

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petition No.917-K of 2022

[Against the Judgment dated 07.03.2022, passed by the High Court of Sindh
Karachi in Constitutional Petition No. S-931 of 2021]

Ashfaq Hussain and another.

...Petitioner(s)

Versus

Ghulam Nabi and another.

...Respondent(s)

For the Petitioner(s) : Mr. Naeem Suleman, ASC

For Respondent No.1 : Mr. Aamir Asher Azeem, Advocate
High Court
Mr. K.A Wahab, AOR

Date of Hearing : 12.06.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, the petitioners have challenged the judgment dated 07.03.2022 **(the impugned judgment)**, passed by the High Court of Sindh, Karachi **(the High Court)**, whereby constitutional petition filed by the Respondent No. 1 **(the respondent)** was allowed.

2. Facts in brief are that the petitioners are the co-owners/ landlords of Shop bearing No.4, located at ground floor of Haji Naik Muhammad Building, constructed over Plot No. RC-4/32, situated in Aja Maoji/ Al-Shifa Street, Ranchorline, Gazdarabad, Karachi South **(subject premises/shop)**. The subject premises/shop was let out to the grandfather of the respondent, namely, Allauddin as the tenant who carried on business over

there solely. However, after death of the original tenant/grandfather, the respondent occupied the subject premises/shop as tenant without informing the landlords about the death of his grandfather. The respondent continued to pay the monthly rent till June 2009, at the rate of Rs.600/-. Thereafter, in June, 2019, the respondent sublet the subject premises/shop to three doctors, namely, Dr. Fazal Ellahi, Dr. Jaipal and Dr. Chetan Lal for running a clinic, namely Muhammadi Clinic *vide* Partnership Deed Exh.O/21 without consent or knowledge of the landlords.

3. Consequently, the petitioners filed a Rent Case No.656 of 2021 in the Court of Vth Rent Controller (South) at Karachi for the eviction of tenant on the ground of default in payment of rent as well as subletting the subject premises/shop. That ejectment application was allowed in favour of the petitioners *vide* order dated 05.04.2021. Being aggrieved, the respondent preferred an appeal (*First Rent Appeal No. 120/2021*) in the Court of Additional District & Session Judge-XII/Model Civil Appellate Court, District South, Karachi **(the Appellate Court)**, that was dismissed *vide* judgment dated 20.11.2021. The respondent challenged the judgment of the Appellate Court by filing a constitutional petition in the High Court, which was decided in favour of the respondent *vide* judgment dated 07.03.2022.

4. The learned counsel for the petitioners contends that subject premises/shop was let out to the grandfather of the respondent who was solely running a business in it; that the respondent or legal heirs of the tenant has sublet the shop in question to doctors and has *malafidely* shown himself as the partner; He relied upon the cases of **M.D Tahir Advocate** vs.

Lahore High Court (1994 SCMR 1507), **Muhammad Shafi** vs. **State Life Insurance Corporation**(2009 SCMR 893) and **State Life Insurance Corporation** vs. **Sami-Ur. Rehman** (2018 SCMR 443).

5. On the contrary, the learned counsel for the respondent contends that the respondent has not committed any default in payment of rent; that he has not sublet the premises/shop but has entered into a partnership with doctors, which does not amount to subletting. He relied upon the cases reported as **State Life Insurance Corporation of Pakistan** vs. **M/S Siddiqui Tailors** (PLD 1993 Karachi 642), **Syed Fakhar Mahmood Gillani** vs. **Abdul Ghafoor** (1995 SCMR 96), **KhudaBaksh** vs. **Muhammad Yaqoob** (1981 SCMR 179), **Habib ur Rehman** vs. **Mehromal** (1993 SCMR 1163), **Habibullah** vs. **Rent Controller Peshawar and 11 other** (1998 SCMR 2656), **Ahmed Khan** vs. **Rasul Shah** (PLD 1975 SC 311) and **Barkhurdar** vs. **Muhammad Razaq** (PLD 1989 SC 749).

6. Heard the learned counsel for the parties and perused the material available on the record.

7. Perusal of the evidence of the parties reveals that the respondent has admitted that he never informed the landlords about the death of his grandfather who was the original tenant inducted by the petitioners. Moreover, the respondent has himself admitted in his cross-examination that doctors have been running clinic in the subject premises/shop with the name of Muhammadi Clinic. The respondent produced the Registration Certificate Exh.0/21 of the said clinic. He has also admitted that he entered into a partnership in respect of the subject premises/shop with three doctors, namely, Dr. Fazal Ellahi, Dr. Jaipal, and Dr. Chetan

Lal. The respondent has also admitted that the petitioners/landlords were not aware about the registration of said clinic and he never informed them about it.

8. Section 15 of the Sindh Rented Premises Ordinance, 1979 (**SRPO, 1979**) envisages the various grounds on the basis of which the landlord may seek eviction of the tenant including the ground of default in payment of rent and subletting of any rented premises without the written consent of the landlord. The case of the petitioner is that the respondent without the consent and knowledge of the petitioners/landlords started the business of running of a clinic and entered into a partnership with the doctors named above in respect of the subject premises/shop.

9. It appears from the record that the evidence of the parties adduced before the learned Rent Controller has not been properly appreciated and discussed in the impugned judgment.

10. In view of the above, the impugned judgment is hereby set aside and the case is remanded back to the High Court to decide it afresh after providing an opportunity of hearing to both the parties and after evaluating the evidence available on the record within a period of 60 days excluding the period of summer vacations.

Judge

Judge

Judge

Karachi,

12th June, 2024

APPROVED FOR REPORTING

*Paras Zafar, LC**