

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.S-1362 of 2011

PRESENT:**MR. JUSTICE ARSHAD HUSSAIN KHAN*****Muhammad SultanVs. Muhammad Yousuf and others.***Petitioner: Muhammad Sultan
Through Mr. Zafaruddin Khan, Advocate

Respondent No.1 Muhammad Yousuf

Date of hearing: 28.11.2016**JUDGMENT**

ARSHAD HUSSAIN KHAN, J: The petitioner through instant constitutional petition has challenged the concurrent finding of facts by the learned courts below and sought relief as follow:-

- a) *To set aside the impugned orders passed by the learned lower Court dated 2.1.2011 and the order dated 21.10.2011 passed by the learned appellate Court.*
- b) *To declare that the said impugned order is beyond the natural justice and equity as such is liable to be set aside.*
- c) *Any other relief or reliefs may also be granted which this Hon`ble Court may deem fit and proper in circumstances of the case.*

2. Brief facts arising out of the present petition are that respondent No.1/applicant is the landlord/owner of shop No.4 Mustafa Colony, North Nazimabad, Karachi (demised premises). The father of respondent/applicant during his lifetime on 12.11.1990 has entered into an agreement of tenancy with the petitioner/opponent at the rate of Rs.400/- per month, which monthly rentals were being increased with the passage of time and at the time when the rent case filed it was Rs.1500/- per month. The respondent/applicant on 4.3.2010 filed a Rent Case No.147/2010 against present petitioner/opponent on the ground of personal need and on default. The petitioner/opponent upon notice of the said rent case filed his written statement and denied the allegations levelled therein. In the written statement it was stated that the father of the respondent / applicant being the real owner of the demised premises

had rented out the same to the petitioner on monthly rental of Rs.300/- and he had also received an amount of Rs.50,000/-(rupees fifty thousand only) as goodwill. It was stated that the petitioner/opponent never committed default in payment of monthly rentals. Further stated that monthly rentals were regularly being paid to the respondent/applicant. The petitioner also denied the earlier as well as current rate of monthly rentals and he had also denied that he received any notice regarding personal bonafide need from the respondent / applicant. It was also stated in the written statement that earlier also father of the respondent/applicant had tried to vacate the demised premises by filing a civil suit bearing No. 698/1990 for permanent injunction, however said suit was disposed of through compromise. It was further stated that the petitioner/opponent paid the monthly rental to the respondent/applicant till January 2010, however he did not issue the receipt thereof resultantly the petitioner had sent the monthly rentals through money-order, which too was returned. Where after, the petitioner started depositing monthly rentals in MRC No.212/2010. It was also stated that the ejectment application was based on malafide as the demised premises was not required by the respondent/applicant in good faith as the demised premises is located at plot of 147 Sq.Yrds, whereat several other shops are also located wherein the respondent / applicant are doing his business.

From the pleadings of the parties the learned Rent Controller settled following points for determination:-

- (1) Whether the Opponent has committed willful default in payment of monthly rent @ Rs.1500/-p.m. from September 2009?
- (2) Whether the demised premises is required to the Applicant for his personal use in good faith?
- (3) What should the order be?

The learned Rent Controller after recording the evidence and hearing counsel for the parties vide its order dated 22.01.2011 allowed ejectment application by giving sixty (60) days' time to the petitioner/opponent to vacate the demised premises. The said order of the learned Rent Controller was subsequently challenged by the present petitioner before the learned IVth Additional District and Sessions Judge, Karachi (Central), [ADJ] in FRA No.23/2011. The learned ADJ

after hearing the learned counsel for the parties vide its order dated 21.10.2011 dismissed the said FRA of the present petitioner. The said orders of learned Rent Controller as well as learned IVth Additional District Judge, Karachi (Central) have been challenged in the present petition.

3. Upon notice of the present petition the respondent / landlord filed his counter affidavit in the case and denied the allegation leveled in the petition.

