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The facts, leading to filing of the instant petitions, have been mentioned hereinabove, therefore, need not be reproduced.

7. As noted above, the petitioners being legal heirs of the co-owner of the property filed the eviction application against respondents No.2 and 3 with respect to Shops No.6, 11 & 12 in Gul Plaza, Main Double Road, F-10 Markaz, Islamabad. The eviction application was initially allowed by the learned Trial

Court but dismissed by the learned Appellate Court. Learned counsel for respondents No.2 and 3 during the course of arguments, contended that there is no relationship of landlord and tenant between the petitioners and respondents No.2 and 3. When confronted whether the relationship has been specifically denied, reliance was placed on the reply to the eviction application. Respondents No.2 and 3 in replying to paragraph-3 of the amended eviction application stated as follow:-

“Not correct as stated. In fact, respondent is doing his business peacefully since 1999 and paying the rent according to the lease agreement and satisfaction of the petitioner but now present petitioner by not honoring commitment/practice of their predecessor-in-interest. It is worth mentioned here that currently rent is not paid Rs.48,000/- but Rs.63,800/- per month without any default.”

It is the case of the respondents that this is a typographical error and on the basis thereof both the Courts have held that there is a relationship of landlord and tenant. Respondents No.2 and 3 by filing the amended reply, which is different from the original reply to paragraph-3 has not denied the relationship between the petitioners and respondents No.2 and 3, rather it has been admitted and it has been specifically stated that the terms and conditions of lease agreement are being complied with, rather the petitioners are not honoring the same. In this view of the matter, where there is admission of relationship and it is in specific words, the same cannot be said to be a typographical error rather it is an admission of fact, hence the learned Appellate Court as well as learned Rent Controller have rightly observed that respondents No.2 and 3 are the tenants under the petitioners as legal heirs of Obaid-ur-Rehman.

8. Even otherwise, the property in question i.e. Plot No.1-T, Gul Plaza, F-10 Markaz, Islamabad is a multi-storey plaza and has many co-owners. Obaid-

ur-Rehman was one of the owners as is borne out from transfer letter dated 22.07.1998 (Ex-A-3). It is pertinent to observe that Muhammad-ur-Rehman from whom respondents No.2 and 3 claim to have obtained the property on lease is also one of the co-owners. The learned Appellate Court while referring to the lease agreement has observed that a document is required to be proved in accordance with the provisions of Qanun-e-Shahadat Order, 1984 and the original document needs to be tendered in evidence. However, it is pertinent to observe that the instant proceedings have arisen out of the matter under Islamabad Rent Restriction Ordinance, 2001. The Code of Civil Procedure, 1908 and Qanun-e-Shahadat Order, 1984 do not apply to the proceedings before Rent Controller. The procedure that is to be followed by the Rent Controller is provided in Section 17 of Islamabad Rent Restriction Ordinance, 2001. Under Sub-Section 2 of Section 17 *ibid*, where an eviction application is filed a show cause notice is issued to the tenant to show cause as to why he should not be evicted and it is he who has to satisfy that the grounds provided in Section 17(2)(i) to 17(2)(v) are not attracted. In this behalf, the opportunity provided to the tenant has to be a reasonable opportunity of showing cause; the procedures as provided in Code of Civil Procedure for conducting trial and the provisions of Qanun-e-Shahadat Order are not applicable. Moreover, under Section 24 of 2001 Ordinance, it is provided that no order under Sections 9, 14, 15, 17 or 18 is to be passed by the Rent Controller except after holding an inquiry and affording to the parties an opportunity of being heard. It is only for the purposes of summoning and enforcing the attendance of any person and/or examining a person on oath; with respect to compelling the discovery and production of any document and other material evidence including issuing a commission for the examination of a witness that the learned Rent Controller has the same powers as are vested in a Court under Code of Civil Procedure, 1908. In the referred backdrop, the fact that the original document was not produced on record or the

execution thereof was also not proved is immaterial to the case of the landlord especially where the relationship is admitted as observed hereinabove. The parties failed to produce the original lease agreement but otherwise the relationship is admitted as mentioned above the tenancy could be treated as periodic based upon the frequency with which the tenants paid the rent. In such tenancies, the fact that the landlord filed an eviction application means that the tenancy stands expired as the landlord does not wish to continue with the same and since expiry of the lease is a valid ground for eviction of a tenant under Islamabad Rent Restriction Ordinance, 2001 in light of the judgment of the Hon'ble Supreme Court of Pakistan reported as "*Qaiser Javed Malik Vs. Pervaiz Hameed and 02 others.*" **(2009 SCMR 846)**, the learned Rent Controller had rightly held that the lease arrangements between the petitioners and landlord stand expired.

9. Respondents No.2 and 3 are conducting business from the shops in question and generally under Section 17, where the tenancy is for a fixed period, the ground of personal bona fide need is not applicable, however, in the instant case as observed above that the tenancy was periodic as the parties failed to establish as to the terms of the tenancy, the personal bona fide need was a valid ground as the petitioners specifically deposed that the property is required for the said purpose.

10. The defence of respondents No.2 and 3 is self-contradictory inasmuch as it was stated in the reply and in evidence as well that the tenancy was entered in the year 2004 and was for a fixed period of six (06) years, meaning thereby the same expired in the year 2009 but since the landlord was accepting rent, it stands converted into holding over or periodic tenancy. In such eventuality, the personal bona fide need is a valid ground and also the petitioners were well within their rights as co-owners in the property to file an

eviction application and the same does not have to be filed by all the owners of the property. Reliance is placed on case reported as "*Abdul Ghani Vs. Abrar Hussain*" **(1999 SCMR 348)**.

11. In so far as objection of the respondents regarding the competency of the attorney to file the eviction application is concerned, the power of attorney on behalf of the petitioners was filed in the Court though not exhibited but since copies were presented only and the documents were marked as Mark, the referred power of attorney authorized Muhammad Arshad Khan to file the eviction application on behalf of the petitioners. As noted above, the rules regarding the primary and secondary evidence and proof of a document as enshrined in Qanun-e-Shahadat Order, 1984 are not applicable inasmuch as learned Rent Controller is only entitled to enter into a reasonable inquiry while adjudicating the matter before it under, *inter-alia*, Section 17. In so far as the procedure to be followed by the learned Rent Controller and applicability of the formal provisions of trial as provided in Code of Civil Procedure, 1908 and Qanun-e-Shahadat Order, 1984 is concerned, this Court in case reported as "*Muhammad Akbar Chohan Vs. Rent Controller, Islamabad and others.*" **(2017 MLD 53)** laid down the principles to be followed by the Rent Controller in Islamabad. Moreover, at no stage any co-owner of the property in question objected to filing of the instant petition by the petitioners. Even during the course of evidence, respondents No.2 and 3 also did not make any effort to lead evidence on behalf of Muhammad-ur-Rehman or his attorney or even otherwise the said persons did not make any application before the Rent Controller objecting the eviction application. In view of the above discussion, the judgment tendered by the learned Appellate Court to the extent of findings on merit is not tenable. However, the finding regarding the relationship between the petitioners and respondents No.2 and 3 is correct.

12. For the above reasons, writ petition No.820 of 2019 is **allowed** and Writ Petition No.2189 of 2019 is **dismissed**; consequently, the eviction application filed by the petitioners is allowed on the grounds of personal bona fide need and expiry of the lease agreement and respondents No.2 and 3 are directed to vacate the premises within one (01) month from the date of this order failing which petitioners shall be entitled to evict the referred respondents through process of law.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 07th day of January, 2020.

JUDGE

M. Zaheer Janjua

Approved For Reporting