

**P L D 2010 Lahore 56**

**Before Mian Saqib Nisar, J**

**Lt. Gen. (Retd.) MUHAMMAD AFZAL NAJEEB---Appellant**

**Versus**

**Mst. AYSHA KHANNA through General Attorney---Respondent**

F.A.O. No.312 of 2008, heard on 2nd December, 2009.

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

---Ss. 17 & 17-A---Ejectment of tenant---Default in payment of rent---Deposit of rent in court---Change of ownership---Notice to tenant---Scope---Tenant had started depositing rent directly with Rent Controller without First tendering the same to landlord---Plea raised by tenant was that no notice of change of ownership had been given to him after the death of owner of premises, therefore, he had been depositing rent with Rent Controller---Validity---Legal heir of deceased landlady attained status of statutory landlady and requisite relationship had immediately emerged on the occurrence of the death (of original owner)---Tenant could not be said to have committed default in payment of rent, if notice under S.17-A of Cantonments Rent Restriction Act, 1963, had not been given by legal heir---If tenant on attaining knowledge of his own or being verbally apprised in such behalf started paying rent and thereafter defaulted in payment, such tenant could not take refuge on account of absence of notice---Rent Controller had rightly passed eviction order against tenant on the basis of default in payment of monthly rent---Appeal was dismissed in circumstances.

Mst. Yasmeen Khan v. Abdul Qadir and another 2006 SCMR 1501 and Pakistan State Oil Company Ltd. Karachi v. Pirjee Muhammad Naqi 2001 SCMR 1140 ref.

Muhammad Ameen v. Gulzar Muhammad 1994 MLD 2162; Mst. Zubeda Begum v. Muhammad Zaheer 1999 CLC 917; Abbas Khan and 11 others v. Hafeez-ur-Rehman and 2 others 2004 CLC 582 and Muhammad Arif v. Muhammad Raza PLD 1993 Lahore 121 distinguished.

Asghar Hameed Bhutta for Appellant.

Anwar Hussain and Mehr Muhammad Iqbal for Respondent.

Date of hearing: 2nd December, 2009.

## **JUDGMENT**

**MIAN SAQIB NISAR, J.**---On 12-3-2008, the respondent under the provisions of section 17 of the Cantonments Rent Restriction Act, 1963 (hereinafter be referred to as the Act 1963) brought an eviction petition against the appellant inter-alia, on the ground of default in the payment of the rent; the appellant in the reply thereto set out the defence that he after obtaining necessary permission/order has been depositing the rent for the (alleged) defaulting period with the learned Additional Rent Controller; the eviction petition has been allowed by the learned Additional Rent Controller vide order dated 6-12-2008 on the basis of the law enunciated by the judgment of the Hon'ble Supreme Court of Pakistan reported as Mst. Yasmeen Khan v. Abdul Qadir and another 2006 SCMR 1501, as per whereof it is declared, if the tenant deposits the rent directly with the Rent Controller without first tendering the same to the landlord, such shall not be a valid tender in law and shall be taken to be a wilful default; as in the instant case, it was found to be so, therefore, the eviction order (impugned order) was passed without further proceedings in the matter.

2. Learned counsel for the appellant has argued that the property in question was originally rented out to the appellant by Mst. Farida, J. Malik, wife of Javed S. Malik, the mother of Mst. Ayesha Khanna/respondent, vide rent agreement dated 1-7-1993 for a period of five years; throughout the rent was being collected on behalf of the land-lady by quite a few persons as her representatives, however, the appellant received a notice/letter dated 19-5-2006 from Mr. Javed S. Malik, father of the respondent as her attorney requiring the vacation of the house on the ground that it was required for her (respondent's) personal need as she was returning from abroad. It is in such circumstance that the appellant was obliged to move an application dated 31-7-2006, to the learned Additional Rent Controller seeking permission to deposit the rent, which was allowed vide order dated 2-8-2006 and the deposit was accordingly made; there is no wilful default on part of the appellant specially when the deposited rent has been withdrawn by the respondent or her father; the appellant was not aware about the demise of Mst. Farida J. Malik, which factum was never conveyed/communicated to the appellant as required through a notice under section 17-A of the Act, 1963, therefore, under a bona fide belief that Mst. Farida is alive, the application for the deposit of the rent was moved by the appellant; the

eviction order of the learned Additional Rent Controller on the face of the record, is illegal as no opportunity of proving the defence has been provided to the appellant.

3. Heard. The submission of the appellant that he had no knowledge about the death of the original land lady is belted by the fact that on the back of the original lease deed, an extension after the initial period of tenancy was further granted for five years, the endorsement dated 6-7-1998 in this behalf duly signed by the appellant reads as follows:-

**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 per cent increase in the monthly rental. All other conditions of the agreement shall remain the same.

(Ltd. 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 per cent increase in the monthly rental. All other conditions of the agreement shall remain the same.

