

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-45 of 2019

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

Before: Mr. Justice Nazar Akbar

Petitioner : Muhammad Saleem, through
Mr. Mian Mushtaq Ahmed, Advocate.

Versus

Respondent No.1 : Jaleel Ahmed Burney
Through Mr. Amir Aziz, Advocate.

Respondent No.2 : The IV-Addl. District Judge Karachi Central.

Respondent No.3 : The VIII-Rent Controller, Karachi Central.

Date of hearing : **19.04.2019**

Date of Decision : **10.05.2019**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The VIIIth Rent Controller, Central Karachi by order dated **30.04.2018** allowed Rent case No.494/2017 filed by Respondent No.1/landlord and the IVth-Additional District Judge, Central Karachi by Judgment dated **29.10.2018** in FRA No.144/2018 maintained the said order of Rent Controller and the Petitioner was directed to handover vacant peaceful possession of the tenement to Respondent No.1 within a period of 60 days from the date of appellate order.

2. To be very precise the facts of the case are that Respondent No.1 had filed Rent Case under Sections 14/15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) stating therein that he is

owner of shop bearing No.3 (Plot No.J-5.1, S.36, 1/5, 1/22)1/5 Automobile Area S.M Taufeeq Road, Liaquatabad, Karachi (the tenement). The Petitioner is tenant in the said tenement. Respondent No.1 filed the ejectment application against the Petitioner on the ground of **personal bonafide need**. The relationship of landlord and tenant is not disputed. It was, however, also averred by Respondent No.1 that the Petitioner has sublet a portion of the tenement and has also demolished the pillar of the corner of the building which has seriously damaged structure of the building.

3. The Petitioner/opponent on service of notice of rent case filed his written statement wherein he stated that his father had obtained the tenement from the father of Respondent No.1 on 08.10.1958 and at that time he had given Rs.15,000/- towards good will and monthly rent was also increased from time to time by Respondent No.1 which the Petitioner was regularly paying to Respondent No.1 without default. He denied all the allegations leveled against him in the ejectment application.

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 hand over the peaceful possession of the tenement to Respondent No.1 within 30 days. The Petitioner filed FRA No.144/2018 against said order before the appellate Court which was dismissed by judgment dated **29.10.2018**. Both the order/judgment have been impugned herein this constitution petition.

5. I have heard learned counsel for the parties and gone through the record as well as written arguments submitted by the respective parties.

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 has relied 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. Learned counsel for the Petitioner in support of his contention has relied on the following case-laws:-

1. Ikramullah Khan vs. Muhammad Umar (**1984 CLC 645**);
2. Muhammad Farooq M. Memon Advocate vs. Government of Sind through its Chief Secretary Karachi (**1986 CLC 1408**);
3. Fasahat Ali vs. Mst. Noor Jehan Begum (**1991 CLC 1902**);
4. Mst. Zohra Bai and another vs. Messrs Standard Industries Ltd. through Managing Director (**PLD 1994 Karachi 209**);
5. Muhammad Yousuf and another vs. Mst. Talia (**1998 CLC 1104**);
6. Syed Abdul Hameed vs. Syed Boo Ali Shah Zaidi (**1999 MLD 2989**);
7. Ghulam Muhammad Khan vs. Muhammad Khalid (**2000 CLC 764**);
8. A.H Alvi vs. Muhammad Tariq (**PLD 2001 Karachi 389**);
9. Mst. Nur Jehan Begum through Legal Representatives vs. Syed Mujtaba Ali Naqvi (**1991 SCMR 2300**);
10. Mian Iqbal Mahmood Banday vs. Muhammad Sadiq (**PLD 1995 Supreme Court 351**);
11. Muhammad Lehrasab Khan vs. Mst. Aqeel-un-Nisa and 5 others (**2001 SCMR 338**);

12. Iqbal Book Depot and others vs. Khatib Ahmed and 6 others **(2001 SCMR 1197)**.
13. Abde Ali vs. Shaikh Hatim Bhaxi **(2003 SCMR 730)**;
14. Muhammad Nawaz alias Nawaza vs. Member Judicial Board of Revenue and others **(2014 SCMR 914)**.

None of the above case-laws have any relevance to the facts of the case in hand on the personal need.

7. Learned counsel for the Respondent No.1 has 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. He has also contended that the concurrent findings are based on the evidence of Respondent which was consistent with their pleadings.

8. 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 learned appellate Court has also very elaborately discussed the issue of personal bonafide need of Respondent No.1/ landlord and referred to various case-laws of superior Courts. The relevant findings of the appellate Court are reproduced below:-

The contention of the learned counsel for the opponent that the property is not required to the applicant for the personal bonafide need for his son in his written arguments has no worth because nothing has been produced before the court to believe that the applicant has not required the property for his personal bonafide need. It is an admitted legal position that applicant landlord has prerogative to use his premises whenever it is required to him for his personal bonafide need. It is also settled law that the choice of selection for the

business premises is depended upon the applicant. It is an admitted position that it is the prerogative of the landlord to select the premises for his business on his own will and he cannot be restrained or confined by the tenant to select another premises. Selection of business place was the sole prerogative of landlord if having more than one premises. The only requirement for seeking eviction of tenant was the proof of bonafide need of landlord such requirements would be discharged the movement landlord appeared in the witness box and made such statement on oath or in the form of an affidavit in evidence. If it remains unshattered in cross examination and un-rebutted in evidence adduced by the opposite party, the tenant has no right to disentitle the landlord of his property and in this regard the learned trial Court had correctly relied upon cases reported as 1996 MLD 1717, 2016 MLD 358 Sindh, 1994 CLC 2422(b) and 1996 SCMR 1178(a) are very much applicable in this case, keeping in view the learned Rent Controller had arrived just and proper conclusion and decided the point in No.3 in accordance with law.

The above observations clearly show that the point of personal bonafide need was proved by Respondent No.1.

9. 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 on this issue are based on the evidence of Respondent No.1 which was consistent with his pleadings. 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 even just one is decided on the basis of evidence, it can be subject 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.

10. In view of the above facts, this constitution petition is dismissed. The Petitioner is directed to vacate the tenement within **30 days** from the date of passing of this order. If the Petitioner fails to vacate the tenement within **30 days**, the Executing Court on expiry of **30 days** will complete writ of possession, already issued, with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi
Dated:10.05.2019

Ayaz Gul