

**2012 C L C 1178**

**[Lahore]**

**Before Mehmood Maqbool Bajwa, J**

**JAVED SADIQ MALIK---Appellant**

**Versus**

**Lt. Gen. (R) MUHAMMAD AFZAL NAJEEB---Respondent**

First Appeal from Order No.431 of 2010, decided on 30th January, 2012.

**(a) Cantonments Rent Restriction Act (XI of 1963)---**

---Ss. 17 & 24---Ejectment of tenant---Wilful default in payment of monthly rent---Change of ownership notice---Object and purpose---Premises was a residential house and after the death of landlady, tenant did not tender any rent to her legal heir but deposited rent in the name of deceased landlady---Validity---Wisdom and object of issuance of notice by new landlord was to apprise tenant regarding transfer / change of ownership / landlord enabling him to liquidate his liability regarding payment of rent---Expression "wilfully" meant intentionally and purposely as distinguished from "accidentally"---Approaching Rent Tribunal by tenant while making application for permission to deposit rent arraying original landlady (since dead) as respondent, attributing malice to her and then depositing rent in her favour though with permission of Rent Tribunal was intentional act and was not result of lack of knowledge or information regarding status of landlady---Deposit of rent in the name of dead person who initially was landlady, was neither proper nor valid or legal tender of rent---Tenant committed wilful default in payment of rent---Findings of Rent Tribunal on issue of default were not based on proper appreciation of evidence and were result of misreading and non-reading of evidence and were set aside resultantly ejectment application was allowed---Appeal was allowed in circumstances.

Sardar Muhammad Yaqoob v. Muhammad Saleem 2000 CLC 274; Thekedar Jehagir v. Izat Fazeel and others 2010 CLC 64; Rukhsana Jabeen v. Additional District Judge and others 2011 CLC 1498; Sabz Ali Khan v. Bismillah Khan and another 1997 SCMR 1781 and Syed Hamid Hussain v. Mst. Humaira Ghias 1986 CLC 1873 ref.

**(b) Cantonments Rent Restriction Act (XI of 1963)---**

---S. 17(6)---Ejectment of tenant---Bona fide personal need of landlord---Proof---Statement of landlord/landlady on oath deposing personal need and in view of provisions of S.17(6) of Cantonments Rent Restriction Act, 1963, sufficiently safeguarding interest of tenant is sufficient to prove bona fides of landlord/landlady claiming occupation of residential premises.

Anwaar Hussain and Mehr Muhammad Iqbal for Appellant.

Amer Iqbal Basharat and Muhammad Umar Malik for Respondents.

Date of hearing: 30th January, 2012.

## **JUDGMENT**

**MEHMOOD MAQBOOL BAJWA, J.**---- Assails the legality and validity of order dated 11-6-2010 recorded by learned Additional Rent Controller (Cantonment) Lahore whereby the ejectment petition filed by Mst. Aysha Khanna through her attorney, Javed Sadiq Malik (Hereinafter called appellant) seeking eviction of the respondent from the tenement i.e. House No.22-4, Fazil Road, St. Johns Park, Lahore Cantt. (hereinafter called disputed house) was dismissed.

2. Facts in brief resulting in preference of present appeal are that appellant filed ejectment petition against the respondent to get the disputed house vacated on the ground of default and personal need asserting that the respondent even having knowledge and information regarding change of ownership of disputed house and her status as landlady deposited rent in the name of her mother, Mst. Farida J. Malik (deceased landlady) and as such remittance of rent by respondent in the name of deceased landlady is not a valid, proper and legal tender. Also asserted that house in dispute is required by her for personal occupation in good faith and bonafidely. The ejectment petition was contested by the respondent on legal as well as factual premises alleging that neither any notice was ever served upon him regarding transfer of ownership nor had any knowledge regarding status of appellant as "landlady" and he with prior permission of learned Additional Rent Controller (Cantt.) is depositing the rent in the name of Mst. Farida J. Malik, (original landlady). During the proceedings, an application was made at the instance of appellant for eviction of respondent summarily, suggesting proof of default on record and learned Rent Tribunal vide order dated 6-12-2008 accepted the ejectment petition which order was questioned before this Court through Appeal No.312 of 2008 and vide judgment dated 2-12-2009, the respondent was non-suited, prompting him to file

Civil Petition No.2145 of 2009 which was converted into appeal and vide judgment dated 9-3-2010, judgment of this Court and order of learned Rent Tribunal was set aside and while remanding the case, it was directed to decide the ejectment petition afresh after casting issues with provision of production of evidence by the adversaries. Divergent pleadings of the parties resulted in casting of as many as nine issues. The parties produced pro and contra evidence and vide order dated 11-6-2010, the ejectment petition was dismissed.