Javed S. Malik (Ltd. Gen. (Retd.)  
82, St.5. Abid Majid Road, (Muhammad Afzal Najib)  
Lahore Cantt. Lessor (Sic)  
(Successor-in-interest) 1 April, 2004.  
Lessee (Sic)  
1 April. 2004

From the above, it is clear that Mst. Farida was described as (late) and Javed S. Malik was extending the time as the successor-in-interest of the deceased land-lady. The submission that the application to deposit the

rent was made on account of being unaware of such death and in good faith is an after thought and frivolous; assuming for the sake of argument that the factum of death was not known to the appellant and she according to him was alive, yet under section 17 (Explanation) of the Act. 1963, it was required that the rent should have been first tendered to the landlord; but in the above text, no such effort/tender admittedly was made. But the application on 31-7-2006 for the deposit of the rent by the appellant was instituted against a dead lady, the portion whereof reproduced below seems relevant and shall throw light that the appellant was aware of the lady's death before the application was filed, it reads;--

"That despite increase in the rent made by the Applicant according to the unjust and illegal demands of the respondent, she continued harassing and black mailing the applicant by threats of getting vacation of the house on the false ground that she needs the house for her personal use. Lastly on 27-6-2006 the applicant received a letter on behalf of the respondent for vacation of the house and the applicant has reasons to believe that again it has been sent with mala fide intentions. Confronted with the situation a messenger of the applicant made hectic enquiries and it was revealed that the author of the letter was the husband of the respondent (who according to her husband had died long before) and now by operation of law, the relationship of landlord and tenant exist between himself and the applicant and he will be shortly sending a notice of change of the ownership along with the documents and thereafter a rent agreement shall be drawn up."

From the above noted paragraph, it is obvious and conspicuously clear that before the institution of the application for the deposit of the rent, the appellant had the knowledge about the death of Mst. Farida J. Malik, still the allegations of unjust, illegal demands, harassing and blackmailing were made against a dead woman, which on the face of it were untrue; besides, the application was filed against a dead person mentioned earlier, which according to the settled law was nullity (See 2006 SCMR 1501 Mst. Yasmeen Khan v. Abdul Qadir and another) and therefore, any order procured on such application from the learned Additional Rent Controller and deposit made pursuant thereto cannot be held to be a valid deposit so as to save the appellant from the consequence of the default. It may be pertinent to state that according to section 17 (Explanation) valid tender of the rent to the landlord could be made by the tenant through a money order; there is no plea even by the appellant in the application that the rent was sent through that channel to any body, may it be the deceased lady or any of her successors and it is upon her/their refusal that the permission was sought to deposit the rent

with the learned Additional Rent Controller; the appellant had never made any effort at all to tender the rent to any one as stated earlier, therefore, the judgments reported as *Mst. Yasmin Khan, v. Abdul Qadir* and another 2006 SCMR 1501 and *Pakistan State Oil Company Ltd. Karachi v. Pirjee Muhammad Naqi* 2001 SCMR 1140 are squarely applicable to the case in hand and having made the default in the above nature, which was clearly established on the record by virtue of the documentary evidence, that the learned Additional Rent Controller was not obliged and required to frame any issue or record the evidence. I am also not convinced with the argument that the respondent should have given a notice to the appellant in terms of section 17-A of the Act, 1963 regarding the death of the deceased lady and it is only thereafter, if the rent was not paid, that the appellant could be impugned to be a defaulter. In my candid view, the legal heir of the deceased landlord attains the status of the statutory landlord and the requisite relationship immediately emerges on the occurrence of the death (of the original landlord), however, the tenant cannot be said to have committed a default in the payment of the rent, if the notice under section 17-A of the Act *ibid* has not been given by the legal heir but if the tenant on attaining the knowledge of his own or being verbally apprised in this behalf starts paying the rent and thereafter defaults in the payment, he cannot take the refuge on account of the absence of the notice. This case is clearly and conspicuously covered by the above situation.

5(sic) The argument of learned counsel for the appellant by relying upon the judgment reported as *Muhammad Ameen v. Gulzar Muhammad* 1994 MLD 2162, that where no notice under section 17-A was given to the appellant about the change of ownership and when the rent had been deposited, no wilful default can be impugned against the appellant, I find that in the circumstances of the case, the principle laid down in the judgment is not applicable to this case. The other three judgments reported as *Mst. Zubeda Begum v. Muhammad Zaheer* 1999 CLC 917 *Abbas Khan and 11 others v. Hafeez-ur-Rehman and 2 others* 2004 CLC 582 and *Muhammad Arif v. Muhammad Raza* PLD 1993 Lahore 121 cited by the learned counsel for the appellant, have no relevance to the proposition involved in the matter.

In the light of above, I do not find any merit in this appeal, which is hereby dismissed.

M.H./M-847/L Appeal dismissed.

