

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No.1143-M/2019

Rahim Ullah and five others Vs. Mst. Yasmeen Bibi and four others.

Present: Petitioners No.1, 2 & 5 in person.
 Mr. Fayaz Muhammad Oazi, Advocate for petitioners No.3 &
 4.
 Nemo for petitioner No.6.
 Mr. Hazrat Rahman and Oazi Farid Ahmad, Advocates for
 Respondents No.1, 2 & 3.

Date of hearing: **30.05.2024**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.-Through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have challenged the legality & correctness of the order of the learned Additional District Judge, Dir Lower at *Chakdarra* camp Court at *Timergara* dated 28.09.2019, whereby their rent appeal against the order of the learned Rent Controller (Civil Judge-I, Dir Lower) dated 31.10.2018 allowing the application of respondents No.1 & 2 (landladies) with directions to petitioners to hand over the vacant possession of the rented premises to the landladies, was dismissed.

2. Briefly, the facts of the instant petition are that respondent No.1 & 2 (Mst. Yasmeen Bibi and Mst. Maria Gul, the daughters of Shah Sultan Khan) have filed an application for recovery of possession of the building situated at Hassan Market Timergara opposite to Imran Medical Center through ejectment of the petitioners No.1 & 2 in violation of terms and conditions of the rent agreement dated 11.02.2010 by alleging in the application that they

are owners of the market as described in the headnote of the application, which was handed over to petitioners No.1 & 2 on rent, for which, rent agreement was executed on 11.02.2010, wherein it was agreed that petitioners No.1 & 2 shall pay rent @ Rs.90,000/- per month along with 10% annual increase. The period of tenancy was fixed as 03 years thereafter the possession of the building shall be handed over to respondents No.1 & 2 (landladies), however, the possession of the rented building shall never be handed over to any third person. They averred that by violating the terms and conditions of the rent agreement, petitioners No.1 & 2 have handed over the possession of the building through subletting to others, for which, they were served with a notice, however, they refused to vacate the possession. The application was contested by petitioners No.1 & 2 through their joint written reply wherein neither the ownership nor the execution of the rent agreement was denied, however, the application was contested on the ground that certain terms and conditions were settled for construction of building, wherein it was agreed that they shall spend an amount to the extent of Rs.30,00,000/- on construction, which shall be acceptable to the respondents/ landladies. It was further alleged that the enhancement as mentioned in the rent deed is the result of collusion of respondents/ landladies. They have also alleged that they are not in possession of the rented premises as they have already sublet it to petitioners No.3 & 4 (Saeed Ullah and Ihsan Ullah) who have further sublet it to Abdul Ghafoor Khan and Hidayat Ullah Khan (petitioners No.5 & 6). They also alleged that Saeed Ullah and

Ihsan Ullah have made construction by spending a huge amount. After submission of the written statement by petitioners No.1 & 2, Saeed Ullah Jan, Ihsan Ullah, Abdul Ghafoor, Hidayat Ullah and Dr. Yasmeen Hanan Khattak were also arrayed as respondents in the rent application. The application was resisted by added tenants through their separate written replies. The learned Rent Controller has framed issues and directed the parties to record their respective evidence. On conclusion of trial, the learned Rent Controller through his order dated 31.10.2018 allowed the application on the ground of default in payment of rent by directing the petitioners to handed over the vacant possession of the rented premises to respondents (landladies) with further directions to petitioners to pay the outstanding rent of 19 months amounting to Rs.17,10,000/- . All the petitioners have jointly filed an appeal, however, same was dismissed by the learned Appellate Court through order dated 28.09.2019, hence, this petition.

