

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT
W.P. No. 4901-P/2022.

Haji Zahir Ullah Vs. Ain Ullah Hassan and others.

Date of hearing: 27.12.2022
Petitioner(s) by: Mr. Kashif Jan, Advocate.
Respondent(s) by: Mr. Aman Ullah, Advocate.

JUDGMENT

MUHAMMAD NAEEM ANWAR, J. Ain Ullah Hassan, respondent No.1 filed an application under Section 13 of the West Pakistan Urban Rent Restriction Ordinance, 1959 for recovery of possession of shops, four in number, as described in head note of the application, situated at Purana Bazar, Charsadda Road, Charsadda, by asseverating therein that his father Tehsin Ullah was the owner of disputed shops on the strength of Mutation No.15996 dated 16.08.2018 and Mutation No.15995 dated 06.07.2018, on whose death, his legacy was devolved upon all the legal heirs including him through inheritance Mutation No.16553 dated 27.11.2019; as such, he is the owner to the extent of his *shari* share in the disputed shops. It was further divulged that the shops were handed over to the petitioner on rent @ Rs.4,200/- per month w.e.f. 01.10.2018 to 31.10.2019 on the basis of a rent deed executed on 30.10.2018, signed by the parties and marginal witnesses thereof i.e., Fazle Moula (Pw-5) and Muhammad Saleem (Pw-4). It was alleged that not only the petitioner is defaulter in payment of monthly rent since February, 2019,

but the shops are required to him for his personal need for extension of his business of Nurpur and Dostea. He pleaded that his predecessor-in-interest had filed an application before the learned Rent Controller for the ejection of the petitioner; however, after his death, the instant application was submitted with the permission of the Court. Allegedly, the petitioner was served with a notice for ejection but to no avail. The application was resisted by the petitioner on different legal and factual objections, it was submitted by the petitioner that he is running his business in the disputed shops (03 in numbers) for last fifty years which were earlier rented out to him by the legal heirs of Fazal Mehmood and thereafter, he has purchased these shops from him through an unregistered deed/agreement bearing No.254 dated 30.01.2019 and a Mutation No.16242 was also attested in his favour on 18.03.2019; hence, he is owner in possession of the shops. However, he has not denied the factum of the ownership of predecessor-in-interest of the respondent or devolution of the shops upon all the legal heirs of Tehseen Ullah. Keeping in view the denial from the relationship of landlord and tenant, the learned Rent Controller has framed issue No.2 as **“whether there is a relationship of landlord and tenant between petitioner and respondent?”** In order to prove their respective contentions, both the parties were directed to produce their respective evidence. The respondent produced Amjad Iqbal as Pw-1, he himself appeared as Pw-2,

statement of Shujaat Ali Khan was recorded as Pw-3, Muhammad Saleem as Pw-4 and Fazle Moula as Pw-5. Contrarily, the petitioner produced Gulraiz Nashad as Rw-1 and himself entered into the witness box through his attorney Tehsin Ullah as Rw-2, Mujahid Ali was produced as Rw-3 and Murad Ali was produced as Rw-4. The learned Rent Controller, after evaluation of the evidence, dismissed the application vide judgment and order dated 04.11.2022, against which, the respondent preferred rent appeal, which, after hearing both the parties, was allowed. Consequently, the judgment and order of the learned Rent Controller was set-aside and the petitioner was directed to hand over the vacant possession of the disputed shops to the respondent within two months from the date of order i.e. 22.10.2022 and he was also held entitled for the arrears of rent.

2. Learned counsel for the petitioner contended that both the parties i.e., petitioner and respondent No.1, are the owners in the property, wherein, the disputed shops were constructed, thus, in consonance with the law, the respondent was legally required to approach the Court of competent jurisdiction for resolution of the controversy i.e., separation of his share. He added that the petitioner has never remained the tenant under the respondent No.1 nor he has ever paid any rent to him. He termed that Ex. Pw-1/5 is forged and fabricated document and even otherwise, it was not proved in consonance with law. He further vociferated that one of

mutation was attested in favour of the predecessor-in-interest of petitioner in column of ownership, whereas, the other was attested in column of cultivation and lastly, submitted that the learned Rent Controller has got no authority to decree the alleged outstanding arrears in consonance with the judgment of this Court. In support of his submissions, he placed reliance on the cases titled "Mushtaq Ahmad and others Vs. Fayaz and others (2021 MLD 1410), Kaleem Ullah Khan and others Vs. Nasib-ur-Rehman and others (2022 YLR 990) and Manager State Bank of Pakistan Vs. Muhammad Ikram (1999 SCMR 2578)". At the end, he submitted that there are certain admissions but erroneous in nature which could not affect the rights of the petitioner and that one Shujaat Ali Khan, who was the brother of the respondent, entered into the witness box as Pw-3 but was not produced for cross examination, therefore, adverse inference was required to be taken against him under Article 129(g) of Qanun-e-Shahadat Order, 1984.

