

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S-1295 of 2018

Present: Mr. Justice Nazar Akbar

Petitioner : Makhdoom Hussam-ul-Haq
Through Mr. S.M Haider, advocate.

Versus

Respondent No.1 : Syed Ghulam Mohiuddin,
through Ch. Jaffar Hussain, advocate.

Respondent No.2 : The Rent Controller No.X Karachi Central.

Respondent No.3 : The District Judge Karachi Central.

Date of hearing : **06.11.2018**

Date of Judgment : **14.12.2018**

J U D G M E N T

NAZAR AKBAR, J- The petitioner through this constitution petition has challenged findings of the District Judge (Central) Karachi, in FRA No.95/2017, whereby rent case No.138/2016 has been remanded to the Rent Controller to record additional evidence of son of the petitioner on the issue of personal bonafide need of the petitioner had been decided by Rent Controller in his favour.

2. Brief facts of the case are that the petitioner is owner/landlord of a double story House No.B-93 situated at North Nazimabad Block-L KDA Scheme No.2 Karachi measuring 561.38 sq.yds (demised premises) having purchased the same through conveyance deed dated **23.06.2015**. The petitioner on **13.08.2015** sent a notice under **Section 18** of the Sindh Rent Premises Ordinance, 1979 (SRPO, 1979) to Respondent No.1 regarding change of ownership and it was replied by him through his counsel on **02.08.2015**. The respondent then started paying monthly rent at the rate of Rs.55000/- per

month to the petitioner. The petitioner's son namely Makhdoom Muhammad Inam-ul-Haq was student of MBBS in Dow University of Health Science Karachi and he was likely to complete his MBBS. He wanted to start his medical practice for which a proper place was required and the demised premises in occupation of the respondent was most suitable place to run a hospital. Therefore, petitioner filed rent case for eviction of Respondent No.1 from the rented premises on the ground of its personal bonafide use for his son.

3. On service of notice Respondent No.1 in his written statement admitted that the petitioner is owner / landlord of the demised premises. He, however, contended that the previous owner had filed two rent cases which were dismissed by order dated **12.03.2009** and **07.09.2013** respectively and the petitioner being an advocate knowingly well has purchased the demised premises hence demand of personal need by the petitioner is false and malafide. The demised premises is being used for school where about 400 children have been admitted and getting education. He further contended that the petitioner has different properties in his name, therefore, requirement of the demised premises for personal use has no substance. It is further contended by Respondent No.1 that the applicant has failed to plead any plausible ground for personal need for filing of instant case as the ground taken by the petitioner does not exist as the son of petitioner has not passed the final examination of MBBS. The Respondent has further contended that the petitioner had served a notice under **Section 18** of SRPO, 1979 dated 18th September, 2015 for enhancement of rent from Rs.55,000/- to 3,50,000/- per month which was replied by him on dated **02.10.2015** which fact has intentionally and malafidely been suppressed by the petitioner. The petitioner, after receiving appropriate reply of non-enhancement of

rent has malafidely filed rent case on the ground of personal need in order to blackmail the respondent for enhancement of rent.

4. The Rent Controller after recording evidence and hearing the counsel allowed rent case No.138/2016 by order dated **22.4.2017** and directed the petitioner to vacate the demised premises within 30 days. In appeal, the learned District & Session Judge Central Karachi set aside the eviction order and **remanded** the rent case by order dated **16.4.2018** for additional issue of **eligibility of the son to start his own hospital** and **“additional evidence of the petitioner’s son”** and decide the rent case afresh.

5. Learned counsel for the petitioner has contended that the impugned order passed by the learned District Judge (Central) Karachi is contrary to the fact and settled law by the superior Court. It is further contended by him that the order passed by the learned Appellate Court suffers from illegality and material irregularity which has resulted in absolute miscarriage of justice and it is without jurisdiction being violative of well settled principles of law by the Apex Courts on the requirement of evidence of landlord to prove his/her personal bonafide need. He relied on cases reported in *Muhammad Iqbal and another Vs. Mst. Saeeda Bano* (**1993 SCMR 1559**) and *Dilshad Muhammad Vs.Mst. Zubaida Begum* (**1981 SCMR 895**) to emphasis that the learned appellate Court by insisting that landlord’s son should be examined by the Rent Controller on the issue of personal bonafide need was in violation of the settled law laid down by superior Courts including the two cases cited before appellate Court.

6. Learned counsel for the Petitioner has further contended that the appellate Court has refused to look into the evidence which was

fully examined by the Rent Controller to come to the conclusion that the bonafide need of the premises has been established by the Petitioner. Even otherwise, he further contended that neither the issue proposed by the appellate Court was raised by the Respondent before the trial Court nor it was the case of Respondent that there was need of additional evidence of the son of applicant/landlord and burden of proof of personal bonafide need was not sufficiently discharged.

7. Learned counsel for the Respondent No.1 in rebuttal has no answer to the legal proposition advanced by the learned counsel for the Petitioner on the exercise of power by the appellate Court to remand "**rent case**" to the Rent Controller. On **05.11.2018** after hearing of the parties the case was adjourned for **06.11.2018** to be taken up on 11:00 am only for the purpose of response of Respondent No.1 to his counsel for reasonable time to vacate the demised premises. The next date was **06.11.2018** when the case was taken up, learned counsel for Respondent No.1 stated that his client wants three years' time to vacate the premises or this Court may decide it on merit. The demand of tenant to allow him three years' time to vacate the demised premises was obviously unjustified.

