

2017 Y L R Note 257

[Lahore]

Before Muhammad Farrukh Irfan Khan, J

Mst. NASEEMA BIBI and others---Petitioners

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No.6709 of 2014, decided on 29th September, 2014.

(a) Punjab Rented Premises Act (VII of 2009)---

---S. 19---Civil Procedure Code (V of 1908), S.99---Application for eviction of tenant--- Recognized agent--- Status---Ejectment petition was filed by landlord/ principal through special attorney---Power of attorney was neither attested by Notary Public nor original had been produced before court---Principal had not questioned authority of agent despite objection by tenant---Effect---Authority of an agent could effectively be challenged by his/her principal but when there was silence on his part it would be presumed that case was validly filed by a recognized agent---Objection raised by tenant was held to be an irregularity and orders of courts below could not be reversed in view of S. 99, C.P.C. [Paras. 5 & 6 of the judgment]

Khayam Films and another v. Bank of Bahawalpur Ltd. 1982 CLC 1275 and Lt.-Col. (Retd.) P.B. Braganza v. The Board Area Allotment Committee and another 1984 CLC 1484 rel.

Muhammad Salim through Special Power of Attorney v. Additional District and Sessions Judge, Sheikhpura and 4 others 2010 YLR 1098 and Sahibzada Anwar Hamid v. Messrs Topworth Investments (Macau) Ltd. through Chairman and 5 others 2003 YLR 2843 ref.

(b) Punjab Rented Premises Act (VII of 2009)---

---S. 19---Application for eviction of tenant---Expiry of tenancy period---Effect---Lease agreement between landlord and tenant had expired and no further tenancy was reduced into writing---Tenancy was to be considered on month to month basis after expiry of agreement of tenancy---Filing of ejectment petition was manifestation of intention of landlord not to extend tenancy and tenant had lost his right to continue possession over demised premises---Tenant could not be allowed to

perpetuate his possession over demised premises for an indefinite period on the basis of technicalities---Due to commercial nature of demised premises, tenant was given period of four months to hand over vacant possession to landlord subject to payment of monthly rent. [Para. 7 of the judgment]

Lt.-Col. (Retd.) P.B. Braganza v. The Board Area Allotment Committee and another 1984 CLC 1484 and Qaiser Javed Malik v. Pervaiz Hameed and 2 others 2009 SCMR 846 rel.

(c) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction---Relief--- Scope--- Relief being discretionary in nature, could be denied in constitutional jurisdiction owing to malicious conduct of petitioner. [Para. 8 of the judgment]

Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236 rel.

Ras Tariq Ch. for Petitioner.

Mehr Muhammad Iqbal for Respondents

ORDER

MUHAMMAD FARRUKH IRFAN KHAN, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners call in question the validity of impugned order/judgment dated 12.07.2010 and 14.02.2014 passed by the learned courts below. Through the former learned Rent Controller while declining application for leave to defend directed them to vacate the demised premises within 45 days and through the latter the learned Appellate Court dismissed their appeal filed against the order of the learned Rent Tribunal.

2. The counsel for the petitioner has mainly argued that the ejectment petition having been filed by an incompetent person was ab initio void and thus both the impugned orders warrant to be set-aside. He has explained that the power of attorney, on the basis whereof the ejectment petition was filed was neither attested by a Notary Public nor original thereof produced in the Court. Relies on Muhammad Salim through Special Power of Attorney v. Additional District and Sessions Judge, Sheikhpura and 4 others (2010 YLR 1098).

3. In the response, learned counsel for the respondents has defended the impugned orders. He places reliance on case reported as Sahibzada Anwar Hamid v. Messrs Topworth Investments (Macau) Ltd. through

Chairman and 5 others (2003 YLR 2843) to urge that defect pointed out have been held to be curable in nature.

4. Arguments heard. Record perused.

5. It is apparent from the record that ejectment petition was filed by the respondents through special attorney Ahmad Hassan Khan. None of the principals have ever questioned the authority of the agent despite objection of the petitioners. It is settled principle of law that authority of an agent who filed suit can effectively be challenged by his/her Principal and if there is silence on the part of the Principal then it shall be presumed that the suit/petition was validly filed by a recognized agent. Reliance is placed on case reported as Khayam Films and another v. Bank of Bahawalpur Ltd. (1982 CLC 1275) wherein it has been laid down as under:--

"In my opinion the fact that the person did or did not have authority can effectively be challenged only by the principal. If in spite of the objections taken the principal continues to recognise the authority of the agent to institute the suit I am inclined to think that this would amount to a ratification and the suit would still be a validly instituted suit."

6. Furthermore, even if there was some defect or irregularity in authorizing respondent No.1 for filing the eviction petition, merely on that basis impugned orders cannot be reversed in view of Section 99 of the C.P.C. The objection raised by the learned counsel is at the most an irregularity and it shall not be allowed to defeat the ends of justice. Reliance is placed on case reported as Lt.-Col. (Retd.) P.B. Braganza v. The Board Area Allotment Committee and another (1984 CLC 1484).

7. Even otherwise ejectment of the tenant was sought on the ground of expiry of tenancy. It has not been denied that the lease agreement between the parties was dated 16.01.1994 and was for a period of one year and three months which has been expired on 31.03.1995, Thereafter, admittedly, no further tenancy agreement was reduced into writing, so, after expiry of settled period, tenancy between the parties was to be considered on month to month basis. Filing of ejectment petition was manifestation of the intention of the landlord that he did not want to further extend the tenancy, therefore, both the learned courts were fully justified in arriving at a conclusion that tenancy between the parties has come to an end which was one of the grounds for eviction of a tenant. After expiry of tenancy period the petitioners lost their right to continue their possession as a tenant over the demised premises. Reliance is placed on case reported as Qaiser Javed Malik v. Pervaiz Hameed and 2 others (2009 SCMR 846). Accordingly the tenant cannot be

allowed to perpetuate his possession over the rented premises for an indefinite period on the basis of a sheer technicality.

8. It is trite law that writ is in the discretion of the Court and issuance thereof even against an illegal order can be denied owing to the malicious conduct of a writ petitioner. Reliance is placed on case reported as Nawab Syed Raunaq Ali etc. v. Chief Settlement Commissioner and others (PLD 1973 SC 236) wherein it has been laid down as under:--

"An order in the nature of a writ of certiorari or mandamus is a discretionary order. Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it cures a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked."

9. A cumulative effect of the above discussion is manifest that the instant writ petition is incompetent and is, therefore, dismissed accordingly. As it is a commercial property, the petitioner is given a period of four months to hand over its vacant possession to the respondent from the date of passing of this order subject to payment of monthly rent.

MM/N-12/L Petition dismissed.