3. Though all the issues barring Issue No.3 were decided against the appellant but attention was focused by the adversaries on the findings under Issues Nos.6 and 7 relating to question of personal need and default.

Learned counsel for the appellant while assailing the findings of learned Rent Tribunal maintained that opinion formulated by the learned Rent Tribunal is result of misreading and non-reading of evidence. Making reference to the evidence led by parties and particularly statement of attorney of appellant (P.W.1), respondent (R.W.1) and copy of lease agreement (Exh.P.W.1-6), it was argued that though tenancy started between respondent and Farida J. Malik on 1st of July, 1993 for a period of 5 years but same was expired on 30th of June, 1998 which was renewed on 6-7-1998 between Javed A. Malik (one of the legal heirs of Farida J. Malik) and respondent, again extended on 1st of April, 2004 and 1st of April, 2006 by mutual consent and understanding in writing between Javed A. Malik (being successor-in-interest of Farida J. Malik and then being attorney of present appellant) and respondent as is evident from endorsements on the back of first page of lease agreement. Submitted that respondent as R.W.1 admitted his signatures on extension of lease period on the back of original agreement but being conscience of his frank admission introduced story that said signatures were put by him on the representation of original landlady for registration of lease agreement which could not be established. Making reference to the statement of respondent (R.W.1) it was argued that respondent admitted execution of receipts (Exh.R.W.1/67 to Exh.R.W.1/71) of rent at the instance of Javed Sadiq Malik authored by the respondent himself where the status of Javed Sadiq Malik is mentioned as an "owner". Maintained that these receipts coupled with endorsements on the back of lease agreement and issuance of notice dated 19th of May, 2006, copy of which is (Exh.R.W.1/84) is sufficient to prove conscious knowledge of the respondent regarding transfer of ownership in favour of Javed Sadiq Malik and ultimately in favour of present appellant being legal heir of Farida Javed Malik and assignee of right and interest of Javed Sadiq Malik conveyed to her.

Seeking help from the dictum laid down in "Sardar MUHAMMAD YAQOOB v. MUHAMMAD SALEEM" (2000 Civil Law Cases 274), it was submitted that there was no legal compulsion to issue notice to the respondent regarding change of ownership after the death of original landlady.

Questioning the findings with reference to personal need of appellant and making reference to the statement of attorney of appellant (P.W.1) and copy of letter dated 26th of February, 2008 (Exh.P.W.1-5), it was contended that appellant was engaged by Lahore School of Economic as foreign faculty for a period of 3 years, having no residential premises in her occupation at Lahore and as such appellant also proved her personal need. Help was sought from the dictum laid down in "THEKEDAR JEHAGIR v. IZAT FAZEEL and others" (2010 Civil Law Cases 64).

Conversely, defending the impugned order, the learned counsel for the respondent while making reference to the statement of attorney of appellant (P.W.1) maintained that in cross-examination there is admission on his part that no notice or intimation was ever given to the respondent regarding change of ownership and the respondent ultimately having no option approached the learned Rent Tribunal for permission to deposit rent in favour of either Farida J. Malik (original landlady) or any other person entitled to receive same and by permission started depositing rent in favour of deceased landlady as there was no credible information regarding the death of original landlady. Referring to the evidence of attorney of appellant (P.W.1) and Tahir Salim (P.W.2) it was submitted that rent was being collected even at the instance of original landlady by different persons including Tahir Salim on different occasions and that too without disclosing the factum of death of Farida J. Malik and status of Javed Sadiq Malik and as such deposit was made by respondent in favour of original landlady in good faith and that too with the prior permission of learned Rent Tribunal. Again referring to the evidence led by appellant, it was argued that same does not inspire confidence containing inherent contradictions and as such was rightly disbelieved by learned Rent Controller. Referring to the statement of respondent (R.W.1) and endorsement on the lease agreement (Exh.P.W.1-6), it was argued that signatures of respondent were procured by original landlady while undertaking to get the lease agreement registered but later on same were used at the instance of attorney of appellant for extension of lease period. Adverting to the ground of personal need, it was maintained that appellant failed to prove her personal need. Placing reliance upon "RUKHSANA JABEEN v. ADDITIONAL DISTRICT JUDGE and others" (2011 Civil Law Cases 1498), it was submitted that after expiry of initial lease agreement rights and obligations of the parties shall be determined according to the stipulation contained in expired agreement.