4. Learned counsel for the petitioner during the course of his arguments, while reiterating the contents of the petition has contended that respondent/landlord wants to usurp the Pugri amount as such he filed the ejectment application on false grounds. Further contended that the evidence available on record is very clear that the demised premises is on Pugri and the Respondent/landlord owns several other shops, situated adjacent to the demised premises, hence, the requirement of demised premises by the respondent/landlord for his personal need is not based on good faith. Furthermore, other grounds of ejectment application were also baseless and made up and hence the present matter is required to be decided afresh keeping in view the material available on record. Further contended that the learned ADJ while passing the impugned judgment has failed to consider that the contents of memo of appeal remained unchallenged. Further contended that the learned Rent Controller while passing the impugned order misread the evidence and ignored the fact that demised premises is on Pugri and the personal need of the landlord is not based on good faith. Lastly contended that the orders impugned in the present proceedings suffer from illegality and jurisdictional error, hence require interference by this Court in its constitutional jurisdiction and the orders impugned herein are liable to be set aside. Learned counsel in support of his stance in the case relied upon following case law:

- (1) 1989 MLD 581 (Syed Wahid Hussain v. Abdullah Bhatti.)

In this First Rent Appeal it is, inter alia, held that requirement of premises in good faith would involve present genuine need of landlord which was to be proved through convincing and tangible evidence--Casual statement of landlord that he

required premises in good faith, would not be enough to satisfy requirement of law.

- (2) 1986 CLC 561
(Messrs Johan Traders and 3 Others v. Ahmed Ali)

In this First Rent Appeal, it is, inter alia held that to establish bona fide need of landlord for personal requirement of premises, burden thereof would be on landlord to establish good faith through evidence inspiring confidence.

- (3) 1991 CLC 2076
(Ahmed Mian v. Afzal Book Centre)

In this First Rent Appeal, this Court while upholding the decision of the learned Rent Controller whereby eviction application of the landlord was dismissed on the ground that Landlord seeking ejection of tenant from shop in dispute for use of his son, had not mentioned the name of his son for whom shop was required, either in ejection application or in affidavit in evidence. Further Landlord also had not stated as to what business was proposed to be carried in the shop. Besides, the Landlord also admitted in the evidence that he owned six or seven shops which were in possession of different tenants and he had filed rent cases against all those tenants on ground of personal need of his sons. Furthermore, the Landlord had admitted in cross-examination that two or three cases had been decided in his favour and that possession of one of the shops had been delivered to him in execution proceedings.

- (4) 1985 CLC 1007
(Noor Muhammad v. Iqbal Ahmed)

In this First Rent Appeal, it is, inter alia, held that No hard and fast rules could be laid down for quantum and quality of evidence to prove bona fide need of landlord for seeking eviction of a tenant on that ground. Statement of landlord alone, held, sufficient to prove his personal requirement if it can satisfy a prudent mind by objective evidence that such requirement does exist.

- (5) 1993 MLD 2575
(M/s. UNITED BANK LTD v. Haji ABDUL RAZZAK & CO.)

In this First Rent Appeal, it is held that Landlord having failed to discharge burden which lay upon him, Rent Controller had rightly decided that landlord had failed to prove that he required premises in good faith for his personal use. To reach the conclusion that premises was required by landlord in good faith, Court must be satisfied about reality of claim of landlord, Court was to see that landlord did not under pretext of personal requirement, invade right of tenants to possess premises while discharging their contractual/statutory obligations as tenants.

- (6) 1997 CLC 1085

(Abdul Rahman and Others v. Pakistan State Oil Co. Ltd. and another).

In this First Rent Appeal, it is, inter alia, held that though it was not incumbent upon the landlord to state the nature of business which he intended to start in the premises needed by him, yet that could not prevent the landlord for not mentioning such requirement in the pleadings. Further held that it would be incumbent upon the landlord to establish good faith through evidence which was essential requirement for ejection of tenant relating to personal need of landlord in respect of premises in question.

(7) 2005 CLC 03

(Pakistan State Oil Co. Ltd. v. Sikandar A. Karim and others)

It is held in the case that bona fide personal need of landlord, without express and clear plea showing the purpose for which demised premises was required by landlord, Court could neither consider nor decide question of requirement and its reasonableness.

5. The stance of the respondent /landlord as stated in the counter affidavit is that the orders impugned in the present proceedings are in accordance with law and were passed after due consideration of evidence available on record and after hearing the counsel for the parties and as such do not suffer from any illegality and irregularity which could warrant this Court to interfere with the present proceedings. It is also stated that the petitioner did not produce any evidence in respect of his claim of pugri / goodwill amount, which he had paid to the father of the respondent/landlord. Lastly, stated that the present petition is liable to be dismissed.

