

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 1194 of 2023

Naseem Akhter & othersPetitioners

Versus

Murtaza Khan& others.....Respondents

Constitution Petition No. S – 1195 of 2023

Naseem Akhter & others Petitioners

Versus

Muhammad Yaqoob & others Respondents

Constitution Petition No. S – 1196 of 2023

Naseem Akhter & others Petitioners

Versus

Muhammad Arif & others Respondents

Constitution Petition No. S – 1197 of 2023

Naseem Akhter & others Petitioners

Versus

Muhammad Hanif & others Respondents

Constitution Petition No. S – 1198 of 2023

Naseem Akhter & others Petitioners

Versus

Muhammad Hanif & others Respondents

Date of Hearing : 07.05.2025

Date of announcement : 14.05.2025

Mr. Muhammad Riaz, Advocate for the Petitioners.

Mr. Ahmed Khan Khaskheli, A.A.G.

JUDGEMENT

Muhammad Jaffer Raza, J:- Through the instant Judgment, the
aforementioned petitions shall be heard and decided. The table below shall

encapsulate the relevant petitions, the respective appeals and rent applications from which they emanate.

Sr. No.	C.P. No.	FRA No	Order in FRA	Rent Case	Order in Rent Case
1	1194/2024	301/2022	12.08.2023	130/2021	02.12.2022
2	1195/2024	302/2022	12.08.2023	131/2021	02.12.2022
3	1196/2024	303/2022	12.08.2023	132/2021	02.12.2022
4	1197/2024	304/2022	12.08.2023	133/2021	02.12.2022
5	1198/2024	305/2022	12.08.2023	134/2021	02.12.2022

2. Through these instant petitions the above orders, as tabulated in the chart above, have been impugned by the learned counsel for the Petitioner who has impugned the concurrent findings of the learned Courts below. Since common facts are involved in the said petitions the arguments and facts shall be noted communally.

3. Learned counsel for the Petitioner has argued that rent applications were filed under section 15(2)(ii)(iii)(a)(b) & (c) VI of the Sindh Rented Premises Ordinance, 1979 (**“Ordinance”**). He has further argued that the plea of personal bonafide need was specifically taken in the said application and the said plea stood un-rebutted. According to the learned counsel the learned Rent Controller and Appellate Court have dismissed the rent application without appreciating the contention of the Petitioner. Learned counsel during the course of arguments has reiterated his plea of personal bonafide need and has prayed that the instant petitions may be allowed and the Respondent may be directed to vacate the tenement in question.

4. The instant petitions were presented on 11.11.2023 and notices were ordered to be issued vide order dated 16.11.2023. It is noted that the matter was fixed repeatedly and notices were repeated to the Respondents, however, no one has affected appearance on behalf of the Respondents and therefore the petitions are being adjudicated with the able assistance of learned counsel for the Petitioner.

5. I have heard the learned counsel for the Petitioner and perused the record. The personal bonafide need of the Petitioner has been very clearly spelt out in paragraphs number 5 and 8 of the rent application, which are reproduced as under:

- “5. That on 10.07.2020 the Applicants approached to the tenant to vacate the said shops for their personal bonafide need but the tenant made lame excuses and extend some times.
8. That the cause of action for institution of present rent application arose, when the Applicant’s father has rented out the rented premises to the Opponent/Tenant on rented premises, when on 10.07.2020 when the Applicants approached the Tenant/Opponent to vacate the said shops for their personal need but by one or other pretext he deliberately & intentionally does not handing over the physical possession of the said shops to the Applicants which is need for their personal use and the cause of action is still subsist hence the present ejection application before this Honourable Court.”

6. Further the Petitioner stepped into the witness box. I have also examined the cross examination of the Petitioner and the plea in respect of the personal bonafide need stood un-rebutted. It is a settled principle of law that once the landlord steps into the witness box and the plea of personal need goes unrebutted, the ejection application must be allowed under Section 15 of the SRPO. The following judgments advance the said proposition. The respective judgments and their relevant parts are reproduced below: -

- **Jehangir Rustom Kakalia vs. State Bank of Pakistan¹**

“Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”

- **Shakeel Ahmed & another v. Muhammad Tariq Farogh²**

“6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-

¹ 1992 SCMR 1296

² 2010 SCMR 1925

evidence as prescribed by law, if it remains unshattered in cross-examination and un-rebutted in the evidence adduced by the opposite party.”

- **Rabia Jamal v. Mst. Nargis Akhtar**³

“22. On the basis of the above decisions of the Supreme Court of Pakistan, it is apparent that once the landlord has adduced evidence by stating that they require the Said Tenement for their personal use in good faith, thereafter the burden shifts on the tenant to show either that the landlord did not require the Said Tenement for her personal use in good faith or that the Said Tenement could not be used by the landlord for the purpose as indicated in the Application under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. However, while raising such a contention it is not open to the tenant to allege mala fide on the part of the landlord by adducing evidence to state that the landlord had alternative premises or for that matter that the landlord had alternative premises that were more suitable for the needs of the landlord. This right to choose from amongst a host of properties that are available to a landlord as to which of those properties the landlord requires for their personal use vests solely with the landlord to the exclusion of all others.”(Emphasis added).”

7. The learned Rent Controller had erroneously declined the rent application of the Petitioner on the sole ground that the Petitioner is in possession of other tenements and therefore does not meet the criteria as set out for personal need. Further, the learned Rent Controller has incorrectly held that the tenement in question is “not suitable” for the purpose mentioned by the Petitioner in the rent application. Ironically, the learned Rent Controller has relied upon Section 14 of the SRPO, whereas the rent application was preferred by the Petitioner under Section 15 of the SRPO. It is held that the threshold of both the provisions is different and therefore the reliance on Section 14 of the SRPO by the learned Rent Controller was unwarranted and beyond the permissible scope of the application which was being adjudicated upon. The learned Appellate Court by dismissing the First Rent Appeal mentioned above, erroneously held that the Petitioner was burdened to provide details of his personal need and the

³ C.P. No.S-495/2023 Order dated 21.07.2023

statement made by the Petitioner in the rent application, affidavit in evidence and examination will fails to establish the threshold for personal need.

8. In light of what has been discussed above the instant petitions are allowed. The rent applications filed by the Petitioner are allowed with direction to the Respondent to vacate the tenement in question within 60 days from today and handover vacant and peaceful possession to the Petitioner.

JUDGE