3. This petition has been filed by Mr. Sabir Shah, Advocate on behalf of all the petitioners, who is before the Court and requested for withdrawal of his *wakalatnama*/ power of attorney. It appears that on 27.05.2024, this Court observed that this matter is pending adjudication since 2019 and is being lingering on, thus, all the concerned including Mr. Sabir Shah, Advocate were directed to argue this petition. Part arguments of petitioners No.3 to 5 were heard. Today, Mr. Sabir Shah, Advocate appeared before the Court and stated at the bar that he is no more counsel for petitioners and they themselves are also not before the court. On the directions of

this Court, petitioners No.1; 2 & 5 are before the Court in person while petitioners No.3 & 4 through Mr. Fayaz Muhammad Qazi, Advocate. Petitioners No.1 & 2 stated at the bar that they have engaged Mr. Wasim Akram, Advocate who due to his ailment is not before the Court and as such requested for adjournment of this petition. It is reflected from the record that on 19.04.2021 learned counsel for the parties requested for adjournment and on their request, it was adjourned for 31.05.2021 and on said date, once again it was adjourned on joint request of learned counsel for the parties. On 26.10.2022, only clerk of learned counsel for petitioners was present as such, this petition was adjourned. On 05.06.2023, learned counsel for petitioners requested for adjournment and this petition was adjourned as a last chance for 26.06.2023. When the petition was fixed for 28.09.2023, no one appeared before the Court on behalf of the parties and on 27.05.2024, Mr. Sabir Shah, Advocate requested for adjournment as he was busy before another Bench of this Court. He was strictly directed to come prepare for arguments. In view of the aforesaid facts, this petition cannot be adjourned to any other date, as such, petitioners No.1, 2 & 5 heard in person, petitioners No.3 & 4 are before the Court through Mr. Fayaz Muhammad Qazi, Advocate and respondents No.1 to 3 through M/S. Hazrat Rahman and Qazi Farid Ahmad, Advocates, their arguments heard and record perused.

4. It is worth to mention that the execution of the rent deed has not been disputed by petitioners No.1 & 2, however, they submitted at the bar that they have handed over the possession of

the rented property to petitioners No.3 & 4 who have further handed over it to respondents No.5 & 6. For determination of the controversy with respect to the creation of tenancy, respective rights of tenants and landlords, the terms and conditions were settled between the parties through rent agreement dated 11.02.2010 which is hereby reproduced as under:

ہم فریقین بقائی دست ہوش و حواس شمسہ برضاور غبت خود بموجودگی گواہان ذیل بروئے تحریر ہذا اقرار کر کے لکھ دیتے ہیں کہ بمقام تیسرے بازار بالمقابل عمران میڈیکل سنٹر ایک حسن مارکیٹ دو منزلہ ملکیت فریق اول واقع ہے۔ فریق دوم کیساتھ مارکیٹ ہذا کے اوپر تیسری منزل کی اور چوتھی منزل کی تعمیر اور کر ایہ داری ماہوار معاہدہ بشرائط ذیل تکمیل پایا۔

(1) یہ کہ فریق دوم اپنے خرچہ / لاگت سے تیسری اور چوتھی منزل تعمیر کریں گے اور جو نقشہ / ڈیزائن فریق اول مالکان فریق دوم کو حوالہ کریں گے بلڈنگ اسی نقشہ اور ڈیزائن کے مطابق فریق دوم تعمیر کریں گے۔

(2) یہ کہ بلڈنگ میٹیریل فریق دوم وہی استعمال کریں گے جو فریق اول انظر سلطان خان (عرف ٹیپو خان) کو قابل قبول ہو اور بلڈنگ کی تعمیر جدید تقاضوں کے عین مطابق فریق دوم تکمیل کریں گے جس میں دروازے کھڑکیاں روشندان وغیرہ کے میٹیریل کا خاص خیال رکھا جائیگا اور بلڈنگ کی تعمیر بشکل پلیٹس ہوگی جو پکس میں جس ضروریات درکار ہوں فریق دوم تعمیر کرنے کے پابند ذمہ دار ہوں گے۔

(3) یہ کہ مدت تعمیر بلڈنگ پلیٹس آٹھ (8) ماہ مقرر ہو کر فریق دوم مدت مقرر یعنی مورخہ 30 نومبر 2010 تک بلڈنگ کمپلیٹ کرنے کے پابند ہوں گے۔

(4) یہ کہ اس وقت سے فریق دوم / کرایہ داران پر کرایہ داری ماہوار شروع ہوگی۔ اور ماہوار کرایہ فی منزل مبلغ پینتالیس ہزار /- 45,000 روپیہ مقرر ہو کر دونوں منزل کا مبلغ نوے ہزار 90,000 روپیہ کرایہ ماہوار فریق دوم تحت فریق اول مالکان بلڈنگ عذر آدا کرتے رہیں گے۔ اور پابند قانون کرایہ داری ہوں گے۔

