

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No. IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. WP- 1598-15

Titled. Nadeem Younas Vs Additional District Judge and 03 other

a) Judgment approved for reporting

✓  
Yes/No

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 1598 of 2015**

Nadeem Younas

**Versus**

Additional District Judge & 03 others

Date of Hearing: - 27<sup>th</sup> October, 2015  
Petitioner By:- M/s Abdul Shakoor Paracha & Haseeb  
Shakoor Paracha, Advocates.

Respondent By: - Mian Abdur Razzaq, learned ASC

**J U D G M E N T**

**MUHAMMAD ANWAR KHAN KASI, CJ:**

This Writ Petition as well as W.P. 4754/2014 arise out of common set of facts and demised premises, therefore, they are decided through this Single Judgment.

2. Brief facts of the case are that Respondents 3 & 4 filed application for eviction of petitioner/tenant (Nadeem Younas) from Shop No.2 Ground Floor Block No 13-J, Khan Plaza, Jinnah Super Market, Markaz F-7, Islamabad. It was claimed that demised premises were rented out to the petitioner by previous owners namely Muhammad Miskeen & Mrs. Nazia Shaheen from whom applicants purchased the same through registered sale deeds No. 4714, 4715 & 1404 dated 24.10.2012 & 22.03.2012 executed by the Attorney i.e Muhammad Qasim. The eviction was sought on the grounds of expiry of lease agreement and default in the payment of rent since 01.11.2011, moreover personal need was also agitated. Respondents 3 & 4 alleged that they had issued notice dated 04.11.2012 whereby change in ownership was intimated and possession as well as arrears of rent were demanded while the notice was shown to have been received by the employee of petitioner/tenant namely Waqar. Initially the Eviction petition was entrusted to Mr. Naseer Ahmed Kakar, learned Rent Controller but subsequently, tenant moved application for transfer of proceedings which was allowed vide Order dated 20.06.2013, passed by the learned District Judge whereby it was also directed that eviction petition be disposed of within **one month**, the latter portion of Order

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was assailed in W.P. No. 2784/2013 and vide Order dated 01.07.2013 passed by the learned Bench of this Court the Order dated 20.06.2013 was modified by directing that matter be decided on its merits without giving unnecessary adjournments.

3. After transfer of proceedings, tenant/petitioner submitted reply to eviction petition wherein, *inter alia*, he denied receipt of ownership change notice and raising objection upon his impleadment refused existence of Landlord & Tenant relationship by asserting that no lease agreement was executed between the petitioner and previous owners. He denied to be the tenant, *albeit*, in evasive manner.

4. Learned Trial Court framed following two issues out of divergent pleadings;

(i) Whether there exists relationship of landlord and tenant between the parties ? **OPA**

(ii) Relief.

5. After framing of issues Eviction petitioner produced his evidence and respondent No.4 appeared as AW-1, who tendered his statement in shape of Affidavit Ex.A-1. He also produced Photostat Copy of Ownership change notice Es.A-2, TCS receipt Ex.A-3, Photostat Copy of Delivery Report as Ex.A-4, Photostat Copies of Sale Deeds as Ex.A-5& A-6, Photostat Copy of telephone bill as Mark-A and Photostat Copy of Metro Group as Mark-B.

6. The case remained pending for Cross Examination but on several occasions petitioner failed to appear before Court whereupon vide order dated 05.06.2014 his right to cross examine was struck off and after hearing arguments learned Trial Court vide Judgment dated 25.06.2014 accepted the eviction petition.

7. Against the aforementioned Judgment Appeal was filed before learned District Court and during its pendency one JehanZeb Nadeem who happens to be son of petitioner-Nadeem Younas, moved application for his impleadment as party by asserting that he is actual tenant of the demised premises because previous owners entered into lease agreement with him but the new owners [respondents 3 & 4] have moved the collusive eviction petition against another person Nadeem Younas [father of intervener] purportedly in order to undermine his rights. This application was contested through reply wherein relying upon local commission report it was asserted that Nadeem Younas is running "Stiletto" Shoe Shop in two adjacent Shop

Nos. 1 & 2 by removing the middle wall of the shops and said Nadeem Younas had mentioned his address as Shop No.2 in previous proceedings i.e Transfer Application and W.P. No. 2784/13 but in order to protract the litigation, the father and son crafted a story without disclosing source of knowledge about appeal as if both had not been sharing common interest. Learned Appellate Court vide Order dated 14.10.2014 rejected the impleadment application. This order has been assailed vide connected W.P. No. 4754 of 2014.

