

# IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-621 of 2010

**Mr. Nisar Ahmed Sheikh**

**Vs.**

**VIIth Additional District Judge, District South & Mrs. Kulsoom Shabbir**

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 27.09.2016

Petitioner : Through Mr. Muhammad Ali Waris Lari,  
Advocate

Respondent No.2 : None present

## JUDGMENT

**Zulfiqar Ahmad Khan, J.:-** The instant constitutional petition finds its roots from the order of the Rent Controller dated 08.09.2009, in terms of which the ejectment application filed by the landlord under Section 15 of the Sind Rented Premises Ordinance, 1979 was allowed on both the accounts of 'default' and 'personal bona fide' use. On account of default, the learned Rent Controller has held on Page-4 that on the basis by his own admission and in his cross-examination, it was crystalized that the tenant neither paid the monthly rent within the 10th of every month (which the tenancy agreement provided for) nor deposited the rent in Court in M.R.C by increasing the monthly rent @ Rs.6,000/- per month, thus by merely paying the accumulative rent, the obligation that the tenant has to pay the monthly rent is not satisfied.

On the account of the bona fide use ground, where it was contended that the landlord's son, who is jobless needs the instant property for his use, the tenant failed to provide any evidence to the contrary and made severe claims that until and unless the person (the son) for whose personal use the property is being sought, is examined and allowed to be crossed, the bona fide use claim of the landlord is not ascertained. The Rent Controller held

that recording of evidence of the person (son) for whom the premises are required is not an essential factor, therefore, as long as, the landlord (father) was able to satisfy that the property is needed by him (for his son), the test posed under the Sind Rented Premises Ordinance, 1979 for personal bona fide use is satisfied.

Since the tenant was not satisfied with these findings, he impugned the said order in F.R.A bearing No. 310 of 2009, wherein the thrust of his assertions, as evident from the reading of the judgment, is that the alleged deficiency of the trial Court of not examining the son of the landlord on whose behalf the landlord father was claiming personal bona fide use, has rendered the Rent Controller's fatally injured. Notwithstanding therewith, in my initial cursory view, the impugn judgment seem to eloquently address this question of personal bona fide need, and after applying independent mind, the appeal is dismissed by the appellate Court, against which the instant petition has been filed.

Learned counsel for the present petitioner, while lauding the factor that the appellate Court held that there was no default, contended that the trial and appellate courts erred in holding that there was no need to put the son of the landlord into witness box and to take his testimony. The learned counsel also attempted to distinguish his case from the narrow widow of 2001 SCMR 338 by submitting that since the courts below failed to appreciate the need for putting the son of the landlord into witness box, fatal error has occasioned.

Heard the counsel, reviewed the record. Emanating from the above discussion, the moot point is that whether in cases, where personal bona fide need is alleged, is it a mandatory requirement that the individual on whose behalf the landlord is claiming bona fide use, has to be put in the witness box.

To start with, taking guidance from Section 2(g) of the Sind Rented Premises Ordinance, 1979, which defines personal use, to mean *the use of the premises by the owner thereof or his wife (or husband), son or daughter*. Also

relevant is the text of Clause-vii of Sub-Section 2 of Section 15 of SRPO, which provides that the Rent Controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in his order, if he is satisfied that the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children. A collective reading of Section 2(g) and Section 15(2)(vii) makes it very clear that SRPO treats the landlord and his spouse or his son or daughter as 'one unit' and to be satisfied to handover the possession to the landlord under Section 15(2)(vii), there is no requirement to breakdown the solidarity and integrity of this family-unit and put in the witness box landlord's wife or his children for whom the landlord needs the tenanted property. If that would have been the intention of the legislature, that would have been specifically provided therein, which is not the case at hand, therefore, it is up to the landlord to satisfy to the Rent Controller that the tenanted property is needed by him, his wife or children making is no exposure to his wife or children for them to come in the witness box and be examined or cross-examined individually. This veil of family-integration is not allowed to be ruptured and a tenant cannot object to the internal arrangement worked-out by the family amongst themselves in this regard.