5. Arguments heard. Record perused.

6. Admittedly, disputed house was leased out to respondent on 1-7-1993 vide lease agreement (Exh.P.W.1/6) at the instance of Mrs. Farida J. Malik for a period of 5 years which period expired on 30th of June, 1998. During this period, rent was being collected by different persons at different occasions including the original landlady, Javed Sadiq Malik (husband of the said landlady) and Tahir Salim (P.W.2).

It is an admitted fact that Farida J. Malik died on 17-4-1998 leaving behind Javed Sadiq Malik (husband) and the present appellant as her legal heirs. However, stance of respondent is that the factum of death was not in his knowledge as no notice was ever served upon him at the instance of legal heirs of deceased landlady.

The first question for consideration is whether at the instance of legal heirs of landlady, notice was required to be served upon the respondent regarding death of original landlady, name and other particulars of her successor-in-interest. It is to be noted that there is no provision of law requiring the legal heirs of deceased landlord (lady) to serve such notice. Provisions of The Cantonment Rent Restriction Act, 1963 (X of 1963) are totally silent in this regard. It is worth-mentioning that in order to meet out such situation, section 13-A was inserted in The Punjab Urban Rent Restriction Ordinance, 1959 and section 30 in The Punjab Rented Premises Act, 2009 (Act VII of 2009).

Learned counsel for the appellant in order to substantiate argument relied upon *Sardar MUHAMMAD YAQOOB v. MUHAMMAD SALEEM*" (2000 Civil Law Cases 274) in which it has been clearly held that there is no such provision in The Cantonment Rent Restriction Ordinance, 1963 for issuance of such type of notice to the tenant.

Similar proposition was moot point before the Honorable Supreme Court of Pakistan in "*SABZ ALI KHAN v. BISMILLAH KHAN and another*" (1997 SCMR 1781) in which it has been held at page 1785 as follows:--

"It would thus be noticed that service of a notice of transfer of a premises by the purchasers to the tenant under the Act is not a sine qua non to seek the latter's eviction either on the ground of default in payment of rent or on account of latter's denial of relationship of landlord and tenant. In any case conceding for the sake of argument that such a notice was necessary on equitable consideration still the petitioner could have availed of the opportunity to tender rent within two months of the

receipt of the notice of the eviction petition from the Rent Controller which he had failed to pursue".

Even otherwise wisdom and object of issuance of notice by new landlord is to apprise the tenant regarding transfer/change of ownership/ landlord enabling him to liquidate his liability regarding payment of rent. In view of the matter, the question for consideration would be whether the respondent got knowledge or information regarding death of original landlady and change of owner/landlord.

Though it is the case of appellant that respondent got knowledge regarding death of Farida J. Malik as he attended her funeral ceremony but same was categorically controverted by respondent in cross-examination. However, in view of evidence particularly documentary, produced by respondent himself plea at the instance of respondent appears to be an afterthought.

7. Prior to proceeding further, it is desirable to add here that appellant sought eviction of respondent on the ground of default w.e.f. August, 2006. As referred earlier, Farida J. Malik expired on 17-4-1998 and from the said date up till August, 2006, status of Javed Sadiq Malik has been pleaded as one of landlord till alienation of disputed house in favour of appellant by way of gift in November, 1999. In the circumstances, question of knowledge and notice of respondent being tenant regarding transfer/change of owner/landlord can be examined from two angles. Firstly, whether the respondent got knowledge regarding status of Javed Sadiq Malik as one of the landlord and secondly, whether it came to the notice of respondent that present appellant is landlady for all intents and purposes after relinquishment of his share by Javed Sadiq Malik in her favour. First issue will enable and help the court to determine conscious knowledge of the respondent regarding death of original landlady though would be irrelevant to settle the question of default keeping in view the target month of default.