6. From the perusal of record it appears that the respondent/landlord on 04.03.2010 filed ejection application bearing rent case No. 147 of 2010 against the present petitioner in respect of demised premises on the ground of personal need and default of monthly rent since September 2009 till filing of the ejection application. The petitioner/tenant resisted the said ejection application and took the stance that the demised premises was taken on pugri/goodwill of Rs.50,000/- from the father of the respondent/landlord, and he never defaulted in payment of monthly rentals and further the personal need of the respondent/landlord is not based on good faith as besides demised premises the respondent/landlord has other shops in the same vicinity.

7. From the perusal of record, it transpires that the learned Rent Controller while passing the eviction order has duly considered the evidence vis-à-vis the above stances of the parties. For the sake of ready reference, relevant portion of the order dated 22.1.2011 passed by the learned Rent Controller in Rent Case No.147 of 2010 is reproduced as under:

“Point No.1

As regard this point the Applicant in para-4 of his ejectment application and para-5 of his Affidavit-in-Evidence has claimed that opponent has not paid the rent since last six months in spite of request. The opponent denied the claim of applicant and stated that he never made himself as defaulter with further submission that prior to filing ejectment application once the father of applicant namely Abdul Majeed had also tried himself to vacate out the opponent from tenancy premises illegally. The applicant refused to receive the rent despite of many request therefore, the opponent has no way to make the applicant to receive the same and sent money orders which were also refused to receive by the applicant therefore, opponent deposited the monthly rent in MRC No.212/2010 and rent is being deposited in same MRC regularly.

The applicant stepped into witness box and was cross-examined by the learned counsel for the opponent at length who replied that

“It is incorrect to suggest that in the month of January 2010 opponent approached me for payment of rent but I refused to receive therefore, he sent the rent through money order for the month of January and February 2008. It is incorrect to suggest that opponent approached me for payment of rent for the month of January and February 2010. It is incorrect to suggest that opponent sent me the rent for the month of January, February and March 2010, same was refused by me. Voluntarily says that said money order was sent after filing of MRC.”

The opponent stepped into witness box and was cross-examined by the learned counsel for the applicant, who replied that

“It is incorrect to suggest that applicant time to time approached me for vacation of demised shops. Voluntarily says that about six months applicant sent area police for vacation of demised premises. It is incorrect to suggest that I have allowed vegetable hawker and used to collect rent from him. It is incorrect to suggest that I want to enjoy my possession in demised premises more and more.”

I rely upon 2005 CLC 1010 which reads as under:

“Ejectment of tenant on ground of default in payment of rent - --Burden to prove payment of rent, no doubt initially was upon the landlord, but it would shift upon the tenant once landlord

asserted on oath that rent had not been paid to him---Reason for such principle was that status of tenant was that of a debtor and a fact could not be proved in the negative---Tenancy in the present case being on monthly basis, if tenant had committed default even in respect of one month, subsequent payment of rent could not wipe off default in payment of rent.”

It is well settled principle of law that once applicant stepped into witness box and stated on oath that the opponent has not paid the rent and have committed willful default then burden shift to the shoulder of opponent to disprove the claim of applicant by producing such oral and documentary evidence. Perusal of documents produced by opponent specially Exh.O/9 and Exh.O/10 which are money order coupon, it appears that the applicant filed the instant rent case on 04.03.2010 and money order coupon filed by the opponent appears that money orders were sent on 17.03.2010 and 24.03.2010 after institution of present rent case. It is pertinent to mention here that these both coupons do not appear that the applicant has refused to accept the rent through money order. The opponent failed to examine the Post Master of the area to prove that the applicant had refused to receive accept the rent sent by opponent through money order. Therefore, Point No.01 is answered in affirmative.

Point No.02

As regard this point the applicant in Para 6 of ejectment application claimed that the demised premises is required for his personal bonafide use as he wants to establish his own business in the rented premises and the present rented premises are best suited to him for which purpose he contacted with the opponent and asked him to vacate the demised premises but he flatly refused to vacate the same.

The opponent denied the claim of applicant with further submission that the case premises is not reasonably in good faith requires to the applicant either to himself for the need of his any of the family members as the case premises located on a very sufficient plot ad-measuring 147 square yards with other many shops where the applicant is peacefully, comfortably residing and doing his business which is very sufficient for his deed as the same is not in a position which can be used by the applicant. He further submitted that alleged personal requirements are based upon malafide intention moreover the applicant has not demanded the possession of the case premises on the ground of real personal need.

