

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P No.S-931 of 2021**

Ghulam Nabi	.....	Petitioner
	<b>Vs.</b>	
Ashfaq Hussain & others	.....	Respondents

**Date of hearing & Order : 08.10.2024.**

Mr. Amir Asher Azeem, advocate for petitioner  
 Mr. Aadil Rasheed, advocate for respondents

**ORDER**

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**MUHAMMAD IQBAL KALHORO J:** Respondents filed a Rent Case No.656/2020 against the petitioner for eviction in respect of Shop No.4, Plot No.RC-4/34, Ground Floor, Aja Maoji/al-Shifa Street, Ranchorline, Gazdarabad, Karachi on three (03) grounds i.e. personal bonafide need, default in payment of rent and subletting the property. The application was allowed by the Rent Controller vide Judgment dated 05.04.2021. Against which, the petitioner filed FRA No.120/2021, which was dismissed vide impugned judgment dated 20.11.2021 against which he filed instant constitution petition. This constitution petition was allowed by this Court vid order dated 07.03.2022 against which respondents filed a Civil Petition No.917-K/2022 before the Supreme Court of Pakistan. This civil petition has been decided vide order dated 12.06.2024 in the terms whereby the case has been remanded to this Court by setting aside impugned judgment passed by this Court with direction to decide the petition afresh after evaluating the evidence available on record and giving an opportunity of hearing of both the parties.

2. I have heard learned counsel for the petitioner, who has submitted that there is no default on the part of petitioner. The rent of July, 2009 was due on 10<sup>th</sup> August, 2009. On 29.09.2009, before expiry of sixty (60) days, the rent through money order was sent but it was refused, hence, the rent was deposited through MRC No.208/2009. He has further argued that the petitioner has not sublet the property but is running the clinic in the demised premises by employing the doctors and paying them salaries. He from time to time changes the doctors, who are his employees and there is no question of subletting the property. He has relied upon the case laws reported in **PLD 1993 Karachi 642, 1995 S C M R 96, 1993 S C M R 1163** **1998 SCMR 2656**, and **PLD 1975 Supreme Court 311** in support of his arguments.

3. On the other hand learned counsel for respondents has supported the impugned judgment and has relied upon the case laws reported in **2018 S C M R 443, 1994 S C M R 1507, 2009 S C M R 893, 1995 S C M R 330, 2012 S C M R 254, 1995 S C M R 214, PLD 1996 Karachi 109, 2006 S C M R 1872, and 2010 S C M R**

4. I have heard the learned counsel for the parties and perused the material available on record. Petitioner in his cross examination has admitted that he is matriculate and one doctor has been running the clinic in the demised premises. He has not produced any document showing that the doctor running the clinic has been employed by him, and if so, under what law and what are the terms of employment. On the contrary, the clinic appears to have been registered by the Sindh Health Care Commission through a Registration Certificate dated 27.06.2019 and the type of ownership is described therein as partnership, which belies stance of the petitioner that he has employed the doctors for running the clinic of which he is the tenant actually. Further, he has admitted that after death of his father he did not communicate such information to the landlord and continued to utilize the demised premises as the tenant.

5. As to the ground of default, as far as the refusal by the respondents to receive the rent is concerned, there is no such proof on the record although the photocopies of receipts showing that money order was sent by the petitioner dated 29.09.2009 are available in the file but the proof that money order was not received or the rent was refused by the respondents in person is not available on the record. It appears that without any refusal by the respondents to receive the rent, the petitioner on his own volition started paying the rent through MRC application, which is not the scheme of law. The rent is to be tendered through money order when the landlord specifically refuses to receive the same. In this case, there is no assertion by the petitioner that he had approached the respondents / landlord and offered the rent to him but he had refused to receive the same, hence, he sent money order followed by the filing of MRC. Although the receipts of money order are available but no record has been filed to show that it was either accepted or refused by the landlord. More so, in para-8 of the rent application, it is clearly stated that the respondents need the demised premises for personal bonafide use.

6. It is obvious that the rent case was not filed only the grounds of default and subletting the property to some doctors but also on the ground of personal bonafide need. Regarding which no defence has been put up by the petitioner in the entire case. In my view, the concurrent findings of the Rent Controller and Appellate Court are unexceptional and in accordance with evidence led by the

parties. Not only the petitioner was found defaulter in payment of rent within due time to the landlord but by putting some doctors to run the clinic, he has been found to have sublet the property. In addition, he has not offered any defence to the assertion of respondents in para-8 of the rent application reiterating his personal bonafide need to use the property. In such circumstances, I find no merits in this constitution petition and accordingly dismiss along with pending application(s).

Petition stands disposed of in above terms.

**J U D G E**

Rafiq/P.A.