

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.S-2036 of 2016

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner No.1 : Salim Ahmed S/o Muhammad Abdul Hye

Petitioner No.2 : Muhammad Ali S/o Muhammad Abdul Hye
Mr. Muhammad Haseeb Jamali Advocate.

Versus

Respondent No.1 : Nasim Imtiaz

Respondent No.2 : Mrs. Rahana Naseer

Respondent No.3 : Mrs. Suraiya Tauquir

Respondent No.4 : Mrs. Kausar Hashim Zaheer

Respondent No.5 : Ms. Farzana Syed

Respondent No.6 : Imran Imtiaz

Through Ms. Shumaila Sagheer and
Mr. Omar Pechoho, Advocates.

Respondent No.7 : Learned Vith Rent Controller, Karachi South.

Respondent No.8 : Learned Vth Addl. District Judge, Karachi
South.

Date of hearing : **20.11.2018**

Reasons/Decision: **18.12.2018**

JUDGEMENT

NAZAR AKBAR, J. The petitioners through this constitution petition have challenged the concurrent findings of two Courts below. The Vith Rent Controller, South Karachi by Judgment dated **03.4.2015** allowed Rent case No.994/2012 filed by Respondents/landlords and the Vth Additional District Judge, South Karachi by Judgment dated **19.10.2016** in FRA No.73/2015 maintained the said judgment of Rent Controller and the Petitioner was directed to hand over the vacant and peaceful possession of the demised

premises to Respondents/landlords within 60 days from the date of appellate order.

2. Briefly stated the facts of the case are that the Respondents, the owners/landlords of the property i.e Shop constructed on Plot No.(G/2) S.B 1/13, V,A 7, Dr. Daudpota Road, Saddar Karachi, (the demised premises), filed Rent Case under **Section 15** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) on the ground of personal bonafide need of Respondent No.1. It was averred that the demised premises was owned by father of the Respondents and on death of their father it was devolved upon the Respondents by inheritance and Respondent No.1 wanted to start his own business of UPS devices in the demised premises. All the other Respondents have also given their consent for eviction of the Petitioners. Respondents sent legal notice dated **15.5.2012** to the Petitioners for vacating the demised premises but the Petitioners failed to do so, therefore, the Respondents filed the rent case.

3. The Petitioners/opponents on service of notice of rent case filed their written statement wherein they denied all the allegations and claimed that Respondent No.1 does not require the demised premises to start his own alleged business of UPS as Respondent No.1 also owns a property in Karachi Industrial Area where he is manufacturing the UPS and other allied digital systems and he also owns other office premises situated at Khayaban-e-Jamil, Defence Housing Authority as well as offices at Lahore and Islamabad where he is doing business of digitech system. Respondent No.1 is also doing business in Gulshan-e-Iqbal main University Road, Karachi as well as F.B Area, Karachi. The Petitioners' other contention in their written statement was that on receipt of legal notice on **15.5.2012**

the Petitioners instead of reply the same approached Respondent No.1 and in the said meeting Respondent No.1 informed them that they are prepared to sell the demised premises in the sum of **Rs.62,50,000/-** and Petitioner No.2 offered to purchase the same for **Rs.40,00,000/-** but Respondent No.1 refused the said offer.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties allowed Rent Application and directed the Petitioners to vacate the demised premises and hand over its peaceful physical and vacant possession to Respondent No.1 within 45 days. The Petitioners filed FRA No.73/2015 against said judgment before the appellate Court which was dismissed by judgment dated **19.10.2016**. Both the judgments have been impugned herein this constitution petition.