(5) یہ کہ بعدہ قانون کرایہ داری مطابق فریق اول کو مالکان مجاز ہوں گے کہ بلڈنگ کرایہ میں حسب قاعدہ ازادگی / اضافہ کریں۔

(6) یہ کہ فریق دوم تحت بلڈنگ ایک گھر تعمیر کریں گے جو بلڈنگ کے لٹرن کیلئے استعمال ہوگا۔

(7) یہ کہ فریق اول کو فریق دوم نے بطور ایڈوانس / سیورٹی مبلغ دو لاکھ 2,00,000 روپیہ بذریعہ چیک نمبری کمرشل بینک تیسرے بازار حوالہ ہونے۔ بلکہ حوالگی رقم کیلئے فریق اور چیک مذکورہ بالا دیدی گئی جو فریق دوم بینک مذکور سے کیش کریں گے۔ اور رقم ایڈوانس ایندہ ماہوار کرایہ میں منہا کئے جائیں گے۔

(8) فریق دوم مدت مقررہ میں بلڈنگ تعمیر کریں گے جو صرف قدرتی آفات کے صورت میں مدت مقررہ میں توسیع ہو سکتی ہے۔

(9) یہ کہ فریق دوم باخذ کرایہ داران ہو کر بلڈنگ مذکور کی کسی قسم ملکیتی دعویداری کے مجاز نہ ہوں گے۔

(10) یہ کہ فریقین معاہدہ ہذا کے بشمول در ثناء پابند ہوں گے اور کسی قسم تجاوز یا خلاف ورزی نہیں کریں گے لہذا معاہدہ / دیگر بلڈنگ و ماہوار کرایہ داری مابین فریقین و حسب گفتہ فریقین سند اضبطہ تحریر شد۔

The contents of rent deed/ agreement reflect that the petitioners No.1 & 2 were under legal obligation to construct the property within due time, however, today have admitted the non-

fulfillment of their obligation and submitted that due to insufficient amount in hand and huge cost of construction, they were unable to make construction, as such, they have transferred the possession of the rented premises to petitioners No.3 & 4 for construction and they have made the construction. Undisputedly, the petitioners No.3 & 4 have got no nexus with the ownership of the property and similarly they have never entered into any agreement with respondents No.1 & 2 (landladies). It is also an admitted fact that the petitioners No.5 & 6 are in possession of the property but being the licensee of petitioners No.3 & 4, as such, petitioners No.3 to 6 have got no nexus or relationship with the respondents/ landladies but it is also an admitted fact that the petitioners No.3 to 6 have been given the possession of the property by petitioners No.1 & 2. In such an eventuality, whatever amount spent by petitioners No.3 & 4 on construction of the building as alleged by them is a matter for settlement between petitioners No.1 & 2 with rest of the petitioners.

5. Adverting to the admitted fact of the relationship of petitioners No.1 & 2 with respondents No.1 & 2 (landladies). It appears that after submission of the written statements by all concerned, the learned Rent Controller on 19.10.2017 has directed petitioners No.1 & 2 to deposit the monthly rent @ Rs.90,000/- w.e.f. institution of the ejectment petition till the date and to regularly deposit the monthly rent before 15th of each month. In the impugned order dated 31.08.2018 of the learned Rent Controller there is a reference of the order passed u/s 13 (6) of the Ordinance

of 1959 which has not been complied with by the petitioners in depositing the rent w.e.f. the institution of the ejectment petition till October 2017. It is also reflected from record that on 06.06.2018 the rent was deposited but only for five months. The non-compliance of the order and that too without any plausible explanation results into straightaway order for ejectment against the tenant in terms of section 13 (6) of the Ordinance of 1959, which for ready reference is reproduced as under:

“13 (6). In proceedings under this section on the first date of hearing, soon as possible after that date and before issues are framed, the Controller shall direct the tenant to deposit all the rent due from him and also to deposit regularly till the final decision of the case, before the fifteenth day of each month, the monthly rent due from him. If there is any dispute about the amount of rent due or the rate of rent, the Controller shall determine such amount approximately and direct that the same be deposited by the tenant before a date to be fixed for the purpose. If the tenant makes default in the compliance of such an order, then if he is the petitioner, his application shall be dismissed summarily and if he is the respondent, his defence shall be struck off and the landlord put into possession of the property without taking any further proceedings in the case.