The applicant stepped into witness box and was duly cross-examined by the learned counsel for the opponent who replied that

“It is incorrect to suggest that the demised premises is not required for my personal use but only I want to dispossess the opponent from demised premises and re-rent out on higher to somebody else. It is correct to suggest that there are total 12 shops out of which only three shops are mine.”

The opponent stepped into witness box and was duly cross-examined by the learned counsel for the applicant who replied that :

“It is incorrect to suggest that demised premises is required for personal bonafide use of applicant in good faith. Voluntarily says that there are 12/14 shops out of which two shops are already lying vacant. In one shop applicant`s son is doing his

business. I do not know that all the sons of applicant are jobless. Voluntarily says that one son of applicant is doing business in one shops, two sons are contractors.”

It is well settled principle of law that where claim made on oath by landlord that he required premises in dispute for his personal use, was found to be consistent with his averments in application for ejectment and not shaken in cross-examination or dispute in rebuttal, such assertion of landlord held should be accepted by Rent Controller as bonafide. Reliance placed upon 1989 CLC 545 Karachi. Ejectment on ground of personal bonafide requirement---Expressions “good faith” “need” and “desire” meaning and connotation of expression “good faith” is an extract term not capable of any rigid definition, its ordinary dictionary meaning is honesty of intention. Reliance placed upon 1989 CLC 616 Karachi. The claim of the opponent is that rear portion has recently been rented out by the applicant to some other tenant therefore, the requirement of applicant is not in good faith. In this regard it is well settled principle of law that ejectment on ground of personal requirement---Choice of landlord to select of premises of his own choice was discretion of landlord. Reliance place upon 1989 CLC 619 Karachi. Landlords prerogative and discretion to select the premises for himself tenant could not imposed his will upon landlord. Reliance place upon 1993 MLD 386 Karachi. Once it was established that premises in question was required by landlord in good faith, Rent Controller was left with no other option but to order eviction of tenant. Reliance place upon 1993 CLC 505 Karachi. Suitability and sufficiency of accommodation required by landlord, was his prerogative and it was not within power of Rent Controller to interfere with such prerogative of landlord---Choice to select premises suitable for personal use, also lay with landlord. Reliance place upon 1993 CLC 270 Karachi. In case of personal requirement where owner owned more than one property, choice as to which premises he would like for his needs, would lie with owner/landlord---Choosing of premises for his personal need was the prerogative of landlord---Landlord was judge of suitability of premises for his requirement and tenant could not have option to choose which premises would be suitable for landlord. Reliance place upon 1984 MLD 958.

In the light of above dictum laid down by superior Courts, evidence and material available on record, it appears that the applicant established his case against the opponent for personal bonafide need in good faith therefore, the Point No.2 is answered in affirmative.

Point No.03.

In the light of reasons discussed above, the application under Section 15 of the Sindh Rented Premises Ordinance, 1979 filed by the applicant is hereby allowed. The opponent or anybody else found there is/are hereby directed to vacate the demised premises viz Shop No.4, situated on ground floor at Mustafa Colony, (formerly known as Nusrat Bhutto Colony) North Nazimabad, Karachi within sixty (60) days from the date hereof.”

[Underlining is to add emphasis]

8. The record further reveals that the above said order of the learned Rent Controller was challenged by the present petitioner/tenant before the IVth Additional District and Sessions Judge, Karachi (Central) in FRA No. 23 of 2011. The learned ADJ after hearing the

counsel for the parties while upholding the decision of the learned Rent Controller, dismissed the said FRA, vide its order dated 21.10.2011. For the sake of ready reference, the relevant portion of the said order of ADJ is reproduced as under:-

“The grumble of the appellant is that he is tenant of respondent and was regularly paying the rent to the respondent and never remained default, inspite of that the learned trial Court has not considered the material available and has allowed the ejection application of the respondent on the personal bonafide use and default.

