

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.419/2016

Muhammad Iqbal

Versus

Syed Muhammad Tahir Zahoor and others

Date of Hearing: 04.10.2019

Petitioner by: M/s Sajjad Haider Malik and Naheed Iqbal

Respondents by: Mr. Munir Bashir Ansari, Advocate for respondents No.1 to 4.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide civil revision petitions No.419/2016 and 420/2016 since they entail common questions of law and fact.

2. Through civil revision petition No.419/2016, the petitioner, Muhammad Iqbal, impugns the judgment and decree dated 01.09.2016 passed by the Court of the learned Additional District Judge (West), Islamabad, whereby respondents No.1 to 4's appeal No.81/2016 against the judgment and decree dated 26.04.2016 passed by the Court of the learned Civil Judge, Islamabad, was allowed and civil suit No.463/2011 for recovery of rent instituted by respondents No.1 to 4 against the petitioner was decreed. Vide the said judgment and decree dated 26.04.2016, the learned Civil Court had dismissed respondents No.1 to 4's said suit with costs.

3. Through civil revision petition No.420/2016, the petitioner, Muhammad Iqbal, impugns the judgment and decree dated 01.09.2016 passed by the Court of the learned Additional District Judge (West), Islamabad, whereby respondents No.1 to 4's appeal No.82/2016 against the judgment and decree dated 26.04.2016, passed by the Court of the learned Civil Judge, Islamabad, was allowed and civil suit No.70/2015 for recovery of Rs.9,85,125/- instituted by respondents No.1 to 4 against the petitioner was decreed to the extent of the recovery of the amount of the utility bills. Vide the said judgment and decree dated 26.04.2016, the learned Civil Court had dismissed respondents No.1 to 4's said suit with costs.

4. The said civil suits No.463/2011 and 70/2015 were decided by the learned Civil Court, and civil appeals No.81/2016 and 82/2016 were decided by the learned Appellate Court through consolidated judgment and decree dated 01.09.2016. The suit for recovery of rent was filed by respondents No.1 to 4 on 07.05.2011 whereas the suit for recovery of Rs.9,85,125/- was filed on 14.02.2015. Respondents No.1 to 4 are not aggrieved by the learned Appellate Court's judgment and decree, whereby the suit for recovery of Rs.9,85,125/- was partially decreed to the extent of the recovery of the amount of the utility bills.

5. The facts essential for the disposal of these petitions are that Ms. Shehnaz Iqbal was the owner of House No.367, Street No.71, Sector F-11/1, Islamabad (**"the suit house"**). She had given the upper portion of the suit house on rent to the petitioner for Rs.35,000/- per month through lease agreement dated 25.07.2006. The period of the tenancy was from 01.08.2006 to 31.07.2007. Ms. Shehnaz Iqbal died issueless on 17.10.2007. Respondents No.1 to 4 are Ms. Shehnaz Iqbal's siblings/legal heirs. After the suit for declaration of heirship was decreed in respondents No.1 to 4's favour by the learned Civil Court at Islamabad vide judgment and decree dated 03.01.2009, they issued notices to the petitioner calling upon him to pay rent to them. The petitioner did not pay rent to respondents No.1 to 4. Respondents No.1 to 4 shall herein after be referred to as **"the respondents"**.

6. The respondents filed a petition under the provisions of the Islamabad Rent Restriction Ordinance, 2001 before the Court of the learned Rent Controller, Islamabad seeking the petitioner's eviction from the suit house. This petition was allowed vide order dated 04.11.2010. There is nothing on the record to show that the petitioner challenged the said order any further.

7. At this stage, it ought to be mentioned that one Sardar Muhammad Rafique Gujjar (**"Rafique Gujjar"**) had instituted a suit for specific performance of agreement to sell dated 21.06.2007 against Ms. Shehnaz Iqbal. In the said suit, the position taken by Rafique Gujjar was that he had purchased the suit house from Ms. Shehnaz Iqbal for a sale consideration of Rs.2,50,00,000/- and that possession of the suit house was handed over to him when the said agreement

was executed. At no material stage was a sale deed with respect to the suit house executed between Ms. Shehnaz Iqbal and Rafique Gujjar. It is an admitted position that the said suit has been dismissed by the learned Civil Court and Rafique Gujjar's appeal is pending before this Court.