8. As stated earlier, I have heard learned counsel for the parties and perused the orders. The perusal of impugned remand order dated **16.4.2018** reflects that the same is contrary to the requirement of **Order XLI Rule 25 CPC** whereby the appellate Court has authority to remand the case for trial to the Court whose decree is being challenged by the aggrieved party but such authority of appellate Court has limited parameters. In terms of **Rule 25 of Order XLI CPC** such power can be exercised only when the appellate Court come to the conclusion that the trial Court has *(i) Omitted to frame or*

try an issue, or (ii) to determine any question of fact essential to the right/title of the suit/proceedings upon the merit. In the case in hand the appellate Court has not observed that the issue of personal bonafide need of the landlord was not properly framed nor the learned appellate Court has even commented on the very fact that the issue has been decided contrary to evidence, instead the learned appellate Court has framed an issue out of the context of the dispute before the Rent Controller in the following terms:-

*Moreover, the applicant has not produced his son before trial court, therefore, **there is need of additional evidence of applicant's son namely Makhdoom Muhammad Inamul Haq with additional issue. "Whether said Makhdoom Muhammad Inamul Haq is eligible to start his own hospital being a professional doctor?."** Hence this point is answered as 'discussed'. The case laws relied upon by the learned counsel for the respondent are not identical to the facts and circumstances of the case therefore are not applicable in this case.*

Observations of the learned appellate Court that the case law referred by Respondent No.1 is not relevant, is also misconceived. The need to produce son in evidence by the landlord for whom the premises was required has never been fatal to the case of landlord seeking eviction of tenant on the ground of need of son. It has been held so by the Hon'ble Supreme Court of Pakistan in the case reported in **1993 SCMR 1559** and I quote relevant finding from the two judgment as follows:-

5. *It was submitted by Mr. Z.U. Ahmed that the examination of the son was necessary in this case, although he stated that **examination of the person for whose benefit a premises is required will depend on the facts of each case and it could not or has not been laid down as a rule by the Superior Courts that to establish the bona fide need such person must be examined.** But we are of the view that bona fides of landlady's son could be established through the evidence of another person which has been amply*

done in this case by examining the husband and attorney of the landlady. **Precedents** are not lacking in support of this proposition. In the case of *Dilshad Muhammad v. Mst. Zubaida Begum (1981 SCMR 895)* this Court held that appearance of the son of the landlady was not fatal to the claim of the respondent and that the landlady in the circumstances amply established that she required the shop in good faith for the use and occupation of her son. In the case of *Zahoor Din v. Mirza Ayub Baig (1981 SCMR 1081)* the premises was required by the landlord for the use of his son going to be married. It was held that law does not require examination of landlord's son concerned as a witness.

9. It is pertinent to observe that the leaned appellate Court has not commented on the orders passed by the Rent Controller but he has set aside the same through the remand order. The very order of remand by appellate Court in the given facts of the case was contrary to the facts and law and the question raised by the appellate Court as additional issue was neither essential to the **“right decision”** in rent case on point of personal need of landlord. It is even outside the jurisdiction of the Rent Controller to decide whether a doctor is eligible to start a hospital. The impugned remand order was, therefore, patently illegal and improper exercise of the jurisdiction by the appellate Court and this Court under extra ordinary constitutional jurisdiction has the power to set it aside. The appellate Court has failed to properly appreciate the evidence on record and exercised its jurisdiction in an arbitrary manner. In coming to this conclusion I find strength from the law laid down by the Hon'ble Supreme Court in the case of *Muhammad Lehrasab Khan vs. Mst. Aqeel-un-Nisa and 5 others (2001 SCMR 338)*. Relevant observation of Hon'ble Supreme Court is reproduced below:-

4. There is no cavil with the proposition that ordinarily the High Court in its Constitutional jurisdiction would not undertake to reappraise the evidence in rent matters to disturb the finding of facts but it would certainly interfere if such findings

are found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction and arbitrary exercise of powers. In appropriate cases of special jurisdiction, **where the District Court is the final Appellate Court, if it reverses the finding of the trial Court on the grounds not supported by material on record, the High Court can interfere with it by issuing writ of certiorari to correct the wrong committed by the Appellate Authority.** Reference can be made to Rahim Shah v. Chief Election Commissioner (**PLD 1973 SC 24**), Lal Din Masih v. Sakina Jan (**1985 SCMR 1972**), Muhammad Hayat v. Sh. Bashir Ahmad and others (**1988 SCMR 193**), Abdul Hamid v. Ghulam Rasul (**1988 SCMR 401**) and Assistant Collector v. Al-Razak Synthetic (Pvt.) Ltd. (**1998 SCMR 2514**).

10. The crux of the above discussion is that this petition is allowed, however, since Respondent No.1 is running a school in the demised premises, therefore, he is directed to vacate the demised premises on or before **15.06.2019**. I am conscious to the fact that such a long period of time is not supposed to be granted by this Court in rent matters as it has been found in one of the judgment of the Hon'ble Supreme Court reported as *Khawaja Muhammad Razzak vs. Dr. Sultan Mehmood Ghouri and another* (**2007 SCMR 1866**) that unusual long period of time cannot be granted by the High Court for vacating the premises in rent matters. However, in the case in hand this eight months' time is given to Respondent No.1 since learned counsel for the Petitioner has also agreed to allow a reasonable time to Respondent No.1 to shift the school but such offer has been turned down by the Petitioner by claiming three years. Consequently the impugned order is set aside.

JUDGE

Karachi
Dated:14.12.2018

*Ayaz Gul/PA**