

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3402 of 2016

Shafique Ahmed Khan etc.

Versus

Learned Rent Controller, Islamabad (West), and others

Date of Hearing: 13.10.2016
Petitioners by: Raja Aamir Abbas, and Muhammad
Abdul Wali Irfan, Advocates,
Respondent No.2 by: Mr. Ishtiaq Ahmad Raja, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, Shafique Ahmed Khan and his wife, Saima Shafique, impugn the judgment dated 05.09.2016, passed by the Court of the learned Additional District Judge (West), Islamabad, whereby the petitioners' appeal against the Order dated 14.06.2016, passed by the Court of the learned Rent Controller, Islamabad, was dismissed. Vide the said Order dated 14.06.2016, the learned Rent Controller, had allowed respondent No.2's eviction petition under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO") and directed the petitioners to vacate House No.30, Street No.28, Sector F-10/1, Islamabad ("the rented premises") within a period of 45 days.

2. Learned counsel for the petitioners submitted that petitioner No.1 had lived in the rented premises for most of his life; that the rented premises were a joint family property and that respondent No.2 was only a *benamidar*, that there is no relationship of tenant and landlord between the petitioners and respondent No.2; that petitioner No.1 was living in the rented premises as respondent No.2's son, and not as a tenant; that after petitioner No.1's father died in May 2011, petitioner No.1 was posted in Rawalpindi; that the rented

premises were leased by petitioner No.1 only for a period of two years, because the facility of self-hiring was available to petitioner No.1; that the rent for the said period was duly paid to respondent No.2; that the lease agreement does not bear respondent No.2's signature; that the said lease agreement is doubtful. Learned counsel for the petitioners prayed for the concurrent orders of the learned Courts below to be set aside and respondent No.2's eviction petition to be dismissed. In making his submissions, the learned counsel for the petitioners placed reliance on the law laid down in the cases of Muhammad Irshad Vs. Additional District Judge, Multan (2009 YLR 2379), Muhammad Naeem Vs. Abdul Wahidi (1999 MLD 1342), and Abdul Rasul Vs. Aziz Khatoon (1992 MLD 1997).

3. On the other hand, learned counsel for respondent No.2 defended the orders impugned in the instant writ petition by submitting that the petitioners in their written replies before the learned Rent Controller, had pleaded that respondent No.2 was not the real owner of the rented premises, and that she was only a *benami* owner; that it was also pleaded by the petitioners that the rented premises were purchased by respondent No.2's husband, who wanted the rented premises to devolve on petitioner No.1 and his two younger brothers; that the petitioners have concealed from this Court several documents, which were exhibited and were a part of the record of the proceedings before the learned Rent Controller; that one such document was Exh.A-2, which was the rent agreement dated 01.09.2011 between respondent No.2 and the President of Pakistan with respect to the rented premises; that Exh.A-5 shows that on 01.09.2011, the rented premises were occupied by petitioner No.1; that Exh.A-7 is letter dated 23.01.2012, conveying the approval of the Quartermaster General's Branch of the General Headquarters regarding the hiring of the rented premises from 01.09.2011 to 31.08.2013 for an annual rental of Rs.225,120/-; that presently respondent No.2 is the undisputed lawful owner of the rented premises. Learned counsel for respondent No.2 prayed for the writ

petition to be dismissed. In making his submissions, learned counsel for respondent No.2 placed reliance on the law laid down in the cases of Rasheeda Qudrat Vs. Muhammad Qudrat Ullah (1998 MLD 171), Muhammad Siddique Vs. Shah Pasandkhan (1979 SCMR 619), Muneer Khan Vs. Uzma Ufaq (2011 CLC 846), and Liaquat Ali Vs. Additional Sessions Judge, Islamabad (PLD 2011 Islamabad 14).

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

5. Respondent No.2 (Mst. Shamim Anjum) is petitioner No.1's mother. The ownership of the rented premises vests in respondent No.2. Petitioner No.1 is serving as a Lt. Colonel in the Pakistan Army. Petitioner No.2 is petitioner No.1's wife.