8. Rafique Gujjar had also filed an application under Order I, Rule 10 C.P.C. for his impleadment as a party in the eviction petition filed by the respondents against the petitioner before the learned Rent Controller. The said application was dismissed vide order dated 25.09.2010. Rafique Gujjar assailed the said order dated 25.09.2010 as well as the order dated 04.11.2010 (whereby the respondents' eviction petition against the petitioner had been allowed by the learned Rent Controller) in an appeal (rent appeal No.532/2010) before the Court of the learned Additional District Judge, Islamabad. The said appeal was dismissed by the learned Appellate Court vide order dated 25.04.2011.

9. The proceedings instituted by the respondents for the execution of the order dated 04.11.2010 passed by the learned Rent Controller and the order dated 25.04.2011 passed by the learned Appellate Court were resisted by Rafique Gujjar by filing an objection petition. Vide order dated 07.06.2011, the learned Executing Court dismissed Rafique Gujjar's objections to the respondents' execution petition. The Court of the learned Additional District Judge, on 30.01.2012, dismissed Rafique Gujjar's revision petition against the said order. After this, possession of the suit house was handed over to the respondents on 16.02.2012 through the bailiff of the Court.

10. The respondents' grievance was that suit house was in a damaged condition and its utility bills had not been paid when its possession was handed over. On 07.05.2011, the respondents filed suit No.463/2011 for recovery of rent against the petitioner before the learned Civil Court. In the said suit, the respondents had prayed for a decree for recovery of rent at the rate of Rs.35,000/- per month with 5% yearly increase. The amount claimed by the respondents was quantified in the plaint to be Rs.15,80,250/-.

11. The petitioner contested the said suit by filing a written statement. The position taken by the petitioner, in his written

statement, was that on the instructions of Ms. Shehnaz Iqbal, the petitioner had paid rent to Rafique Gujjar. It was also pleaded that the petitioner handed over possession of the suit house to Rafique Gujjar.

12. On 14.02.2015, suit No.70/2015 for recovery of damages amounting to Rs.9,85,125/- was filed by the respondents against the petitioner before the learned Civil Court. This suit was also contested by the petitioner.

13. The said two suits were consolidated vide order dated 17.10.2015. After the framing of the consolidated issues, respondent No.1 (Syed Tahir Zahoor) appeared as PW-1 whereas the petitioner gave evidence as DW-1. As mentioned above, vide judgment and decrees dated 26.04.2016, the learned Civil Court dismissed both suits with costs. The respondents' appeal against the said judgment and decree, to the extent of dismissing suit No.463/2011, was allowed and the said suit was decreed as prayed for whereas the respondents' appeal against the said judgment and decree to the extent of dismissing suit No.70/2015 was partly allowed. The judgment and decrees dated 01.09.2016 passed by the learned Appellate Court have been assailed by the petitioner in the instant civil revision petitions.

14. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petitions, submitted that the learned Civil Court had committed no illegality in dismissing the suits instituted by the respondents; that the judgment and decrees passed by the learned Appellate Court suffer from misreading and non-reading of evidence; that during the subsistence of the tenancy, the landlady/Ms. Shehnaz Iqbal had instructed the petitioner to pay rent to Rafique Gujjar who was said to have purchased the suit house; that during the pendency of the eviction petition filed against the petitioner by Rafique Gujjar, possession of the suit house was handed over to him by the petitioner; that since the petitioner had already paid rent on Ms. Shehnaz Iqbal's instructions to Rafique Gujjar, the learned Appellate Court erred by holding that the petitioner was liable to pay rent to the respondents; that after Ms. Shehnaz Iqbal's demise, the petitioner had continued paying rent to Rafique Gujjar;

that Rafique Gujjar had filed a suit for specific performance of an agreement to sell the suit house against Ms. Shehnaz Iqbal; that even though the said suit had been dismissed, Rafique Gujjar's appeal against the dismissal of the suit was still pending; and that the eviction petition filed by the respondents had been allowed by the learned Rent Controller.

15. Learned counsel further submitted that since the petitioner had only taken the upper portion of the suit house on rent, and since the upper portion did not have separate meters for the utility supplies, he could not have been held liable to pay the utility bills for the entire suit house; that the petitioner could not be made to pay the utility bills for the lower portion of the suit house where the respondents were residing; that the suits were filed only by respondent No.1 who is one of the co-owners of the suit house and that the other co-owners of the suit house did not appear to give evidence before the learned Trial Court. Learned counsel for the petitioner prayed for the judgment and decrees passed by the learned Appellate Court to be set-aside and for those passed by the learned Civil Court to be restored.

