

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.S-2737 of 2017**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Shahid Ahmed, through  
Mr. Muhammad Akram, Advocate.

**Versus**

Respondent No.1 : Mst. Rafiqan  
Through Mr. Javed Ahmed Rajput, Advocate.

Respondent No.2 : VIth Additional District & Sessions Judge,  
Karachi East.

Respondent No.3 : 1<sup>st</sup> Rent Controller, Karachi East.

Date of hearing : **25.01.2019**

Reasons/Decision: **25.01.2019**

**JUDGEMENT**

**NAZAR AKBAR, J.** The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The Ist Rent Controller, East Karachi by Judgment dated **18.7.2017** allowed **Rent case No.67/2015** filed by Respondent No.1/landlady and the VIth Additional District Judge, East Karachi by Judgment dated **09.11.2017** in **FRA No.198/2017** maintained the said judgment of Rent Controller and the Petitioner was directed to vacate the premises and handover the peaceful possession of the premises to Respondent No.1/landlady within 30 days from the date of appellate order.

2. Briefly stated the facts of the case are that Respondent No.1 filed Rent Case stating therein that she is the absolute owner/

landlady of House No.Q-153, situated at Korangi No.2, Karachi and a tenancy agreement was executed between her husband and mother of the Petitioner namely Mst. Wahedan Begum on **10.01.2000** in respect of a room/portion of said house (the tenement) and in the said agreement it was mentioned that the tenement will be used as shop or godown. The Petitioner was doing business of selling sleepers/shows in the tenement. After death of husband of Respondent No.1, she become landlady of the tenement and Petitioner/tenant started payment of monthly rent to her. It was claimed by Respondent No.1 that the Petitioner broken the bheem of the tenement and amalgamated the room into the shop of one Rafiq who is brother-in-law of Respondent No.1/landlady. It was averred that son of Respondent No.1 namely Shahid solemnized marriage on **08.6.2014** and the accommodation where Respondent No.1 was residing was too small, therefore, the tenement was required by Respondent No.1 for personal bonafide use of her son and Respondent No.1 requested the Petitioner to vacate the tenement but he refused to do so, therefore, Respondent No.1 filed rent case against the Petitioner on the ground of personal bonafide need.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he admitted the relationship of tenant and landlady nor he disputed the rate of rent, even no default in payment of rent was alleged. However, he contended that he obtained the tenement on pugri basis and he denied the personal need of Respondent No.1.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by Respondent No.1 and directed the Petitioner to vacate the tenement

and handover the same to Respondent No.1 within a period of 30 days. The Petitioner filed **FRA No.198/2017** against the said judgment before the appellate Court which was dismissed by judgment dated **09.11.2017**. Both the judgments have been impugned herein this constitution petition.

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

6. Learned counsel for the Petitioner was required to satisfy the Court about the misreading and non-reading of evidence by the two Courts below in coming to the conclusion on the point of personal bonafide need of the tenement by Respondent No.1/landlady, but he is unable to show any material illegality or irregularity in the judgments passed by the two Courts below. However, he contended that Respondent No.1 wants to enhance the rate of rent of tenement and to let out the same to some other person at higher rate of rent, therefore, the rent case was filed under the cover of personal need, as there is sufficient accommodation for Respondent No.1 and her family members. Learned counsel has contended that the tenement is a shop it cannot be used for residential purpose. It was even let out for the same purpose under written agreement. I have perused the tenancy agreement, it reads that "*Landlord has agreed to let out the said room/godown*". It was not a shop as per agreement. The evidence of addition and alteration has also gone un-rebutted. In rebuttal, learned counsel for the Respondents contended that as per agreement only a room was let out to be used as godown and it was not shop. The said room is attached to the residential other rooms. The Petitioner has breached the conditions of agreement.

7. 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. The concurrent findings are based on the evidence of Respondent No.1 which was consistent with her 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. The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the concurrent findings of facts by the courts below. The scope of rent proceeding is limited to the three factual controversies. That is, (1) default in payment of rent; (2) personal bonafide need of landlord; and (3) any unauthorized addition and alteration in the demised premises by the tenant. These issues are issues of fact and once decided after recording evidence can be subjected to scrutiny only by the appellate forum provided under the rent Laws. The Sindh Rented Premises Ordinance, 1979 is special law and it provides only ONE remedy of appeal under **Section 21** of the Ordinance, 1979 against the eviction. And in rent cases concurrent findings of the two courts are sacrosanct except in extraordinary circumstances in which there is something like jurisdictional defect in the proceedings. 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 device 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).

8. In view of the above facts, the concurrent findings of two Courts below do not call for any interference, consequently this constitution petition is dismissed alongwith pending application. The Petitioner is directed to vacate the tenement within **30 days**. If he fails to vacate the demised premises within **30 days**, the Executing Court will issue writ of possession with police aid and permission to break open the locks of the tenement without even notice to the Petitioner.

JUDGE

Karachi  
Dated: 25.01.2019

Ayaz Gul