In order to prove stance of appellant and to controvert the defence of respondent, endorsement on the back of lease agreement was rightly relied upon by the learned counsel for the appellant which are reproduced for ready reference:--

#### **"AGREEMENT**

This Agreement of Lease, originally made on the 1st day of July, 1993, between Mrs. Farida J. Malik (late) and Lt. Gen. (Retd.) Muhammad Afzal Najib for five years till 30th June, 1998 is hereby extended for another five years i.e. till 30th June 2003, with a twenty percent increase in the

monthly rental. All other conditions of the agreement shall remain the same.

(Lt. Gen. (Retd)  
Muhammad Afzal Najib  
Lessor. (Sic)

Javed S. Malik  
82, St 5, Abid Majid Road,  
Lahore Cantt.  
(Successor-in-interest)  
Lessee (sic)

### **AGREEMENT**

This Agreement of Lease is further extended till 1 April, 2006 with a fifteen percent increase in the monthly rental. All other conditions of the agreement shall remain the same.

(Lt. Gen. (Retd) Muhammad Afzal Najib  
Lessor. (Sic)  
1st April, 2004

Javed S. Malik  
82, St 5, Abid Majid Road,  
Lahore Cantt. (Successor-in-interest)  
Lessee (Sic)  
1st April, 2004".

It is to be noted that both the endorsements regarding extension of lease agreement clearly suggests the status of Javed Sadiq Malik who signed the same being successor-in-interest of original landlady. It clearly finds mentioned in the first extension that Mrs. Farida J. Malik is dead. The respondent as R.W.1 when confronted with his signatures on both the endorsement admitted his signatures but made an attempt to avoid the consequences by adding that he did not sign any extension and while admitting his signatures, suggested that he put his signatures on the asking of original landlady for the purpose of registration of lease agreement (Exh.P.W.1-6) and signed at cross-points as pointed out. Replying next question, the respondent admitted that there is no sign of "cross" in and around his signatures. In the circumstances, it appears that story was coined by the respondent to avoid his liability. In view of frank admission on the part of respondent regarding extension of lease agreement but stamping it to be verbal which does not appeal to the reason, it stands established that respondent was fully conscious of death of original landlady and status of Javed Sadiq Malik as new landlord being successor of original landlady. Even otherwise, stance taken by the respondent is unworthy of credit. If the original landlady procured the

signature of the respondent for the purpose suggested by respondent and lease agreement was not registered, why the respondent did not object to it. Though it was maintained by the respondent in cross-examination that he talked with said landlady on telephone in this regard but appears to be without substance. Conduct of the respondent keeping in view his status appears to be unnatural and improbable which will least impress a man of ordinary prudence.

8. Matter can be looked from another angle as well. The appellant produced copies of receipts (Mark B-1 to B-27) regarding receipt of rent authored by the respondent in his own hand. The respondent also produced receipts (Exh.R.W.-1/46 to EXh.R.W.1/83). In cross-examination he admitted that receipts (Exh.R.W.1/67 to Exh.R.W.1/71) were written by him showing the payment of rent for the months of August, October to December, 2002, January to March, 2003, April to June, 2003, July to September, 2003. Perusal of the said receipts suggests that under the name of Javed Sadiq Malik, expression "owner" finds mentioned which was frankly admitted by the respondent in cross-examination. It is not understandable, if the factum of death of Farida J. Malik (original landlady) was not in the knowledge of the respondent, why he mentioned the word "owner" under the name of Javed Sadiq Malik. The said documentary evidence coming from the side of respondent is sufficient to prove the stance of appellant regarding knowledge of respondent about the death of original landlady and status of Javed Sadiq Malik as an owner/landlord.

9. Adverting to factum of knowledge of respondent regarding transfer of ownership in favour of appellant and her status as "landlady" reference is made to the copy of notice (Exh.R.W.1-84) dated 19th of May, 2006 written to respondent by Javed S. Malik being attorney of appellant, disclosing the arrival of appellant to Pakistan with an intent to occupy the disputed house. Perusal of the contents of notice suggests that appellant has been cited as owner of the disputed house. Receipt of notice by respondent is not moot point. Attempt was made at the instance of respondent contending that contents of notice are nowhere suggestive regarding intimation of transfer of ownership. Though factum of transfer of ownership does not find mentioned in explicit terms but it clearly suggests status of present appellant as an owner. There was no legal compulsion for the appellant or her attorney to supply the title document to respondent being tenant. (See: "Syed HAMID HUSAIN v. Mst. HUMAIRA GHIA" (1986 Civil Law Cases 1873) Even otherwise, it is not the case of the respondent that he ever made such demand. After receipt of said notice, the factum of transfer of ownership and status of appellant came to the knowledge of the respondent casting duty upon him to pay or tender the rent in favour of appellant.