This view finds supports of the Court from the case reported as 1995 MLD 1471, where the question as to bona fide personal need of the landlord arose, where the plaintiff wanted premises for his wife and children and during the trial, the landlord statement was not conflicted in cross-examination, which by legal implication deemed to have been accepted by the tenant, Court came to the conclusion that in the absence of any challenge to the testimony of landlord, tenant could not be allowed to say that no justification existed for directing his ejection on the ground that the premises were required by landlord for his own use or use of his family. There are numerous precedents, where the word (bona fide) in relation to the need of the landlord has been dealt with. A conclusive reading of these precedents shows that for proving the bona fides, it is the landlord who has

to bring evidence of his necessity, desire and the preparations made by him for using the property for his proposed need. Time and again courts have reiterated that bona fide requirement has to be distinguished from a mere whim or fanciful desire and bona fide requirement is in *praesenti* and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire. Courts have held the landlord to be the best judge of his requirement and that the tenant cannot dictate the terms to the landlord and advise him what he should do and what he should not. With regards the bona fide requirement of the landlord, it is also established position that it is on the landlord (alone) to satisfy the Rent Controller as to the absolute interest and it is only upon the landlord to show the same unless the landlord is considered to be abusing or misusing the right to acquire position of the property in question in eviction proceedings, which means that he seeking to get possession under the veil of bonafide requirement, the tenant cannot bear the said bona fide need by bringing in the witness box each and every family member or wife of the landlord to the witness box.

With regards the assertion of witness boxing relatives (wife, son and daughters of the landlord), lets imagine a scenario where a landlord, who has a wife and six children and wants to evict the tenant from their property on account of growing needs of the children, one wonders what would be gained from putting the children in the witness box to be crossed by the tenant to show that the children would actually benefit from the larger premises for the better enjoyment of life. So similarly, it is for the head of the family i.e. landlord, who had on his shoulder the responsibility of making sure the welfare of the children, as well as, when the children grow up, to make sure that the premise rented to tenant would be best used by grown up children for their greater economic benefit. Imagine another scenario where a father, who owns a shop, rented out to a tenant wants his son to start a new business in the said premises and his son has no experience and interest in running of the business, but the father (landlord) in his greater wisdom and foresightedness wants the kid to start a commercial venture. By putting the

son into witness box to prove that he actually needs the premises, will defeat the very intention of the legislature, since it is to the landlord (father) to be put to the witness box and satisfy the trial Court that what he is planning is good and bona fide use of the tenanted property in his family's best interest thus even after putting the son into the witness box in the present case one can have a finding that the son is not interested in the property or running of the business, still the bona fide need of the father will have to be honored, as he has responsibility for the welfare of his family. Concluding therefrom is that while adjudicating the matter related to bona fide use of the rented out property, one has to keep in mind also that bona fide is a state of mind, thus it can only be determined by examining the person, who requests for such a use as he is the one, who can provide the best evidence in support of his claim for bona fide use and one person's bona fide cannot be proved by another person unless the person claiming bona fide i.e. landlord is examined himself and he swears on oath that he bonafidely required the property in question only his testimony can be tested in the examination and the evidence could be examined by the Court only through him.

Imagine a situation that a person claims bona fide need and someone else on his behalf is examined. This situation arose in the case of *Viriendrapal vs. Daljeet Singh Saudh* (reported as 1978(ii)RCJ 365), where while the landlord alleged that he needed the building for his personal bona fide use, an attorney on his behalf appeared and he was examined. Relying on the principle that the bona fide requirement is in the first place, a state of mind, therefore, the person, who is claiming for a bona fide need has to be deposed by himself and if he does not step in the witness box and brings before the Court evidence for proving his requirement then it cannot be said that he reasonably and bonafidely required the premises. In such situation when an attorney appeared on behalf of the landlord, Court refused to give any importance to the attorney's testimony.