5. I have heard learned counsel for the parties and gone through the record.

6. Learned counsel for the Petitioner was precisely required to satisfy the Court about the misreading and non-reading of evidence by the two Courts below since both the courts below have decided the question of personal bonafide need of the Respondent on the basis of evidence. The learned counsel for the Petitioner has attempted to argue this case as second appeal and wants to rely on several case-laws to impress upon the Court to come to a different conclusion from the conclusion drawn by the two Courts after reevaluating the same evidence. Each and every contention raised by him has already been thoroughly examined by the two courts below. Learned counsel has repeated the same contentions and no fresh ground has been advanced by him. The repeated reference of the counsel for the Petitioner to the contents of power of attorney to challenge the

authority of Respondents to file rent case are misconceived since the Respondents are admittedly owners and they have jointly filed rent case on the ground of personal bonafide need of one of the co-owners/Respondent No.1. His contention that the Petitioner had no lawful authority to institute a rent case for personal bonafide need of Respondent No.1 for want of specific authority to do so was adequately replied by the two courts on the basis of Supreme Court judgment reported as Abdul Ghani vs. Abrar Hussain (**1999 SCMR 348**) wherein the Hon'ble Supreme Court has held that even the co-owner can seek the ejectment on the ground of personal bonafide need. Learned counsel without distinguishing the case of the Petitioner from the law laid down by the Hon'ble Supreme Court reported in **1999 SCMR 348** insists that both the Courts should have dismissed rent case filed by the owners for personal need of one of the owners.

7. Learned counsel for the Respondents contended that by now it is settled law that landlord's claim of personal bonafide need cannot be defeated by the tenant unless he produces cogent and very elaborately convincing evidence to show that the request of landlord was malafide. They have also contended that the concurrent findings are based on the evidence of Respondent which was consistent with their pleadings. I have repeatedly asked learned counsel for the Petitioner to identify the evidence which has not been read or mis-read by the two Courts below but he has not referred to any piece of evidence which could be considered as misreading and non-reading of evidence to come to a different conclusion than the conclusion drawn by the Courts below. In the written statement, the Petitioner challenged the bonafide of the Respondents on two grounds; (i) there are other properties owned by Respondent No.1, and (ii) the

Respondents have offered to sale the demised premises for **Rs.62,50,000/-** and the Petitioners have offered to buy the same for **Rs.40,00,000/-**. However, the Petitioners have not brought any evidence on the record in support of their grounds. To the contrary, both the Courts below have reproduced the admission of the Petitioner from the cross examination that *“it is correct to suggest that I did not submit the detail of other places (offices and factories) in my affidavit-in-evidence as I claimed the same”*. The other ground was on the face of it an act of blackmailing by the Petitioner/tenant to the Respondent/ landlord to compel them to sell their property for just **Rs.40,00,000/-** as against the value of **Rs.62,00,000/-**. The Petitioner’s son has recorded the conversation on the point of their offer to purchase the demised premises and the Rent Controller has observed that recording of such conversation was against the moral ethic. The Rent Controller has reproduced the same in his order and even the effort of recording conversation to be used as proof of malafide failed to bear fruits as in the said conversation, reproduced by Rent Controller in the eviction order, Respondent has not even offered to sale the demised premises.

8. Learned counsel for the Petitioner after going through the impugned order and evidence lastly contended that this Court should mention case-laws which he wants to rely in support of his contentions in this judgment because he would like to challenge the same in the Hon'ble Supreme Court. Unfortunately such statement at the bar while concluding his arguments is in a bad taste. Even if he does not rely on the case-laws or it is not mentioned in the order, he can still refer the case-laws before the Hon'ble Supreme Court, if at all, he goes to the Hon'ble Supreme Court. The purpose of this kind of argument is to delay the judgment on merit as much as possible

by the counsel for a tenant. Before examining the case-law submitted by the learned counsel for the Petitioner, I believe it would be appropriate to refer to the authoritative pronouncements of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has disapproved the practice of filing constitution petition by **tenant** to delay their eviction. In this context one may refer to the following observation of Supreme Court in the judgment reported as Muhammad Hussain Munir and others v. Sikandar and others (**PLD 1974 SC 139**):-

*"It is wholly wrong to consider that the above constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction **merely because in its opinion the decision is wrong.** In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which plainly is not the intention of the constitution-makers."*

The Hon'ble Supreme Court in 1981 following the above referred case-law while affirming dismissal of a constitution petition in a rent case arising from the conflicting findings of Rent Controller and the Additional District Judge in the case of Muhammad Sharif v. Muhammad Afzal Sohail (**PLD 1981 SC 246**) has observed as follows:-