Keeping in view the assertions of the appellant, I have taken into consideration the material available in the R&Ps. so also the impugned order. Since the ejection application of the respondent has been decided on personal bonafide use and default, therefore, I would take into consideration the testimony of respective parties. Firstly, I would take into consideration of testimony of appellant. He has admitted in his evidence that he is a bonafide tenant and rent agreement was executed between him and the father of respondent initially for the payment of rent of Rs.300/= p.m. and has also paid Rs.50,000/= as goodwill, for that the receipt was not issued by the father of the respondent. He further avowed that he is regularly paying the rent and never defaulted. He further avowed that since the respondent has refused to receive the rent, that's why he sent rent through money order and allegedly the said money order was also refused to receive by the respondent, therefore, he has deposited the rent in MRC No.212/2010. He further avowed that the respondent is having other shops also and the respondent has filed instant ejection application only just to dispossess him and to ruin his business. He also avowed that the tenancy agreement available on record as Ex.O/1 produced by him does not show that he has paid Rs.50,000/= to the father of respondent as advance. He denied that he want to enjoy the demised premises more and more in same rent. He admitted that one of the son of the applicant does business in one shop, whereas two do the business as contractor and for the remaining he does not know that they are jobless or not.

Considering the testimony of appellant I have taken into consideration the agreement of tenancy executed between the father of respondent and appellant, it does not bear anywhere that the appellant has given Rs.50,000/= to the father of the respondent and Clause 4 of the said tenancy agreement reflect that the rent was to be paid by the appellant to the respondent by 10th of each month of English calendar and in case of failure in payment of rent of two consecutive months, the tenant/appellant shall be liable for ejection without any notice. The testimony of appellant itself suggests that he started depositing of rent in MRC No.212/2010 on 09.04.2010. For the safe administration of justice, I have taken into consideration the first bank deposit challan in MRC, available at Ex.O/11, the same proposed that the appellant deposited three months rent at the rate of Rs.3375/= meaning thereby Rs.1125/= each of three months. It is pertinent to mention here that the respondent has presented his ejection application on 04.03.2010 before the learned Rent Controller and the appellant has sent the money order to respondent on 17.03.2010 and 24.03.2010 meaning thereby that the same were sent after institution of ejection application.

So far the testimony of respondent is concerned, he admitted that the tenancy agreement was executed between his father and appellant and Rs.10,000/= were deposited by the appellant with his father as refundable amount. He further avowed that appellant has not executed fresh agreement with him and the appellant is a tenant in shop No.4. He admitted that his son namely Ghulam Dastagir used to collect the rent and used to give receipt of receiving rent and has had received the rent from the appellant for the month of September and December 2009. He denied that the appellant has approached to him for payment of rent but he refused to receive the same. He denied that the tenement is not required for personal use but he just want to dispossess the appellant from the tenement and want to give the same on higher rent to someone else.

Keeping in view the testimony of both sides in juxta- position, I have taken guidance from the case law reported in MLD 1993 Page 336 wherein the Hon`ble High Court was pleased to hold that ***the personal bona-fide need of landlord is his prerogative and discretion to select his premises for himself and tenant could not impose his will and wish upon the land.*** It is also held in the supra case law by the Hon`ble High Court that ***mere statement of tenant that he had paid rent to landlord for the period in question is not enough to discharge that burden.***

In the present case the tenant/appellant has emphasized on the point that he was regular in payment of rent, in this respect he has presented money order receipt which does not reveal any endorsement of the post office or postman that the respondent has refused to accept the rent. Further the money order receipts reveal that the same was sent to respondent by the appellant after institution of ejectment proceedings. So in such circumstances, very respectfully following the dictum of the Hon`ble High Court, I am of the view that the appellant has not discharged his onus according to the prescribed norms of law and has not approached the Court of law with clean hands, therefore, I am of the view the appellant has defaulted in payment of rent, so he is liable to be ejected from the tenement. So for the personal need of the respondent is concerned in this respect law in its instinct is very clear, it says that ***it is only the landlord who has to decide the use of his premises.***

In such circumstances, order dated 22.01.2011 does not require any interference, therefore the same is upheld, however I am cautious to note that the appellant is having his business on a tenement therefore he is allowed sixty (60) days' time for evicting the premises in question peacefully. Hence First Rent Appeal is dismissed accordingly, with no order as to costs."