16. On the other hand, learned counsel for the respondents submitted that after Ms. Shehnaz Iqbal's demise on 17.10.2007, the petitioner did not pay any rent to her legal heirs; that the petitioner and Rafique Gujjar had been colluding with each other against the respondents; that the petitioner did not deny that he had not paid any rent to the respondents; that the petitioner did not produce any independent witness to prove that he had paid rent to Rafique Gujjar; that the lease agreement between the petitioner and Rafique Gujjar was not produced at any material stage; that the rent receipts allegedly issued by Rafique Gujjar were also not produced; that the petitioner did not even produce Rafique Gujjar as a witness to prove that the petitioner had paid rent to him after Ms. Shehnaz Iqbal's demise; that the payment of rent by the petitioner to Rafique Gujjar is nothing but a concoction; and that in the case at hand, the petitioner has completely failed to prove that he paid any rent to the respondents.

17. Learned counsel further submitted that the respondents were non-suited by the learned Trial Court on the ground that they had not

produced an heirship certificate and therefore had no *locus standi* to file the suits; that the learned Civil Court had ignored Exh.P.36 which is the heirship decree; that the respondents had also been non-suited on the ground that the suits were barred by limitation; that the ejectment order was passed by the learned Rent Controller in the respondents' favour on 04.11.2010; that as a consequence of the ejectment order, the suit for recovery was filed on 07.05.2011 (i.e. six months after the ejectment order); that no order for the payment of tentative rent had been passed by the learned Rent Controller; that suits were filed within the limitation period provided by law; that the suit for recovery of damages as well as the unpaid utility bills was also not time barred since the cause of action accrued to the respondents when they were given possession of the suit house, i.e. on 16.02.2012; that although the filing of the said suit was delayed, it was within the limitation period of three years; that the electricity bill (Exh.P.32) shows that the same was for the first floor of the suit house; that the petitioner cannot escape his liability to pay the utility bills for the period before possession was handed over to the respondents; that the original plaint in suit No.463/2011 had been signed by all the co-owners but the amended plaint was signed by respondent No.1; that through power of attorney dated 08.11.2014 (Exh.P.1), all other private respondents authorized respondent No.1 to pursue the cases; that with the execution of the said power of attorney, the technical defect in the filing of suit No.463/2011 stood cured/rectified in terms of Order VI, Rule 14 C.P.C.; and that the appellate judgment dated 01.09.2016 does not call for any interference in the revisional jurisdiction of this Court. Learned counsel for the respondents prayed for the revision petitions to be dismissed.

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

19. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 5 to 13 above, and need not be recapitulated.

20. The undisputed facts are that through lease agreement dated 25.07.2006 (Mark-DA), Ms. Shehnaz Iqbal had given the upper portion of the suit house on rent to the petitioner for a period of one year, i.e. up to 31.07.2007. Ms. Shehnaz Iqbal breathed her last on 17.10.2007. Through judgment and decree dated 03.01.2009, the Court of the learned Civil Judge, Islamabad declared the respondents as Ms. Shehnaz Iqbal's legal heirs. On 16.02.2012, possession of the suit house was given to the respondents through the bailiff of the Court appointed by the learned Executing Court in proceedings for the execution of the ejectment order dated 04.11.2010 in favour of the respondents. This order had attained finality.

21. The petitioner's case was that since he had paid rent to Rafique Gujjar on Ms. Shehnaz Iqbal's instructions, the respondents had no case for recovery of rent against the petitioner. The respondents, in their suit for recovery of rent, had pleaded and respondent No.1/PW-1 had deposed that the petitioner had not paid any rent to the respondents. In rent disputes, when the landlord takes a position that the tenant has not been paid rent, the onus to prove that rent was paid shifts to the tenant. The non-payment of rent is a negative fact, and the landlord has only to come to the witness box and say that the tenant has not paid the rent since a specified date, whereafter the onus shifts to the tenant to prove that he has paid the rent. In such a case, the tenant has to prove through reliable evidence that rent was indeed paid. Reference in this regard may be made to the following case law:-

- i) In the case of Allah Din Vs. Habib (PLD 1982 S.C. 465), it has been held as follows:-

"It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 13(2)(i) of the Sind Urban Rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question. The principle thus stated was held to apply to the case of a transferee for value who has paid his money in good faith and without notice of the original contract under

section 27(b), Specific Relief Act, 1877, in the case of KhairunNisa v. Muhammad Ishaq P L D 1972 S C 25.