Conclusion from the above examples cements into the understanding that where the landlord bonafidely or genuinely requires the property, such

bona fide be assessed by the Court only by examining the landlord and the trial Court would not require testimony of the forthcoming occupier. Question of this nature arose in the case of Mushtaq Ahmed vs. Tahir Adam (reported as 2015 YLR 308), where landlord was trying to evict the tenant for his bona fide need and question was posed, if the landlord had required experience in the business that he wants to commence in the tenanted property. The Court held that landlord was not bound to disclose the nature of business to be started in the demise premises in order to seek ejectment of tenant from a commercial premises on the ground of his personal bona fide need, proof of having experience in the trade or business by the landlord was not necessary to prove personal need to such premises. Also worth referring is the case of Shahid Mehboob vs. Muhammad Ismail (reported in 2008 CLC 87), where the Court held that even if the son of landlord was carrying on his own and was not dependent on his father (landlord), such son was also entitled to have premises vacated from tenant for his personal use on such application having been made by his father and the Court held that ejectment application was maintainable on such plea by making reference to 1994 SCMR 355 and 2001 SCMR 550. In the above referred case of Mushtaq Ahmed vs. Tahir Adam (supra), the Court very clearly held that the sole testimony of landlord was sufficient to establish his personal and bona fide requirement. Time and again it is also held that tenant cannot dictate the landlord regarding his need or choice of the building. Also of relevance is the Indian Supreme Court case of M/S. Sri Srinivas vs. Sri Narayandas and Others (Civil Revision Petition 5778/2006 reported as 1998-8-SCC 119), where court observed that when the landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide and it is not for the tenant to dictate terms to the landlord as to how else the landlord can adjust himself without tenant handing over the possession of the tenanted premises.

Coming back to the premise that bona fide is state of mind and the testimony of the person claiming bona fide is the only option. In the case of

Mustafa Haji vs. Umbichi [reported as 2004 (2) KLT 1110], the Court in the similar situation held that non-examination of son of the landlord was not fatal to a petition for the use and occupation of the rented out property by the landlord for his son. Since facts are of similar nature, it is worthwhile to reproduce them here and to see what the Court decided in those circumstances. The facts in the above referred case are that father was the landlord and wanted the property in question for his son, who had a wife and three children and made prayer for the eviction of the tenant. Father was examined and gave oral evidence, so was tenant and examination of both was conducted by the Rent Controller and after considering the evidence the Rent Controller came to the conclusion that the need was bona fide and passed appropriate orders. The tenant took up the matter into an appeal and alleged that the landlord's son on whose behalf the eviction was sought was not examined, thus (like the instant case) alleged that, the order of the Rent Controller is flawed and non-examination of the son of the landlord is fatal to the petition filed for eviction on personal bona fide ground of the father in respect of his son. The High Court in the said matter gave its findings that once the landlord had specifically pleaded that the son was in need of the tenanted premises and it was required for the purposes of starting a business for his son, it was for the tenant to disprove the same by adducing evidence and appellate authority was carried away by the fact of personal dependency, rather than the dependency on the premises. Also in the case of Gulraj Singh vs Dr. Harbans Singh (reported as 1993 AIR 1574, 1993 SCR (1) 149), court held that non-examination of the son was not fatal to the petition for eviction. Relying upon the above referred judgments, Kerala High Court in Mustafa Haji Umbichi case (supra) held that since the landlord had specifically pleaded that his son has no other avocation and the son was dependent on the father for conducting business in the tenanted premises and the tenant having failed to adduce evidence against the landlord to disprove landlord's version, Court held that non-examination of the son was not fatal in the given circumstances.

For the above reasons, the contention that the trial court which failed to put son of the landlord, on whose behalf the eviction was sought, in the witness box is groundless and in my considered view non-examination of the son of the landlord in neither necessary nor fatal to the eviction application filed by the landlord father on personal bona fide use ground in respect of his son, and in such circumstances the testimony of the landlord father is sufficient for the trial court to determine bona fide needs of the landlord father for his son.

Petition is accordingly dismissed.

Karachi: 5 October 2016

**JUDGE**

Barkat Ali/PA