[Underlining is to add emphasis]

9. From the perusal of record, it transpires that the learned courts below while passing the orders impugned herein have duly considered the evidence available record. From the record, it appears that the petitioner did not produce any evidence, which could establish that the petitioner has made payment of monthly rentals from January 2010 to March 2010 prior to 04.03.2010 when the rent case bearing No. 147 of 2010 was filed. Furthermore, the money order and MRC were also of the date after filing of the rent case; hence the default in payment of

rent has been established. As regards the claim of the petitioner that demised premises was taken on pugri / goodwill also does not establish from the record as the petitioner has failed to produce any evidence in respect thereof except verbal assertion, which was categorically denied by the respondent/landlord. As regards the contention of the petitioner that personal need of the respondent/landlord is not based on good faith as the respondent/landlord besides demised also own several other shops in the vicinity, the terms 'good faith' and as to whether need of the landlord is genuine and bona fide came up for consideration before the Hon'ble Supreme Court of Pakistan in the case of *MST. SHIRIN BAI v. FAMOUS ART PRINTERS (PVT.) LTD. AND OTHERS (2006 SCMR 117)* wherein the Hon'ble apex Court while dealing with the above issue has observed as under:-

"8. "Good faith" means an honest act. Honesty is a state of mind and is capable of proof or disproof only by evidence of conduct. If requirement of landlord is found to be genuine, Rent Controller is bound to order eviction of tenant notwithstanding the fact that he had also made a demand for enhancement of rent or any other demand from the tenant. The expression "good faith" is abstract term not capable of any rigid definition. The ordinary dictionary meaning of the expression "good faith" is honesty of intention and therefore, what is required under clause (vii) of subsection (2) of section 15 of the Ordinance is that the landlord should have a genuine need of the premises, which should certainly be more than a mere wish or desire. The expression "good faith" has been used in the Ordinance purposely meaning an act performed honestly without fraud, collusion or participation in wrong doing. The words "desire" or "need" have not been used, which would negate the two extreme views which are pleaded in cases of this nature. The expression "good faith" employed in clause (vii) must be interpreted in the light of definition thereof as embodied in section 2(28) of the West Pakistan General Clauses Act, 1956, which provides that "a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not". Strictly speaking it means honesty and when a person is in occupation of another premises, generally speaking he cannot be said to be acting honestly when he asks for another premises unless the premises in his occupation is not sufficient for his need. Mere whim or fancy, wish or convenience of the landlord should not be adequate to demonstrate that the landlord requires the premises in "good faith". He must plead and prove his requirement by sufficient and satisfactory evidence inspiring confidence. It is a state of mind, which may be inferred from circumstances attending to each case and Courts ordinarily accept requirement of landlord without imputing bad faith unless strong circumstances indicate to the contrary. Right of landlord to claim possession from a tenant is regulated by Rent Controller only to the extent to examine whether the request of landlord for possession is inspired with "good faith", or is frivolous or mala fide. Sufficiency or insufficiency of accommodation available with a landlord is a matter of individual taste and discretion with which neither Controller nor the Appellate Authority would ordinarily interfere. All that Controller has to see or the Appellate Authority has to examine is whether the landlord requires the premises in "good faith" for his own