8. Thereafter pursuant to conceding statement of eviction petitioner the learned Appellate Court vide judgment dated 01.11.2014 set aside the eviction judgment dated 25.06.2014 and remanded the case to learned Rent Controller for decision afresh within one month after providing opportunity of cross examination & production of evidence to tenant/Nadeem Younas.

9. In post remand proceedings petitioner [Tenant] Cross examined the respondent No.4 and moved an application for summoning of proposed witnesses i.e previous owner Muhammad Miskeen, Muhammad Saeed, CDA record Keeper, Post Office Record Keeper and Record Keeper Registrar Office Islamabad. This application was dismissed by learned Rent Controller vide order dated 08.12.2014 and thereafter the tenant/petitioner again defaulted to produce defense evidence, resultantly on 07.01.2015 learned Rent Controller closed his right to produce evidence and finally vide Judgment dated 20.01.2015 accepted the eviction petition.

10. Petitioner/Tenant again filed appeal against Eviction Order dated 20.01.2015 but his appeal was dismissed vide impugned Judgment dated 13.04.2015.

11. Writ Petition No. 1598/2015 was taken up first wherein learned Counsel for petitioner submitted that his right of evidence was closed without observing the process of law due to which he has been condemned unheard. He added that learned trial court denied summoning of crucial evidence, therefore, the impugned judgments being violative of the principles of natural justice are without jurisdiction.

12. It is next submitted that respondents 3 & 4 failed to exhaust onus regarding existence of landlord and tenant relationship because in support of their claim that tenant had entered into lease agreement they should have produced the agreement but they failed to do so. He

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added that there was no mention of oral agreement in the eviction petition or elsewhere in pleadings of purported landlord and during cross examination AW-1 admitted that there was no written lease agreement between the parties which further outcasts the claim that lease agreement has expired.

13. It is further averred that learned Courts ignored the material aspect that respondent No.4 had sold his share of shop to respondent No.3 but the latter did not appear in witness box which was fatal to his case. He added that no record of CDA was produced to prove title and private documents in the form of Photostat copies were allowed to be produced while registered sale deeds had no nexus with existence of tenancy.

14. It is also contended that contrary to requirement of Section 19 of Islamabad Rent Restriction Ordinance, 2001, the notice for change of ownership had not been sent. He added that claim of respondents in this regard is false and un-creditworthy because neither the lawyer who sent notice, nor witnesses of notice were produced. Moreover relationship of petitioner/tenant with recipient Waqar had to be proved but landlord failed to do so and in absence of such notice default of tenant cannot be assumed.

15. He further argued that alleged default of tenant for period prior to transfer of ownership and payment of rent by vendors of title on this account is a baseless claim as during the cross examination respondent No.4 admitted that he had never met previous owner and had no knowledge about the lease agreement with previous owner. He added that learned Rent Controller appointed local commission illegally and did not decide objections of petitioner thereupon due to which consequent judgment is not sustainable in the eye of law.

16. Learned Counsel concluded that impugned judgments are liable to be set aside being result of mis-reading and non reading of evidence and suffer from illegal exercise and omission to exercise jurisdiction. Learned Counsel relied on case law cited as "*Mst. Munawar Sultana Vs Additional District Judge, Islamabad*" [2005 CLC 1119].

17. Addressing arguments on W.P. 4754/2014, learned Counsel for petitioner submitted that previous owner namely Muhammad Miskeen entered into lease agreement with him and he is in possession of utility bills for demised premises but respondents intentionally moved ejectment petition against Nadeem Younas and by misleading the

learned Rent Controller succeeded in obtaining eviction order and as soon as it came into the knowledge of Jehanzeb Younas, he moved implead-ment application which was unlawfully rejected by learned appellate Court.

18. He next submitted that Jehanzeb is a necessary party as he produced a written lease agreement with previous owner while the veracity of allegation with regard to forgery in the lease agreement is factual dispute which cannot be decided without recording evidence but learned Appellate Court did not consider material aspect of the case.