Applying the principle to the facts of this case, it is clear to us that upon asserting in the evidence that he had not received the rent for the disputed period, the appellant had successfully discharged the burden of proof and the onus was shifted to the respondent. If, therefore, the evidence of the two parties consisting of oral assertions the appellant stating that he had not received the rent and the respondent testifying that he had paid the rent but no receipts were issued to him, the issue could only be decided on the ground that the tenant had failed to discharge the onus to prove the factum of payment. The approach as already observed, adopted by the learned First Appellate Court was, therefore, wholly erroneous and was liable to be upset in Second Appeal. The conclusion is that the appellant has successfully established that the respondent had committed default in the payment of rent and is liable to be evicted from the premises.”

- ii) In the cases of Muhammad Riaz Shaikh Vs. Iftikhar uddin (2014 CLC 1695) and Aulad Hussain Vs. Khair un Nisa (1996 MLD 1669), it was held that non-payment of rent was a negative fact, and where a landlord appears before a Court and states on oath that he had not received rent for a certain period, the burden would shift to the tenant to prove affirmatively that he had paid or tendered such rent. This principle which is applicable in cases to prove default in payment of rent before a Tribunal of Rent Controller, is also applicable to cases for the recovery of rent before a Civil Court.

22. Now, in his examination-in-chief, the petitioner deposed that he had entered into a lease agreement with Rafique Gujjar but he chose not to produce the lease agreement. He also deposed that after November 2007, he had been paying rent to Rafique Gujjar, and that the latter had issued rent receipts. Not a single rent receipt issued by Rafique Gujjar was produced in evidence. The “*primary evidence*” for the payment of rent by the petitioner to Rafique Gujjar would have been the rent agreement executed between the said parties and the rent receipts issued by Rafique Gujjar to the petitioner. The petitioner did not even produce Rafique Gujjar so that he could depose that he had received rent from the petitioner. It is well settled that in cases where a party withholds the best evidence then it can fairly be presumed that the party had some sinister motive behind it. The presumption under Article 129(g) of the *Qanun-e-Shahadat* Order,

1984 would be that if the witness would have been examined, his evidence would have been unfavourable to the prosecution. Therefore, it is safe to hold that the petitioner failed to prove that he had paid rent to Rafique Gujjar after Ms. Shehnaz Iqbal's demise.

23. The petitioner, in his written statement to suit No.463/2011, had pleaded that he had handed over possession of the suit house to Rafique Gujjar. It may also be mentioned that on 29.01.2010, Rafique Gujjar had filed an eviction petition against the petitioner before the learned Rent Controller. Respondents No.1 and 2's application for impleadment as parties to the said eviction petition had been allowed by the learned Rent Controller. Learned counsel for the petitioner had also represented Rafique Gujjar in the said eviction proceedings. No warrant of possession regarding the suit house was issued by the learned Rent Controller in the eviction proceedings instituted by Rafique Gujjar. In fact, no eviction order was passed in Rafique Gujjar's favour at any stage. Even if it is to be believed that the petitioner handed over possession of the suit house to Rafique Gujjar since the petitioner did so on his own accord and not pursuant to any order passed by any Court, he cannot escape the liability to pay rent up to the period when possession of the suit house was handed over to the respondents. There is nothing preventing the petitioner to recover the amount paid as rent by him from Rafique Gujjar, if at all any such rent was paid.

24. Possession of the suit house was handed over to the respondents on 16.02.2012 in execution of the warrants of possession issued by the learned Executing Court for the execution of the order dated 04.11.2010 passed by the learned Rent Controller and the order dated 25.04.2011 passed by the learned Appellate Court. The petitioner's stance that he had handed over possession of the suit house to Rafique Gujjar is belied by the bailiff's report dated 16.02.2012 according to which when the bailiff went along with the warrant of possession to the suit house, the same was found vacant and unlocked. There is no mention of Rafique Gujjar in the said report. It was also reported that the judgment debtor (i.e. the petitioner) had taken his belongings from the suit house a few days earlier. This report is ample evidence of the fact that Rafique Gujjar

was not in possession of the suit house when the warrant of possession was executed.