Admittedly, after receipt of such intimation, respondent made an application on 2-8-2006 to learned Rent Tribunal seeking permission to deposit rent arraying Farida J. Malik as respondent though she expired in the year 1998, which fact was in the knowledge of respondent as discussed. Perusal of para (6) of the application suggests that malice was attributed to original landlady admitting the receipt of notice on 27-6-2006 but with stance of her exploitation. Version contained in para (6) of the application suggests nothing but malice in fact on the part of present respondent.

Impleading of Farida J. Malik as respondent in the said application despite having knowledge of her death as discussed, accepting Javed Sadiq Malik as owner/landlord and receipt of notice (Exh.R.W.1/84) regarding ownership of appellant and vacation of disputed house for personal need of appellant clearly demonstrates mala fides of the present respondent who started depositing rent in the name of deceased landlady though he used to pay rent to Javed Sadiq Malik as owner/landlord as discussed earlier who after receipt of notice was under legal compulsion to pay or tender in favour of appellant being landlady.

10. The expression "wilful" means intentionally and purposely as distinguished from "accidentally". In view of discussion made in preceding paragraphs, there can be no two opinions that approaching the Rent Tribunal by the respondent while making application for permission to deposit rent arraying original landlady (since dead) as respondent, attributing malice to her and then depositing the rent in her favour though with the permission of learned Rent Tribunal was intentional act and was not result of lack of knowledge or information regarding the status of appellant. Deposit of rent as such in the name of dead person who initially was landlady was neither proper nor valid and legal tender of rent, thus, willful default on the part of respondent.

Findings of learned Rent Tribunal as such on the issue of default are not based on proper appreciation of evidence and being result of misreading and non-reading of evidence are hereby set aside.

11. The appellant also sought eviction of respondent on the ground of personal need asserting that she has been appointed as visiting Foreign faculty in the Lahore School of Economic for a period of the three years having no residential premises for her occupation. Same fact was deposed by attorney of appellant as P.W.1 in an affidavit (Exh.P.W.1-1) sworn by him. Letter of offer (Exh.P.W.1-5) was placed on record in order to substantiate the plea.

The respondent questioned the bona fides of the appellant to occupy the house in dispute.

Perusal of the letter dated 26th of February, 2008 (Exh.P.W.1-5) suggests that offer was made by Lahore School of Economics to the appellant as visiting Foreign Faculty for a period of three years starting from March 1st, 2008 up till 28th of February, 2011.

Since the period of offer extinguished on 28th of February, 2011, therefore, the ground agitated at the instance of appellant at this stage is legally not available to her. It is not the case of appellant that said institution offered her for an indefinite period or period of Faculty was extendable. It is also not the case of appellant that the institution which offered her to engage her services is still ready and willing to hire her services. In the attending circumstances plea of personal need is not available to the appellant.

Though it was argued at the instance of appellant that she got no accommodation in Lahore and as such on her arrival in Pakistan, lodging is a big problem for her but the argument cannot advance plea in view of her specific stance with reference to personal need.

No doubt, statement of landlord/landlady on oath deposing personal need and in view of provisions of section 17(6) of The Cantonments Rent Restriction Ordinance, 1963, sufficiently safeguarding the interest of tenant would be sufficient to prove bona fides of the landlord/landlady claiming occupation of residential premises but in the present case in view of discussion made, the plea of appellant regarding her personal need is legally not sustainable.

12. Argument regarding expiration of lease period suggesting "Tenancy in perpetuity" and its effect are not required to be attended in view of negative findings on the issue of personal need.

13. Findings of learned Rent Tribunal regarding filing of ejectment petition with malice in fact cannot be endorsed in view of affirmative findings on issue of default.

14. Pursuant to discussion made, findings of learned Rent Tribunal on the issue of default are legally not sustainable and as such conclusion drawn regarding dismissal of ejectment petition vide impugned order cannot be endorsed. While setting aside the same and accepting the appeal, ejectment petition on the ground of default in payment of rent is hereby accepted directing the respondent to hand over vacant possession of the

disputed house to the appellant within thirty days from the date of this judgment.

15. Parties are left to bear their own costs.

M.H./J-6/L Appeal allowe