3. Conversely, learned counsel for respondent contended that not only the respondent has proved the relationship but this fact has also been admitted by the petitioner through cross examining the witnesses of respondent. He submitted that one of the co-owners can file an ejectment petition against the tenant and there was no bar for respondent to seek ejectment of the petitioner. He contended that for determination of rights amongst the

landlord and tenant, the learned Rent Controller has got exclusive jurisdiction and the learned Appellate Court, while considering the entire aspect, has rightly allowed the appeal and directed the petitioner to handover vacant possession alongwith the arrears of the past rent. In support of his submissions, he placed reliance on the cases titled *"Fazal Raziq Vs. Haji Sher Zaman (2016 MLD 121), Asad Ali Khan Vs. Special Judge Rent (PLD 2019 Lahore 363) and Fareed Ud Din Masood Vs. Additional District Judge, Bahawalpur (2019 SCMR 842)"*.

4. Arguments heard and record perused.
5. Since the learned Appellate Court has allowed the appeal of the respondent and reversed the findings of the learned Rent Controller, therefore, for proper determination and resolution of the controversy, reappraisal of evidence is inevitable. It is of much significance that the petitioner, while cross examining Pw-1, has placed it on record that rent deed was written by petition writer as per the terms and conditions settled by the petitioner and at whose instance, the deed was executed. It was also brought on the record that the deed was signed by the petitioner and the contents were handed down by him (Pw-1). Moreover, petitioner while cross examining the witnesses of respondent No.1 has admitted that the deed was signed by marginal witnesses including Muhammad Saleem. Though, in written statement, the petitioner has not admitted the factum of transfer of the property in favour of

the predecessor-in-interest of petitioner, however, he, while cross examining respondent, it was brought on record that the property in dispute was purchased by the predecessor-in-interest of the respondent No. 1 and mutation No.15996 and 15995 were attested in his favour, wherein, four shops were constructed. During the course of arguments, learned counsel for the petitioner, while pointing out cross examination of Pw-2, contended that he has admitted his two other shops in the disputed property which were rented out to someone else; nevertheless, this submission of the learned counsel for the petitioner is of no help to the petitioner for the reason that this admission does not pertain to the disputed shops rather respondent has admitted that apart from the disputed shops, he has two other shops which were rented out by him. It was also admitted by the petitioner that deed was executed which was signed by the parties and the witnesses thereof. Pw-4 was cross examined at length but nothing favorable to the petitioner was brought on record and same is the situation of Pw-5 who was one of the marginal witnesses of rent deed/agreement. It is an axiomatic principle of interpretation of the evidence that whole of the statement of a witness is read and one cannot be allowed to pick and choose from the statement. The importance of cross examination is to bring the truth on record. In the instant matter, not only the relationship was admitted by the petitioner himself while cross examining the witnesses of respondent but execution of

the rent deed/agreement has also been proved by the respondent No.1. Moreso, the statement of PW-1 to the extent of payment of rent was not cross-examined by the petitioner which amounts to an admission on the part of petitioner. It is well settled principle of law that whenever the relationship of the tenant and landlord is denied, and the existence of such relationship is proved by the land lord then an ejectment order is passed against the tenant, otherwise the application of the landlord is dismissed summarily. Reliance is placed on the case titled "Anwar Khan Vs. Abdul Manaf (2004 SCMR 126)", wherein it was observed that the question of title has got no relevancy with the tenancy and this view was re-affirmed by the apex Court in the case titled "Amin and others Vs. Haji Ghulam Muhammad and others (PLD 2006 SC 549)", wherein, it was ruled by the apex Court that question of title in the matter of tenancy is not relevant and the determining factor would be the existence of relationship, which, as held, to have been proved by the respondent. Reliance can be placed on case titled 'Muhammad Younis vs. Atta Muhammad' (1999 SCMR 2574), 'Zafar Ali vs. Additional District Judge' (1999 SCMR 2602), 'Gul Rehman Khan vs. Shirtan Khan' (2004 SCMR 592), 'Waheed-Ullah vs. Rehana Naseem' (2004 SCMR 1568).

6. An equally significant aspect of the matter is that the petitioner alleged to have purchased the shops from one of the owners but he has neither produced his alleged

owner nor has proved it before the court of competent forum or even before the Rent Controller. Admittedly, neither any civil suit was instituted nor pending even otherwise, pendency of civil suit, if any, would make no difference. It is now settled that mere pendency of a civil suit does not change the status of a tenant and as long as his status remains as tenant, he will be dealt with accordingly. On the pretext of a dispute regarding relationship of landlord and tenant the petitioner cannot claim continuity of his possession of the rented premises. In case of *Barkat Masih v. Manzoor Ahmed* (2006 SCMR 1068) it was observed by the apex Court that: "Even otherwise it is settled principle of law that if a tenant denies the proprietary rights of the landlord, then he is bound to first of all deliver the possession of the premises in-question and then to contest his proprietary rights in the property and if ultimately he succeeds in getting relief from the Court and decree is passed in his favour then he can enforce the same according to law with all its consequences." In case titled "*Abdul Rasheed vs. Maqbool Ahmad & others*" (2011 SCMR 320), it was held that:

“5. We have heard both the learned Advocates Supreme Court. It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to *Shameem Akhtar v. Muhammad Rashid* (PLD 1989 SC 575), *Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi* (PLD 1991 SC 242), *Muhammad Rafique v.*

Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order, the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist”

7. It is reflected from record that it was a case of stipulated tenancy for specific time as mentioned in the deed, thus, after expiry of the period, there was no hurdle/impediment for the respondent to bring the application on the ground of personal need and in such eventuality, the tenant is legally bound to handover the vacant possession of the property in view of the expiry of the tenancy as agreed between the parties. Even otherwise, after the expiry of the tenancy, no written agreement was executed between the parties, as such, when the respondent/landlord demanded the recovery of possession of the shops, the petitioner was required to hand over vacant possession of the shops as in the circumstances above, he had no justification to remain as a tenant of the respondent/landlord without his consent. Rel: *Qaiser Javed Malik vs. Pervaiz Hameed and 2 others* (2009 SCMR 846), *Arshad Ali vs. Mst. Zubaidah Bibi and 2 others* (2008 SCMR 1457). It is well settled law that after expiry of tenancy when no further tenancy agreement was

executed, tenancy between the parties was to be considered on month-to-month basis, and after expiry of tenancy period the tenant loses his right to continue his possession as a tenant over the rented premises. Learned appellate Court has rightly appreciated the controversy between the parties through the impugned order, to which, learned counsel for the petitioner has not been able to point out any illegality, irregularity or jurisdictional defect.

8. Moreso, one of the grounds in the application was the personal need which, after crossing the barrier, as imposed by the legislature, in terms of first proviso to Section 13 i.e., the expiry of tenancy, has been proved by him through his categorical statement and he was not cross examined on material points by the petitioner. Even in such eventuality, the sole statement of the landlord is sufficient to establish the personal bona fide need if his statement is consistent, coherent and un-shattered. Reliance is placed on the case titled "Muhammad Hayat Vs. Muhammad Miskeen and others (2018 SCMR 1441)".

9. Turning to another question as to whether the Rent Controller can grant a decree for the arrears of the rent. It is an inbuilt provision of law that the Rent Controller would provide safeguard to the rights of tenant as well as the landlord, as added by W. P. Ord No. XXX of 1960 to the effect that the Controller shall finally determine the amount of rent due from the tenant and direct that the same be paid to

the landlord in term of section 13(6) of the Ordinance therefore, the submission of the petitioner, while keeping reliance on the judgment of this Court, is misconceived.

10. Insofar as the case law relied upon by petitioner is concerned, this Court in the case titled *"Mushtaq Ahmad Vs. Fayaz and others"* (2021 MLD 1410) has held that when the issue regarding the existence of relationship of landlord and tenant is framed, the landlord is required to prove the same and in case of failure, his application would be turned down. In the instant case, the respondent put his appearance in the witness box in support of his contention but not only his statement remained un-rebutted but the petitioner has also admitted the factum of existence of relationship and proof of the rent agreement/ deed. The judgment of this Court in the case of *Kaleem Ullah Khan* (2022 YLR 990) is also of no help in view of peculiar circumstances when the petitioner himself admitted the stance of respondent regarding the creation of tenancy and expiry thereof. Reliance is placed on the cases of *"Sughra Bibi Vs. Abdul Aziz (1996 SCMR 137), Haji Hilal Murad Vs. Hami Ameer Zaman and others (2017 YLR 118) and Nasira Afridi Vs. Muhammad Akbar (2005 MLD 171)"*, it was held by this Court that payment of rent is *sine-qua-non* for the relationship of landlord and tenant which in the instant case has been proved. It is also available on record that the petitioner has not paid or deposited the outstanding rent of the disputed shops to the respondent,

therefore, in consonance with the provisions of Section 13, the learned Appellate Court has rightly held entitled the respondent for recovery of the arrears of rent for the period as alleged by the respondent.

11. For what has been discussed above, I have reached to an irresistible conclusion that the learned Appellate Court has rightly appreciated the evidence and applied the law in its true perspective to which the petitioner has not been able to point out any jurisdictional defect, illegality, misreading and non-reading of any document from record. Therefore, the instant petition, being without substance, is hereby dismissed. The petitioner is directed to handover the vacant possession of the disputed shops to the respondent within a period of two months from today along with arrears of rent, otherwise the learned Executing Court shall execute it in accordance with law.

Announced
Dt:27.12.2022
Muhammadullah


JUDGE

(SB) Hon'ble Mr. Justice Muhammad Naem Anwar.