6. The record shows that on 03.09.2015, respondent No.2 filed an eviction petition under Section 17 of the IRRO, against the petitioners, seeking their eviction from the rented premises. The grounds taken in the said eviction petition were *inter-alia* (i) default in the payment of rent, (ii) respondent No.2's *bonafide* need of the rented premises for her own personal use, (iii) subletting of the rented premises by the petitioners, and (iv) expiry of the lease agreement. The petitioners contested the said eviction petition by filing their respective replies. The position taken by petitioner No.1 in his reply was that while he was posted at the General Headquarters, Rawalpindi, he had rented the rented premises for the period 2011-2013 from respondent No.2. It was also pleaded that upon the expiry of the lease agreement, the relationship of landlord and tenant between respondent No.2 and the petitioners respectively, came to an end. After a trial stretching over a period of several months, the learned Rent Controller, vide order dated 14.06.2016, allowed respondent No.2's eviction petition. The petitioners challenged the said eviction order in an appeal before the Court of the learned Additional District Judge, Islamabad. As mentioned above,

vide appellate order dated 05.09.2016, the petitioners appeal was dismissed. The said concurrent orders passed by the learned Courts below have been impugned by the petitioners in the instant writ petition.

7. During the trial before the learned Rent Controller, the record keeper of Military Lands, Rawalpindi Cantonment, appeared as CW-1 and produced Exh.A/1 to Exh.A/18. The petitioners chose not to file any of these Exhibits alongwith the writ petition. Respondent No.2 has brought these Exhibits on record through a civil miscellaneous application. Perusal of these Exhibits shows that on 01.09.2011, an agreement was executed between respondent No.2 and the President of Pakistan for the lease of the rented premises from 01.09.2011 to 31.08.2013. The monthly rent was agreed to be Rs.18,760/-. Exhibit A-4 is an affidavit of respondent No.2 deposing *inter-alia* that the rented premises will not be given on lease to any other party till such time that they remained with the Military Estate Office. Exhibit A-5 shows that the rented premises were occupied by petitioner No.1 on 01.09.2011. Exhibit A-6 shows that the rented premises were vacated by petitioner No.1 on 31.07.2013. Exhibit A-7 is letter dated 23.01.2012 from the office of the Quartermaster General conveying the sanction for leasing the rented premises for the benefit of petitioner No.1. Exhibit A-8 is a certificate from respondent No.2 showing her willingness to lease her house to the Pakistan Army for a period of two years. The signature of petitioner No.1 also appeared on this document. This document also contains an agreement between respondent No.2 and petitioner No.1 showing *inter-alia* that the monthly rent of Rs.30,000/- for the rented premises was agreed between the said parties. The difference in the agreed rental and the sanction rental was to be paid by petitioner No.1. Exhibit A-9 are the receipts of the monthly rent paid to respondent No.2. The cumulative reading of these documents established the relationship of landlord and tenant between respondent No.2 and petitioner No.1 respectively. The petitioners ought not to have withheld these

documents and should have filed their copies alongwith the writ petition.

8. The record keeper of the Estate Management Directorate, Capital Development Authority appeared as CW-2 in the proceedings before the learned Rent Controller and produced Exhibits A-19 to A-23. Exhibit A-19 is letter dated 13.11.1991 issued by the Estate Management Directorate, Capital Development Authority which shows that the rented premises are owned by respondent No.2. Exhibit A-21 is respondent No.2's application dated 08.05.2015 to the CDA for issuing a no demand certificate for the transfer of the rented premises to her three sons, including petitioner No.1. This application was subsequently withdrawn by respondent No.2 vide letter dated 11.08.2015 (Exhibit A-23). Perusal of the documents produced by CW-2 show that till date the ownership in the rented premises vests solely in respondent No.2.

9. The petitioners' stance that the rented premises are not actually owned by respondent No.2, but that she is only a *benami* owner, is not borne out from the record. The petitioners have not even instituted a suit for declaration that the rented premises are owned only ostensibly, and not really by respondent No.2. The petitioners reliance on a deed of declaration dated 08.08.1998 allegedly executed by petitioner No.1's father that he wanted the rented premises to devolve on his sons, is also of no avail because the rented premises were not owned by alleged executant.

10. It may have been the case that petitioner No.1 had been living in the rented premises with his parents but the fact remains that petitioner No.1 had leased the rented premises from respondent No.2. The factum as to lease of the rented premises is amply demonstrated by the documents produced before the learned Rent Controller by CW-1. The learned counsel for the petitioners in his arguments submitted that since respondent No.2 was only a *benamidar*, there was no

occasion to pay her any rent is, in fact, a candid admission of default in the payment of rent. As regards petitioner No.2, who is petitioner No.1's wife, the learned Rent Controller had correctly held that petitioner No.2 would not have an independent right to continue to occupying the rented premises because a tenant includes his spouse and children in occupation of demised premises.