The Controller shall finally determine the amount of rent due from the tenant and direct that the same be paid to the landlord, subject to adjustment of the approximate amount deposited by the tenant.”

It has been held time and again by the superior Courts that failure in payment of the monthly rent even of a single day if not explained with plausible justification amounts to deliberate default in payment of the rent and in such an eventuality, the tenant cannot be allowed to remain in possession of the rented premises rather he shall be directed to hand over the vacant possession along with

outstanding dues to landlord. Rel: **Rukhsana Begum Vs. TNT**

Sabz Ali/* (S.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR

express worldwide Pakistan (Pvt.) Ltd (2005 SCMR 1398) and "*Khawaja Muhammad Mughees's* case (2001 SCMR 2020) in which, it was held by their Lordships that:

"In this view of the matter, the default on the part of the petitioner stands established. Furthermore, he had failed to comply with the interim order dated 3-10-1997 passed by this Court whereby he was required to deposit rent for the month of October, before the 10th of November, 1997. There is no explanation on behalf of the petitioner in this respect. In this view of the matter, his defence was liable to be struck off as no infirmity or lacuna, whatsoever, appears in the impugned order, the leave to refused. However, six months' time is allowed to the petitioner to put the landlady in vacant possession of the property in dispute. This order will be subject to the payment of rent, current charges of electricity and gas and clearance of arrears bills of electricity within a month."

6. Insofar as the contention of the petitioners No.1 & 2 and learned counsel for petitioners No.3 & 4 that all of them are not in possession of the rented premises and that petitioners No.1 & 2 were direct tenants of respondents/landladies but petitioners No.3 & 4 were not tenants and could not be directed to pay the outstanding rent against petitioners No.1 & 2. No doubt, petitioners No.3 & 4 were not direct tenants of the respondents/ landladies but it is an admitted position that they have entered into rented premises without the consent and permission of the landladies and it is also admitted fact that they have transferred the possession to petitioners No. 5 & 6 and that too without any permission by the landladies thus, in such circumstances they (petitioners No. 3,4 & 5,6 cannot resist the ejectment of the creation of their tenancy with petitioners

No. 1, 2 who were the direct tenants of the landladies, hence the plea of the learned counsel for petitioners No. 3, 4 is misconceived. The application of the landladies for ejectment of the petitioners was on the ground of default and under section 13(2)(ii)(a) where the subletting and that too without the consent of landladies has been proved rather admitted. In the case of *Haji Said Wahab Khan vs. Amjad Ali and others* (2005 SCMR 840, the ejectment application was allowed by the rent controller and the appeal thereagainst failed but the writ petition was allowed however, Hon'ble Supreme Court has observed that the transfer of possession of the rented premises was without permission of the landlord as such the judgement of the High Court of set aside and the tenant was directed to handover vacant possession to the landlord. The Court observed that:

The tenant, therefore, can defend only that subletting has taken place with the written consent of the landlord and not otherwise. In the instant case, no written consent of the landlord was either pleaded or proved. The landlord having not consented in writing can rightly challenge the subletting which, in the instant case, is rather admitted. On this score alone tenants were liable to be ejected and the learned High Court should have avoided interference in the concurrent findings and that too under Article 199 of the Constitution.

7. Consequently, the petitions, after conversion into appeals, are hereby accepted, impugned judgment, dated 17-12-2002 of the High Court is set aside and the tenant is directed to handover the vacant possession of suit premises within six months from today and shall,

in the meanwhile, keep on paying the monthly rent regularly.