"We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop. We have been noticing, of late, that notwithstanding the fact that the Legislature, in its wisdom has abolished the second appeal in cases under the West Pakistan Urban Rent Restriction Ordinance and has made the orders of the District Judge as final, yet the parties, probably after obtaining legal advice, have taken to filing writ petitions in the High Court against the final order passed by the appellate Court, merely to take another chance or to delay their eviction, hoping that the matter shall take considerable time to be disposed of or that in any case the High Court

*while dismissing their writ petition may be persuaded to allow further time for vacating the premises-in-question. **The writ petitions are argued before the High Court as if they are regular second appeals and we notice that the learned Judge of the High Court take great pains to re-appraise the evidence and to consider each and every contention raised by the petitioner's side before deciding the petition without realizing that, more often than not, such petitions are merely a devise to circumvent the amendment in the law and defeat the obvious intention of the Legislature, namely, a speedy determination of cases under the Urban Rent Restriction Ordinance.** Such frivolous applications not only cause the poor litigants to incur necessary expenditure but also result in the waste of valuable public time and should, therefore, be discouraged by the High Court. It has been repeatedly held that a tribunal having jurisdiction to decide the matter is competent to decide it rightly or wrongly and the mere fact that another conclusion could be arrived at from the evidence does not make it a case for interference in the exercise of its constitutional jurisdiction." (Emphasis provided).*

9. Learned counsel for the Petitioners later on submitted list of following cases with photocopies:-

1. Mst. Shamim Akhtar vs. Zakaria Yousuf and others **(1998 CLC 410)**;
2. Sultan Press Ltd. vs. Muhammad Hassan **(PLD 1985 Karachi 624)**;
3. Muhammad Saleh vs. Haji Abdul Khaliq **(2001 MLD 1817)**;
4. Hafiz Ferozeuddin and 2 others vs. Arshad Begum and 6 others **(2010 CLC 365)**;
5. Muhammad Swaleh vs. Mst. Asma Yasin and others (Unreported judgment passed by this Court in C.P No.S-210/2007);
6. Muhammad Younus vs. Additional District Judge (VII), Karachi (South) and others **(2018 YLR 1284)**;
7. Allies Book Corporation through L.Rs. vs. Sultan Ahmed and others **(2006 SCMR 152)**.
8. Mst. Shirin Bai vs. Famous Art Printers (Pvt.) Ltd. and others **(2006 SCMR 117)**;

The case-laws at serial No.1 to 3 are judgments of first appellate Court under the Sindh Rent Restriction Ordinance, 1979 prior to its amendment. This Court is not an appellate Court rather order of appellate Court has been impugned in this constitution petition, therefore, even reference to these case-laws was uncalled for. The case-laws at serial No.4 to 6 are judgments of single bench of this Court which are also out of context and irrelevant in the facts and circumstances of the case in hand. The judgments from the jurisdiction of Hon'ble Supreme Court also do not advance the case of the Petitioner. In the case of Allies Book Corporation at serial No.7 above **(2006 SCMR 152)**, the Hon'ble Supreme Court has reiterated the principle about exercise of constitutional jurisdiction by High Courts in the cases where the two lower forums provided under special law have decided a finding of fact concurrently and the order of appellate forum is final. Relevant dictum from page No.158 para-12 is reproduced below:-

*In large number of cases wherein this Court categorically **held that where the finding suffered from illegality, infirmity, misreading and non-reading of evidence on record, misconstruing the evidence or based on extraneous material then the High Court would be justified in setting aside such concurrent findings of the forums below and to substitute the same by its own findings.***

10. In line with the above dictum of the Hon'ble Supreme Court, when the learned counsel for the Petitioner was repeatedly asked by the Court to please identify any illegality, misreading and non-reading of evidence on record or even misconstruing the evidence by the Courts below, learned counsel did not refer to any evidence. Even in the memo of petition the learned counsel has not quoted any evidence to be considered as not read or misconstrued by the two courts below. The case of Mst. Shirin Bai at serial No.8 above **(2006**

