THE HIGH COURT OF SINDH KARACHI

C.P. No. S-569 of 2011

[Muhammad Shafi vs. Hassan Ali & others]

Petitioner	:	Muhammad Shafi through Syed Muhammad Haider, Advocate
Respondent No.1	:	Hassan Ali through Mr. Muhammad Ilyas Awan, Advocate

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Date of hearing	:	04.11.2026
Date of decision	:	04.11.2026

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O R D E R

Zulfiqar Ali Sangi J.– The petitioner has assailed the judgment dated 22.03.2011 passed by the learned VIth Additional District Judge, Karachi (South), in First Rent Appeal No.269 of 2010, whereby the appeal was dismissed, thereby maintaining the order dated 24.03.2010 passed by the learned VIIIth Rent Controller, Karachi (South), in Rent Case No.20 of 2009, whereby the petitioner's ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979, was dismissed.

2. Briefly stated, the petitioner's case before the learned Rent Controller was that he was one of the legal heirs of late Mst. Bashiran, admittedly the owner of the property in question, and that during her lifetime, a family settlement was arrived at on 10.04.1994, whereby the property in dispute fell to his share. It was further his case that respondent No.1 had entered into an oral tenancy agreement with him in May 1994 at a monthly rent of Rs.220/-, and had paid rent up to December 1994, but thereafter committed default in payment of rent from January 1995 onwards. The petitioner also sought ejectment of respondent No.1 on the ground of his personal bona fide requirement, asserting that he and his family were residing in a rented accommodation having insufficient space. Respondent No.1, while admitting that late Mst. Bashiran was the owner of the property and that the petitioner was her son, denied the relationship of landlord and tenant between the parties. His defence was that he had been paying rent to Muhammad Rafique, another son of the deceased, who was issuing rent receipts to him. He also disputed the alleged family

settlement and relied upon the rent receipts produced in evidence to substantiate his plea of payment of rent.

3. The learned Rent Controller, after recording the evidence of the parties, dismissed the rent application through order dated 24.03.2010, primarily holding that the petitioner had failed to establish the relationship of landlord and tenant. The learned Appellate Court, through the impugned judgment, maintained the said finding, mainly on the basis that the petitioner had neither produced title documents in his favour nor established that he was collecting rent or had been authorized by the other legal heirs to initiate ejectment proceedings.

4. I have carefully examined the impugned orders, the pleadings and the grounds urged in the petition. The principal question requiring consideration is whether the learned Courts below could legally dismiss the ejectment application without framing an issue and recording a finding on the ground of personal bona fide requirement, which was specifically pleaded by the petitioner.

5. In this regard, learned counsel for the petitioner has placed reliance upon the case of ***Agha Daver Hussain v. Mrs. Zaibun Nisa (1999 MLD 3088).*** The said judgment, rendered by this Court, is directly relevant to the controversy. In that case, the ejectment application had been instituted on the grounds of personal requirement and default in payment of rent, but the Rent Controller had failed to frame an issue and record a finding on the ground of default. This Court held that failure to frame issues on the points in controversy and to record findings thereon amounted to non-compliance with Section 19(5) of the Sindh Rented Premises Ordinance, 1979, resulting in miscarriage of justice. Consequently, the impugned order was set aside and the matter was remanded to the Rent Controller for decision afresh after framing the necessary issue and affording the parties an opportunity to adduce evidence.

6. The aforesaid principle squarely applies to the facts of the present case. A perusal of the order dated 24.03.2010 passed by the learned Rent Controller reflects that although the petitioner had specifically sought ejectment on two independent grounds, namely, default in payment of rent and personal bona fide requirement, the learned Rent Controller framed only three points for determination, relating to the existence of the relationship of landlord and tenant, default in payment of rent and the consequential order. No specific

issue was framed regarding the petitioner's pleaded personal bona fide requirement, nor does the order contain any independent discussion or finding on that aspect. The learned Appellate Court, while dismissing the appeal, also failed to address this material aspect of the controversy.

7. It is a settled principle that where a landlord seeks ejectment on more than one statutory ground, each such ground, if specifically pleaded and requiring adjudication, must be considered independently on the basis of the pleadings and evidence brought on record. The omission to frame an issue on a material controversy and to record a finding thereon cannot be treated as a mere procedural irregularity, particularly when it deprives a party of an adjudication of a substantive ground of ejectment.

8. It is further noticed that the petitioner claimed the status of landlord on the basis of his alleged co-ownership arising out of a family settlement among the legal heirs of late Mst. Bashiran. The respondent No.1, on the other hand, admitted the ownership of late Mst. Bashiran and the petitioner's relationship with her, but disputed the alleged family settlement and asserted that rent was being paid to Muhammad Rafique. The question whether the petitioner established his status as landlord within the meaning of Section 2 of the Sindh Rented Premises Ordinance, 1979, was required to be examined in the light of the entire evidence, including the admissions elicited during cross-examination and the evidence of the respondent's own witnesses. Equally, the mere existence of a dispute amongst the legal heirs would not, by itself, dispense with the requirement of examining the petitioner's claim in accordance with the applicable law.

9. However, this Court, while exercising constitutional jurisdiction, would not ordinarily substitute its own appraisal of disputed evidence for that of the competent Rent Controller, particularly when material questions arising from the pleadings have not been properly adjudicated. The appropriate course, therefore, is to ensure that all material grounds raised by the petitioner are decided by the competent forum through a speaking order, after affording both parties a fair opportunity of hearing.

10. In view of the foregoing discussion, I am of the considered view that the impugned orders cannot be sustained in their present form, particularly in view of the failure of the learned Rent Controller to frame an issue and record a finding on the petitioner's claim of

personal bona fide requirement. The omission has materially affected the adjudication of the controversy and renders the proceedings legally unsustainable to that extent. The learned Appellate Court also failed to rectify the said omission while exercising its appellate jurisdiction.

11. Consequently, this constitutional petition is allowed to the extent that the impugned judgment dated 22.03.2011 passed by the learned VIth Additional District Judge, Karachi (South), in First Rent Appeal No.269 of 2010, and the order dated 24.03.2010 passed by the learned VIIIth Rent Controller, Karachi (South), in Rent Case No.20 of 2009, are hereby set aside. The matter is remanded to the learned Rent Controller concerned for decision afresh in accordance with law, after framing appropriate issues covering all the grounds of ejectment pleaded by the petitioner, particularly the ground of personal bona fide requirement, and after affording both parties an opportunity to address arguments and, if so required, to lead further evidence strictly in accordance with law.

12. The learned Rent Controller shall independently examine the question of relationship of landlord and tenant, the petitioner's claim of co-ownership and entitlement to maintain the ejectment proceedings, the alleged default in payment of rent and the plea of personal bona fide requirement, without being influenced by the observations contained in the impugned orders or this order. Needless to observe that all questions of fact and law shall be determined on the basis of the pleadings and evidence available on record, in accordance with the applicable provisions of the Sindh Rented Premises Ordinance, 1979.

13. The learned Rent Controller is further directed to conclude the proceedings expeditiously, preferably within a period of three months from receipt of this order. It is clarified that this Court has not expressed any opinion on the merits of the respective claims of the parties, and the learned Rent Controller shall decide the matter independently in accordance with law.

14. The petition stands disposed of in the above terms with no order as to the costs.

JUDGE