19. Learned Counsel for respondents 3 & 4 while repelling above arguments asserted that petitioners are willfully exploiting the process of court as they are father and son inter se doing the same business but posing to be separate entities. He added that when learned Rent Controller ordered eviction of Nadeem Younas he manipulated application for implead-ment by his Son in order to prolong proceedings and delay the cause of justice. He further states that their collusion is evident from the fact that petitioners have mentioned different addresses at different stages of proceedings and Nadeem Younas mentioned his address as demised premises in transfer application, W.P. 2784/13 & 2993/14 while in W.P. 1598/15 he has mentioned address of Karachi without giving parentage. Learned Counsel added that petitioners are playing mockery with judicial proceedings as the Writ Petition No. 4754/2014 filed by Jehanzeb Nadeem carries an affidavit of Nadeem Younas at pages 34 & 37 but same are signed by Jehanzeb Nadeem while such illegalities cannot be taken lightly rather negate the bona fides of petitioners due to which these petitions merit outright dismissal.

20. Learned Counsel next submitted that respondents/landlord nowhere in the eviction petition mentioned that there was a written lease agreement with the previous owners. He added that purported lease agreement produced by Jehanzeb Nadeem does not merit to be considered as a valid documents because it is a photocopy and unregistered piece of paper which neither mentions date of its execution nor period of its effect and even if it is presumed to be a valid document, the fact remains that it being an agreement beyond 11 months, should have been registered hence its non registration shows that it has been expired, even though its execution is not admitted. In

support of this contention learned Counsel relies on case law cited as “HBL Vs Dr. Munawar Ali Siddiqui” [1991 SCMR 1185].

21. Learned Counsel explained the point of non issuance of notice regarding change of ownership by submitting that notice issued by them had been proved to have reached at the address of petitioner which is sufficient compliance of the statutory requirement. Alternatively he submits that filling of eviction petition is also treated as notice for change of ownership. In support of his contentions learned counsel placed reliance on case laws titled as “ Qaiser Javed Malik Vs Pervaiz Hameed & 02 others” [2009 SCMR 846], “Ghulam Rasool Vs Mian Khurshid Ahmed” [2000 SCMR 632], “Mst. Khursheed Begum & another Vs Muhammad Siddique” [1991 CLC 1134 Karachi], “ Ghulam Waris Vs Riaz Ahmad Advocate” [1990 MLD 2300 Karachi], “Muhammad Yameenullah Pervez Malik Vs Mrs. Syeda Habiba Rizvi” [1990 MLD 2356 Karachi], “Suleman and another Vs M.A. Mallick” [1988 SCMR 775], “ Pakistan National Shipping Corporation Vs M/s General Service Corporation” [1992 SCMR 871], “Major (Rtd.) Muhammad Yousaf Vs Mehraj-ud-Din” [1986 SCMR 751] & “Aziz Begum Vs Faiyaz Butt” [1991 CLC Note 9 Lahore].

22. Heard and Record Perused.

23. After careful examination of record, it is pertinent to observe that conduct of Nadeem Younas remained dubious. From very inception of the case he had been playing hide and seek with the judicial procedure as he initially resorted to filing of transfer application, then disjoined the proceedings and when his eviction was ordered, he filed appeal wherein case was remanded but in post remand proceedings after initial cross examination, he again disappeared which compelled the learned Court to finally strike off his right to produce evidence but outré of his scheme was introduction of his son through filing of impleadment application by the latter which is glaringly a ploy to suffocate the course of justice because despite the fact that both father and son had engaged same firm of counsel to represent them, they no-where plainly disclosed their relationship rather mentioned different addresses in perceivable attempt to suppress the true picture. CNIC issued on 23.07.2014 to Nadeem Younas annexed with Writ Petition-1598/2015 shows him a resident of Islamabad but he mentioned his address in the petition as that of Karachi, while Shop No.2 Block No. 135, Khan Plaza Jinnah Super

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Market, Markaz F-7, Islamabad [demised premises] is mentioned as his address in Writ Petition No. 2784/13 as well as in Transfer Application before learned District Judge. Moreover, the address of Jehanzeb Nadeem mentioned in CNIC and W.P. 4754/2014 is also the same as of demised premises and affidavits of Nadeem Younas are on record of said petition though signed by Jehanzeb Younas. This shows that primarily Nadeem Younas retains the legal character of tenant at the demised premises and for that matter Jehanzeb Nadeem at the most being merely a business associate is not necessary party in peculiar circumstances of case. His interest is per se indivisible from that of his father Nadeem Younas, therefore, no interference is warranted in Order dated 14.10.2014 passed by learned Additional District Judge. Apart from that petitioners have not approached this Court with clean hands which is foremost requirement for invoking extra-ordinary Constitutional Jurisdiction.

