

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.S-1179 of 2016**

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

Petitioner : Syed Shafiq Abbas, through  
Mr. Syed Muhammad Haider, Advocate.

**Versus**

Respondent No.1 : Muhammad Azam, through  
Mr. Muhammad Sadiq Hidayatullah Advocate

Respondent No.2 : The Court of IInd Rent Controller Karachi  
Central.

Respondent No.3 : The Court of IIrd Additional District Judge,  
Karachi Central.

Date of hearing : **02.04.2019**

Date of Decision : **22.04.2019**

**JUDGMENT**

**NAZAR AKBAR, J.** This constitution petition is directed against the Judgment dated **21.04.2016** passed by the learned IIIrd Additional Sessions Judge, Central Karachi, whereby First Rent Appeal No.102/2015 filed by Respondent No.1 was allowed and the order of IInd Rent Controller, Central Karachi dated **26.10.2015** in Rent Case No.332/2013 was set aside and the rent case was dismissed.

2. Briefly stated the facts of the case are that the Petitioner filed Rent Case against Respondent No.1 stating therein that after death of his father, he became owner of House No.2/865-B, Liaquatabad, Karachi by virtue of mutation letter dated 25.08.2007. It was averred

that the said house is consisting ground plus two floor known as Syed Market while the first, second and third floors are being used for residential purpose by the Petitioner and his family. It was further averred that his father let out shops No.1 and 2 (the tenements) to the father of Respondent No.1 namely Shaikh Muhammad Usman on rent in his lifetime and after the death of Shaikh Muhammad Usman, Respondent No.1 became the tenant of the Petitioner and he lastly paid the rent at the rate of Rs.500/- per month for each shop to the Petitioner till January, 2008 and from the month of February, 2008 started depositing monthly rent in Court in MRC No.87/2008 and 88/2008 in the name of the Petitioner. However, as the Petitioner intended to start his own business of selling cloths in the tenements, therefore, the Petitioner filed rent case against Respondent No.1 on the ground of personal bonafide need.

3. Respondent No.1/opponent on service of notice of rent case remained absent and did not contest the matter and was debarred from filing written statement and was declared as ex-parte. The Petitioner filed affidavit-in-exparte proof and he was cross examined by the counsel for Respondent No.1 on ex-parte evidence.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by the Petitioner and directed Respondent No.1 to vacate the tenements and handover the same to the Petitioner within a period of 60 days. Respondent No.1 filed FRA No.102/2015 against the said order before the appellate Court which was allowed by judgment dated **21.04.2016**. The said judgment of appellate Court is impugned herein this constitution petition.

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

6. Learned counsel for the Petitioner has contended that the appellate Court while passing the impugned judgment completely ignored the settled principle of law laid down by the Hon'ble Supreme Court in various decisions that selection and choice of any shop for his personal use is the sole prerogative of the landlord and the tenant as well as the Court has no discretion to interfere in the choice of the landlord. Since the Petitioner required the tenement for his personal need to start his business and according to him the tenements are most suitable for him it was even ordered by the Rent Controller but the appellate Court interfered in the prerogative of the Petitioner without cogent reason and dismissed application of the Petitioner by setting aside the order of Rent Controller. He further contended that the appellate Court has wrongly observed that the Petitioner must disclose the nature of business, source of income, details of number of family and if he owns other properties and the appellate Court on the basis of non-disclosure of said facts, wrongly observed that the need of the Petitioner for personal use is based on malafide. In support of his contentions, learned counsel for the Petitioner has relied upon the following case-laws:-

1. *Muhammad Hayat vs. Muhammad Miskeen (DECD) through LR's and others* (**2018 SCMR 1441**);
2. *Zarina Ayaz vs. Khadim Ali Shah* (**2003 SCMR 1398**);
3. *Abdul Rauf vs. Shah Nawaz* (**1997 CLC 646**);
4. *Jehangir Rustam Kakalia through Legal Heirs vs. Messrs Hashwani Sales & Services (Pvt.) Limited* (**2002 SCMR 241**);
5. *S.M Nooruddin and 9 others vs. SAGA Printers* (**1998 SCMR 2119**);

6. *Shakeel Ahmed and another vs. Muhammad Tariq Farogh and others (2010 SCMR 1925);*
7. *Mst. Hajiyan Ayesha Bai vs. Zahid Hussain (2001 SCMR 1301).*

7. In rebuttal learned counsel for Respondent No.1 contended that the Petitioner has admitted in his cross examination that he has at about eight shops in his building but he filed rent case of only shops No.1 and 2. He further contended that in fact the Petitioner wanted to enhance the rate of rent of tenement and to let out the same to some other person at higher rent, therefore, the rent case was filed under the cover of personal need. Learned Counsel for the Respondent No.1 has vehemently contended that the petitioner/landlord is unable to justify his need of particular shops as during the pendency of rent proceedings different shops were lying vacant, which he re-let to different tenants and it has come on record that the petitioner/landlord has obtained the possession during pendency of this rent case and re-let to someone else. Subsequently, another shop was vacated, which, too, was let out by the landlord/petitioner to some other person but he did not use the said shop for his personal need, which shows his malafide.