25. One of the reasons given by the learned Civil Court for dismissing suits No.461/2011 and 70/2015 was that they were barred by limitation. As mentioned above, suit No.463/2011 was filed by the respondents against the petitioner for the recovery of rent. Under Article 110 of the Schedule to the Limitation Act, 1908, the limitation period for filing a suit for recovery of rent is three years from the date when the arrears become due. The peculiar feature in the case at hand is that Ms. Shehnaz Iqbal died issueless. The respondents are Ms. Shehnaz Iqbal's collaterals. As mentioned above, the learned Civil Court did not give a declaration to the effect that the respondents were Ms. Shehnaz Iqbal's legal heirs until 03.01.2009. The respondents would have been in a position to sue for the recovery of rent only after they were declared as Ms. Shehnaz Iqbal's legal heirs. The suit for recovery of rent (suit No.463/2011) was filed on 07.05.2011, i.e. two years and four months after the passing of the judgment and decree dated 03.01.2009, whereby the respondents were declared as Ms. Shehnaz Iqbal's legal heirs. Therefore, it is my view that the suit for recovery of rent was not barred by limitation.

26. As regards suit No.70/2015 for recovery of damages and unpaid utility bills, the same was filed on 14.02.2015, i.e. just two days before the limitation period of three years for the filling of such a suit was to expire. The respondents were given possession of the suit house on 16.02.2012. That is when they came to know that the suit house had been damaged and the utility bills had not been paid. Since the cause of action for filing the said suit accrued to the respondents on 16.02.2012, the learned Civil Court could not have dismissed the said suit on the ground of limitation.

27. As regards the contention of the learned counsel for the petitioner that since only the upper portion of the suit house had been given on rent to the petitioner, he could not have been held liable to pay the utility bills for the entire suit house, suffice it to say that Exh.P.36 which is the electricity bill for Rs.21,188/- clearly shows that it is for the first floor of the suit house. The letters "FF" on the said bill

indicate that it is for the first floor of the suit house which had been given on rent by Ms. Shehnaz Iqbal to the petitioner.

28. There is no denying the fact that suit No.463/2011 had been signed by all the co-owners of the suit house, i.e. respondents No.1 to 4. Although the amended plaint was signed only by respondent No.1 but subsequently power of attorney dated 08.11.2014 (Exh.P.1) was executed by the other respondents in favour of respondent No.1, authorizing the latter to pursue the cases. It is well settled that an irregularity or omission in the signatures of the pleadings or signature by a person not authorized is merely a defect of procedure not affecting the jurisdiction of the Court and can be allowed to be corrected at any stage. Order VI, Rule 14 C.P.C. permits a party unable to sign the pleadings to authorize any person to sign the same or to sue or defend on his behalf. The special power of attorney dated 08.11.2014 (Exh.P.1) had been executed by respondents No.2 to 4, authorizing respondent No.1 to represent them and do all lawful acts necessary for the conduct of the suit in question. With the execution of the said power of attorney, the technical objection taken by the learned counsel for the petitioner to the maintainability of the said suit is rendered redundant. In holding so, I place reliance on the following case law:-

- (i) In the case of Muhammad Sham Shaikh Vs. Ghulam Muhammad (1980 CLC 1150), it has been held *inter alia* that where a written reply is signed by one respondent on his own behalf and on behalf of another respondent and both the respondents are represented by a common counsel, the reply would be deemed on behalf of both the respondents.
- (ii) In the case of Wali Muhammad Khan Vs. Ishak Ali Khan (AIR 1931 Allahbad 501), it was held that the absence of signature or verification or for that matter the absence of presentation on the part of some of the plaintiffs out of several does not affect the jurisdiction of the Court, and the suit must be deemed to have been duly instituted on their behalf if it is filed with their knowledge and authority.

29. After considering the rival submissions of the learned counsel for the contesting parties, and having gone through the evidence and

the documents on the record, I am of the view that the reasoning given by the learned Appellate Court for decreeing suit No.463/2011 and partially decreeing suit No.70/2015 is very sound and cannot be said to be suffering from any jurisdictional infirmity. The petitioner embroiled the respondent in arduous litigation for several years. Consequently, the instant revision petitions are dismissed with costs throughout.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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