SCMR 117) is also against the Petitioner. The Hon'ble Supreme Court in the said case has accepted the claim of landlord/Petitioners for personal bonafide need and set aside the findings of the Rent Controller, the appellate Court and even the High Court which were concurrently against the landlord. In this judgment the Hon'ble Supreme Court, while setting aside the findings of the three forums against the personal bonafide need of the Petitioner, has observed in para-8 and 9 at page-126 and 127 as follows:-

8. -----
----- *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 ejectment application and the same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on oath **A would be considered sufficient for acceptance of the ejectment 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 & 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 Rustain Kakalia v. Haswani 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.

9. *Having considered the case of the parties from every angle in the light of the submissions advanced at the Bar and the legal position, which has emerged in the facts and circumstances of the case, we are inclined to observe that **the view formed by the Rent Controller and endorsed by the Appellate Authority on the face of record, appears to be hyper-technical, too narrow and not in consonance with the spirit and object of law.** Even if -the argument of the respondents to the effect that presently sons of the petitioner are running their business smoothly and in a profitable manner is considered, it would not deprive them of their intention to shift the same to the premises owned by them and start the same business in a locality of their own choice. **In our opinion, it is not for the Controller or the Appellate Authority or the tenant to determine the suitability and fitness of the location of the business which the petitioner's sons intend to establish. as they cannot be deprived of their right to deal with their property in a manner suited to their circumstances.** It is not at all necessary for them to demonstrate compelling circumstances for shifting of their existing business as agitated on behalf of the respondents. **At any event, it is not shown that their demand is motivated by any ulterior factor or suffers from lack of bona fides. Whether it is a reasonable and fair demand or not, should be judged from the view point of the landlord rather than the tenant, who is" already enjoying the fruits of the property for almost five decades.***

11. I have purposely quoted passages from the two Supreme Court judgments showing the development of law on the personal bonafide need of landlord with reference to the constitutional jurisdiction of

this Court in rent cases in which the parties have exhausted their constitutional protection to be dealt with in accordance with law under **Article 4** of the Constitution once they have availed an opportunity of an appeal provided under **Section 21** of the SRPO, 1979 and got the judgment either way. Therefore, in my humble view the passages/findings of different rulings from the case of Muhammad Bashir (**1991 SCMR 846**) to the case of Jehangir Rustain Kakalia (**2002 SCMR 241**) which have been quoted by his lordship Mr. Justice Rana Bhagwandas (as he then was) in the case of Shirin Bai indicate that inclination of the Supreme Court is towards protecting the fundamental right of the landlord guaranteed under **Article 23** of the Constitution and to avoid unreasonable restriction in the name of order passed under Rent Laws. In view of the case-law developed till date in my humble view this Court while seized of a constitutional petition against the judgments of Court or Tribunal of inferior jurisdiction the Court should not superimpose its opinion “merely because in its opinion the decision is wrong” (as held in the case of Mohammad Hussain supra). Lest in such a situation the Court may sacrifice the fundamental right of one party guaranteed under **Article 23** of the Constitution against the party who has already exhausted his/her constitutional protection under **Article 4** of the Constitution by availing the “**remedy provided**” under the Rent Laws.

12. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, consequently this constitution petition was dismissed by short order dated **20.11.2018**. These are the reasons for said short order. The Petitioner has already enjoyed two years’ time since **13.12.2016** when he had obtained exparte order of suspension of concurrent finding of the Courts below, therefore, he

is directed to vacate the demised premises within **30 days** from the date of assigning reasons to the short order. The Rent Controller may send only ONE notice to the counsel appearing in the Execution proceedings in these thirty days and if the Petitioners fail to vacate the demised premises within 30 days, the Executing Court will issue writ of possession with police aid and with permission to break open the locks without issuing notice to the Petitioners. The office is directed to send copy of this judgment to the Rent Controller today without fail.

JUDGE

Karachi
Dated:18.12.2018

Ayaz Gul/P.A