24. Adverting to averments in W.P. No. 1598/2015, the main focus had been upon existence of landlord and tenant relationship between petitioner and respondents 3 & 4 and in that reference as observed earlier Nadeem Younas had from his own accord acknowledged usufruct of demised premises but has not uttered anything about his capacity of enjoying the possession of demised premises, therefore, in absence of adverse claim of title his status becomes that of a tenant. Guidance is sought from case of "FAKHRUDDIN KHAN SYED VS Mst. SURRYIA SULTANA" [2005 YLR 349 Karachi] wherein it was held as follows;

*" Where no rent agreement existed between the parties, law would assume that when a person, who was not the owner of premises, occupied any portion thereof and had not setup a title which was adverse to owner of premises, then such a person by fiction of law would become a tenant of owner landlord."*

25. Mere non production of lease agreement with the previous owner cannot be termed fatal to the case of eviction petitioner because despite having possession of demised premises adverse title has not been setup as defense and as such no other capacity of enjoying the possession can be attributed. It is not the case of petitioner/tenant that he either tendered rent in Court or to the previous owner. There is no cavil to proposition that defect or verification of title documents does not concern the tenant in any

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manner and even the most defective title of landlord does not entitle the tenant to evade payment of rent and he cannot be presumed entitled to require inspection of title documents. The Hon'ble Supreme Court in case of "*Suleman and another Vs M.A. Mallick*" [1988 SCMR 775] observed that "*Tenant, could not raise plea that he was entitled to demand copy of title deed and as such he deliberately and willfully defaulted in payment of rent.*"

26. So far as aspect of the requirement of ownership change notice is concerned, landlord had produced copy of notice as well as its dispatch courier receipt which has not been denied through rebuttal evidence as no evidence was produced from the tenant's side. Ordinarily learned Rent Controller should have framed issues in respect of eviction grounds i.e default, bona fide personal need and expiry of lease agreement but in the peculiar circumstances of the present case default of tenant is made out during the period when case was pending adjudication, if not from the period mentioned in the petition. Even otherwise the Hon'ble Superior Courts have held on numerous occasions that filling of eviction petition is sufficient notice and according to record since eviction petition was filed on 05.12.2012, no rent has been tendered by the petitioner/tenant which makes him a willful defaulter within the preview of Section 17 of Islamabad Rent Restriction Ordinance, 2001. Guidance is sought from case of "*Major (Rtd.) Muhammad Yousaf Vs Mehraj-Ud-Din*" [1986 SCMR 751] wherein the Hon'ble Supreme Court held as follows;

*"6. On the second question also the respondents have no case it is neither supported by statute nor any principle of law that if a notice under section 13-A of the Ordinance is not served that would amount to absence of relationship of landlord and tenant. The analogy of case law under Section 30 of Displaced Persons (Compensation & Rehabilitation) Act, 1958, is not attracted here. Thus, the finding of issue of relationship has to be reversed and we do accordingly.*

*7. That being so, rent having admittedly not been paid after the institution of the application for eviction which has also been treated as notice under Section 13-A the respondents were liable to be evicted. We do accordingly."*

27. In view of above landlord and tenant relationship stand established and in the same sequel default of petitioner upon his

failure to tender rent during pendency of proceedings is evident, therefore, present Writ Petition as well as Writ Petition No. 4754/2014 are dismissed. In accord with observations recorded in para 23 *supra* special cost of Rs.10,000/- is imposed upon the petitioner in W.P. 4754/2014.

(CHIEF JUSTICE)

Announced in Open Court, on this 25<sup>th</sup> day of November, 2015.

(CHIEF JUSTICE)

*APPROVED FOR REPORTING*

Umar

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