11. As mentioned above, there were several documents, which formed part of the record of the proceedings before the learned Rent Controller, which documents the petitioners chose not to annex with their writ petition. Some of these documents were of pivotal importance for the just adjudication of this case. In the judgment dated 03.10.2016, passed in W.P.No.1090/2015, titled "Khushnood Ahmed Vs. Learned Additional District Judge, Islamabad" I have had the occasion to hold as follows:-

"A litigant, who approaches a Court, is bound to produce all the documents which are relevant to the litigation. For instance, in a petition seeking a writ of certiorari, the entire record of the court or a tribunal below has to be filed. The practice of filing documents which favour the petitioner and avoiding to file those which go against him, should not just be deprecated but met with a penalty of summary dismissal of the petition. The superior courts in innumerable cases have refused to exercise discretionary power for issuance of a writ on the ground that the petitioner had not approached the Court with clean hands by withholding the material facts/documents. Writ jurisdiction is equity jurisdiction, and he who seeks equity must come with clean hands."

12. Learned counsel for the petitioners during the course of his arguments submitted that he was under instructions to submit that he would have no objection if the writ petition is dismissed provided respondent No.2 undertakes not to transfer the rented premises in her life time. I am afraid such a restrictive and cruel fetter is not permissible under any cannon of law, justice, equity and jurisprudence, least of all at the instance of a son on a mother. I cannot help but observe that Islam has given an exalted position and status to a mother as can be appreciated from the following verses from the Holy

Quran and Ahadith of the Holy Prophet (may peace be upon him):-

“The Holy Quran:

1. *We have enjoined on man kindness to his parents; in pain did his mother bear him, and in pain did she give him birth (46:15).57*
2. *Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honor. And out of kindness, lower to them the wing of humility, and say: ‘My Lord! Bestow on them Thy Mercy even as they cherished me in childhood’ (17:23-24),*
3. *We have enjoined on man and woman kindness to parents; but if they (either of them) strive (to force) thee to join with Me anything of which thou hast no knowledge, obey them not.*
4. *We have enjoined on man and woman (to be good) to his/her parents; show gratitude to Me and to thy parents; to Me is (thy final) Goal. If they (parents)strive to make thee join worship with Me things of which thou hast no knowledge, obey them not; yet bear them company in this life with justice (and consideration) and follow the way of those who turn to Me (in love) (31:14-15).*

The Ahadith of the Holy Prophet (may peace be upon him):

1. *The Prophet Muhammad said, may Allah’s peace and blessings be upon him: Your Heaven lies under the feet of your mother (Ahmad, Nasai). 32*
2. *A man came to the Prophet and said, ‘O Messenger of God! Who among the people is the most worthy of my good companionship? The Prophet said: Your mother. The man said, Then who? The Prophet said: Then your mother. The man further asked, ‘Then who? The Prophet said: Then your mother. He asked again, ‘Then who? The Prophet said: Then your father. (Bukhari, Muslim).*
3. *Abu Usaid Saidi said: We were once sitting with Rasulullah when a man from the tribe of Salman came and said to him: O Messenger of Allah! do my parents have rights over me even after they have died? And Rasulullah Said: yes. You must pray to Allah to bless them with His Forgiveness and Mercy, fulfill the promises they made to anyone, and respect their relations and their friends (Abu Dawud and Ibn Majah).*
4. *Abdullah ibn Amr narrated that the Messenger of Allah said: The major sins are to believe that Allah has partners, to disobey one’s parents, to commit murder, and to bear false witness (Bukhari, Muslim).*
5. *It is narrated by Asma bint Abu Bakr that during the treaty of Hudaibiyah, her mother, who was then pagan, came to see her from Makkah. Asma informed the Messenger of Allah of her arrival and also that she needed help. He said: Be good to your mother (Bukhari, Muslim).”*

13. In view of the above, I do not find any reason to interfere with the concurrent findings of the learned courts below. Resultantly, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in open court on_____.

JUDGE

Approved for reporting.

JUDGE

Sultan*

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