occupation or use or for occupation or use of his spouse or any of his children. Expression "require the premises in good faith" cannot be confined to precise, identical and invariable definition nor any hard and fast rule can be propounded as to encompass possible eventualities which could arise due to particular fact and circumstances of a case. Bona fide requirement cannot be turned down simply on assumption of tenant that proposed business could not be carried out profitably in the tenanted premises. Even otherwise, it is a fundamental right of landlord to shift his business or to change its nature so long it remain lawful and not against the public interest. "Good faith" means bona fide, which would show reasonableness of requirement of landlord whereas mala fide would mean that case has been brought with some ulterior or collateral purpose. Where landlord wants to carry on his business in his own premises, instead of rented accommodation, to deprive him of the use and enjoyment of his property would be against all canons of justice unless he is expressly prevented by law from carrying on such business or there are circumstances to reflect that his need is not bona fide. Once a landlord has elected to live in his own house or start a business in the premises earlier let out on rent, his demand for eviction of the tenant would be presumed to be bona fide and founded on "good faith" unless mala fide is alleged and proved by the tenant. Suitability of requirement of landlord to commence a lawful business in the premises in dispute can by no stretch of imagination be said to be mere desire rather than bona fide need. In law a landlord is required to discharge his onus and to satisfy the conscience of the Controller that his requirement is based on "good faith" and is bona fide. Once a landlord is able to satisfy the Controller about the truth and genuineness of his requirement, the latter is left with no discretion but to order ejection of a tenant irrespective of the fact that it would result in uprooting its long standing trade or business. In Iqbal Book Depot (supra), it was, inter alia, held that where the statement on oath was quite consistent with the averments of the landlord in the ejection application and the same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on oath would be considered sufficient for acceptance of the ejection application. It was also observed that "good faith" of landlord being a question of fact, finding on the issue could not be taken exception to unless it was shown that finding suffered from violation of some fundamental legal principle in the matter of appreciation of evidence or omission of evidence or misreading of evidence. Likewise in F.K. Irani and Co. (supra) statement of law was reiterated to the effect that suitability of opening a departmental store by landlord, in any one of the available premises, entirely depends upon the choice of the landlord. It was cautioned that such need and choice, however, should be real, genuine and not tainted with mala fide. In Muhammad Bashir v. Sakhawat Hussain 1991 SCMR 846, it was observed that there appears to be no legal impediment in the way of landlord if he wanted to start business in the demised premises in spite of the fact that he is a rich man and has no children. Sajjad Ali Shah, J. (as his Lordship then was) remarked that the landlord can do whatever he liked with his property and if the interest of the tenant was involved because property of landlord was rented out to him, then his rights are protected under the law. If landlord did not contravene the provision of rent law, which allows him the relief it would not be open to the tenant and even for that matter to the Court to make a comment as to what landlord should do or should not do. In Imran Ahmed (supra), right of the landlord to seek eviction of his tenant on the ground of personal requirement in good faith for his own use or for the use of his spouse or children, was fully recognized by this Court without any unreasonable restriction. In Jehangir Rustam Kakalia v. Hastwani Sales and Services (Pvt.) Limited 2002 SCMR 241, this Court candidly held that a landlord

of the demised premises cannot be deprived of his right and interest to use his property in a manner more suited to his requirement. It was expressly laid down that no unreasonable restriction can be placed on the exercise of such right, which would offend the fundamental rights guaranteed under Article 23 of the Constitution."

[Underlining is to add emphasis]

In view of the above dictum laid down by the Hon'ble Supreme Court, and in absence of any evidence, the assertion of the petitioner/tenant challenging the respondent/landlord's requirement of demised premises for his personal need is not based on good faith, is misconceived, hence untenable in law.

10. In view of the law laid down by the Hon'ble Supreme Court in respect of bona fide need of the landlord, the case law cited by the petitioner is not applicable to the present case.

11. From perusal of the petition, it also appears that the petitioner through the present petition has sought reappraisal of the evidence by this court to arrive at a conclusion other than what have been arrived at, concurrently, by the learned courts below. It is a settled proposition of law that in rent matters, where there are concurrent findings of facts recorded by the Courts below against the petitioner, this Court under its Constitutional jurisdiction cannot reappraise the entire evidence in the matter, as such jurisdiction besides being discretionary in nature is very limited and not plenary in nature. In this regard, reliance can be placed on the case Messrs MEHRAJ (PVT.) LTD. v. Miss LAIMA SAEED and others (2003 MLD 1033), wherein, this Court while discussing the scope of constitutional jurisdiction vis-à-vis rent case, it is observed as follows :-

“In this context it may be observed that by conferring only one right of appeal under section 21 of the Sindh Rented Premises Ordinance, 1979 the legislator in its wisdom seems to have tried to shorten the span of litigation in rent cases. In such circumstances interference by this Court in exercise of its Constitutional jurisdiction under Article 199, in the judicial orders passed by the Tribunals, merely on the ground that another view of the matter is also possible, would not serve any other purpose but would add to the misery of prolonged litigation for the parties and would defeat the spirit and object of the statute. The dictum laid down in the case of Secretary to the Government of the Punjab (supra) also postulates similar view and is fully applicable to the facts and circumstances of the present case. No

case for interference in the concurrent findings of facts recorded by the two Courts below is thus made out.”

12. The upshot of the above is that in the instant case the two Courts below have given concurrent findings of facts against the petitioner/tenant, against which the petitioners have not been able to bring on record any concrete material or evidence, whereby, such finding could be termed as perverse or having a jurisdictional defect or based on misreading of material available on record. In the circumstances, no case for interference is made out, hence the present constitutional petition stands dismissed.

JUDGE

Karachi
Dated: 28.02.2017