8. The perusal of impugned judgment shows that the reason advanced by first Appellate Court for setting aside the judgment of learned Rent Controller was not only contrary to the facts and evidence but it was also against the settled principles of law enunciated by the superior courts on the question of personal bonafide need of landlord. The petitioner right from day one expressed that he needs two shops adjacent to each other for running his business and this is also the statement of landlord in affidavit in evidence, which has never been shaken that why he needs particular

shops and, therefore, it has come in the evidence that the landlord/petitioner has stated on oath about his need and his evidence has not been shaken. The appellate Court was not supposed to set-aside the same by referring to irrelevant piece of evidence on the point of personal need. It is nowhere mentioned in the Rent Laws that the landlord is supposed to elaborately disclose his need and the reason that why he needs particular premises for his business. The Rent Controller has relied on the judgments of superior courts, which are even mentioned in the order impugned before the First Appellate Court, however, the First Appellate Court did not even consider the case law cited by the petitioner/landlord of rent controller and set aside the order of Rent Controller.

9. The contention of learned Counsel for the petitioner that the reasoning advanced by the Appellate Court for setting aside the order of the Rent Controller has already been discussed by the Hon'ble Supreme Court in different case law and has been resolved in favour of the landlord appears to be correct. In the judgments cited by the Rent Controller in his order, amongst other, include **2010 SCMR 1925**. In the said judgment, Apex Court has observed as under:-

*“Here it may also be observed that the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, and therefore no restrictions can be imposed upon the landlord/ appellant No. 1 on the pretext of restoration of his clearing and forwarding license during the pendency of rent case.*

*For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains un-shattered in cross examination and un-rebutted in the evidence adduced by the*

*opposite party. If any case law is needed to fortify this view, reference can be made to the case of Mst. Toheed Khanum v. Muhammad Shamshad (1980 SCMR 593), wherein the opinion of I. Mehmood, J. (as he then was) in the case of Hassan Khan v. Munawar Begum (PLD 1976 Karachi 832) to the same effect, was approved.*

In the recent judgment of Supreme Court in the case of Muhammad Hayat vs. Muhammad Miskeen (DECD) through LRs and others reported as **2018 SCMR 1441**, Hon'ble Justice Gulzar Ahmed has observed that:-

*“It is well settled principle of law that sole testimony of the landlord is sufficient to establish his personal bona fide need, if the statement of the landlord on oath is constant with his averments made in the ejectment application. Reference in this context can be made on the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui reported in 2000 SCMR 1613. In the instant case, the petitioner could not succeed to shake/shatter the evidence of the respondent on this point. Even otherwise, it is not necessary that the applicant must establish that the premises in question is required for the personal bona fide used of all his five sons. It is sufficient under the law if he succeeds in establishing that the premises in question is required for personal bona fide need of only one of his sons.*

*Yet another plea has been raised by the petitioner that respondent No. 1 has rented out other shops to different tenants besides the shop in question, as such the requirement of the premises in question by the respondent is not bona fide and in good faith. In this connection, suffice it to say that apart from the fact that the petitioner has to produce any documentary evidence in support of such plea, it is a well settled principle of law that it is the sole choice and prerogative of the landlord to choose the premises which better suits to him as he is the best judge of this personal need and he is not under any legal obligation to act upon dictation of the tenant. If any authority is needed, reference can be made on the case reported as Jehangri Rustam Kakalia through its legal heirs v. Messers Hashwani Sales and Services (Pvt) Ltd (2002 SCMR 241 and Bata Pakistan Limited v. Muhammad Nawaz (1996 CLC 959). In this view of the matter, it may be observed that the respondent*

*has also succeeded in proving the issue of personal bona fide need in his favour”.*

10. In view of the above, the order of learned Appellate Court suffers from incorrect interpretation of evidence on record and he has not only failed to appreciate the evidence in its true perspective but he has also failed to follow the law laid down by Hon’ble Supreme Court which is binding on him under Article 189 of the Constitution of Pakistan, 1973.

11. In view of the above facts and law this constitution petition is allowed, the order of the IIIrd Additional Sessions Judge, Central, Karachi in FRA No. 102 of 2015 is set-aside and the order of the Rent Controller is restored. Respondent No.1 is directed to vacate the tenement within **30 days** from the date of this order and hand over peaceful possession of the tenements to the petitioner.

JUDGE

Karachi  
Dated: 22.04.2019

Ayaz Gul  
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