Even otherwise it has been held consistently that a subtenant has no independent right of his own and has to stand or fall, sail or sink with the tenant and has no right to claim tenancy or pay rent or file appeal against orders of ejectment, because subtenant who has taken the possession or put in possession without the consent of landlord is unauthorized possessor of the property. In the Case of Messrs. Noorani Travels Karachi v. Muhammad Hanif and others (2008 SCMR 1395), it has been observed by the Honourable Supreme Court of Pakistan that "It is well settled that an unauthorized sub-tenant can be evicted along with the tenant against whom the eviction order is passed by Rent Controller and he is not a necessary party to the proceedings, being unauthorizedly in occupation of the premises. Though in order to avoid complications in the execution, it has been, in some cases, suggested that sub-tenant may also be impleaded in the rent proceedings, yet, the fact remains that in order to become a party to the proceedings it is to be established by the intervener or the interceptor that he has a "legal right in the property which is enforceable by law", otherwise he cannot claim to be a necessary party in the proceedings". Reference may also be made to the Case of Muhammad Sulleman v. Abdul Sattar (2004 SCMR 415), wherein it has been held by the Honourable Supreme Court of Pakistan as under: -

“The contention of the learned counsel for the petitioner that landlord having received the rent regularly from the petitioner has acknowledged his status as tenant, has no substance as there was no material on record in support thereof except the bare statement of the petitioner. The admitted position is that the premises were rented out to Muhammad Iqbal and the tenancy continued in his name without any change till, the filing of ejectment petition by the landlord and in absence of any proof of delivery of the possession of premises to the petitioner by Muhammad Iqbal with the permission of landlord or the acknowledgment of the status of the petitioner as tenant of the premises: the petitioner would be deemed to be in occupation of premises through Muhammad Iqbal and would have no independent right to retain the possession and resist the ejectment”.

Reliance may be placed on the case of State Life Insurance Corporation of Pakistan Versus Sami-Ur-Rehman and others (2018 SCMR 443). Furthermore, the contentions of the learned counsel for respondents No. 3 & 4 that they have spent an amount on construction of the building and further sublet it to respondents No.5 & 6, thus, it is the matter in between petitioners No.1 to 6 to pay the outstanding amount to respondents/landladies. It is their joint liability and the outstanding rent may be paid/ deposited by anyone of them in favour of the landladies/ respondents. Respondents No.1 & 2 are entitled for receipt of the entire outstanding rent w.e.f. institution of the ejectment application till handing over the vacant possession of the premises to them. It may be mentioned here that the amount spent on construction of the building was the obligation of petitioners No.1

& 2 as per the terms and conditions of the rent agreement as admitted by them while appearing in person before this Court today, thus, the amount incurred by petitioners No.3 & 4 on the construction is matter in between the petitioners No.1 & 2 and petitioners No.3 & 4. It may not be clothed with the subject of rent rather it is a civil liability amongst the petitioners inter se.

7. It is pertinent to mention here that at the spot, petitioners No.5 & 6 are in possession of the rented premises with no direct relationship with respondents No.1 & 2 but as sub-tenants of petitioners No.3 & 4 who too were sub-tenants of petitioners No.1 & 2 and in such an eventuality, the petitioners No.5 & 6 are directed to hand over the vacant possession to respondent No.1 & 2 (landladies).

8. It is significant to mention here that during the course of arguments, learned counsel for the respondents /landladies contended that the petitioners may directed to pay the rent with 25% enhanced rate after expiry of the every three years from the date of execution of the rent deed in view of section 4 of the Ordinance of 1959 or @ 10% after the expiry of each one year from the date of execution of the deed till the transfer of possession to them, however, the order of the learned Rent Controller and that of the learned Appellate Court though have been passed in their favour but without any increase and they have not assailed it before the learned Appellate Court either through direct appeal or cross objection in terms of order XLI rule 22 C.P.C, thus, while sitting in

writ jurisdiction this prayer of the respondents/ landladies is not entertainable for determination of their enhanced rent, therefore, their submission is hereby turned down. The petitioners are directed to handed over the vacant possession of the rented premises to respondents/ landladies within a period of one-month along with all outstanding dues, otherwise the respondents/ landladies may get this order execute through filing of execution petition before the learned Rent Controller not only for recovery of possession but also for outstanding rent, which shall be decided by the learned executing Court in accordance with law.

9. This petition is disposed of in the above terms.

Announced.

30.05.2024.

Released on.

10.06.2024.



JUDGE

Office
10/06/2024

Sabz Ali/* (S.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR