

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-2012 of 2018

Date	Order with signature of Judge
1.	For orders on office objection as at 'A'.
2.	For hearing of Main case
3.	<u>For hearing of CMA No.8141/2018 (stay)</u>

13.05.2019

Mr. Bacha Zaib, advocate for the petitioner.

NAZAR AKBAR,J:- The Petitioner through this constitutional petition has challenged the findings of Rent Controller dated **02.05.2017** in Rent Case **No.337/2016** and affirmed by IIIrd Addl. District & Sessions Judge (Central) Karachi by order dated **24.04.2018** in F.R.A. **No.112/2017** whereby the Petitioner was directed to vacate the Flat No.10, building constructed on Plot No.13/8, 2nd Floor, Firdous Colony, Gulbahar, Nazimabad, Karachi and handover its peaceful physical possession thereof within **30** days to Respondent No.1/ landlord.

2. Brief facts of the case are that petitioner as tenant is in possession of Flat No.10, building constructed on Plot No.13/8, 2nd Floor, Firdous Colony, Gulbahar, Nazimabad, Karachi (the tenement) owned by Respondent No.1. Respondent No.1 has filed rent application under **Section 15** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) for eviction of the petitioner on the ground of personal bonafide need.

3. The Petitioner was duly served with eviction proceedings and he filed written statement wherein petitioner admitted the ownership of the Respondent No.1 but he stated that he has entered into "PAGRI AGREEMENT" with the outgoing PAGRI

HOLDER / Tenant against the consideration amount of Rs.225,000/- in presence of Respondent No.1. besides this payment the petitioner has also paid Rs.60000/- as charges of receipt changing in the name of Respondent No.1. Respondent No.1 admitted that he is living in Flat No.8 subject suit property. Petitioner denied that Respondent No.1 has required the premises for his personal need because other flats in the same building out of which flat No.4 is still lying vacant. Petitioner admitted that the receiving of legal notice in the year of 2009. Petitioner denied that he has made commitment for vacating the premises.

4. After recording evidence and hearing learned counsel for the parties, learned Rent Controller has allowed the rent case filed by respondent No.1 by order dated **02.05.2017** and directed the petitioner to vacate the tenement and handover its vacant and peaceful possession to the Respondent No.1 within 30 days. The order of Rent Controller dated **02.05.2017** was challenged by petitioner in F.R.A. **No.112/2017** before IIIrd Addl. District Judge (Central) Karachi, which was also dismissed by the impugned order dated **24.04.2018**. The petitioner has challenged the concurrent findings through the instant petition.

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

6. The only point determined by the two Courts below against the Petitioner is that Respondent No.1 has established personal bonafide need for the tenement in possession of the Petitioner. It is always difficult for the tenant to dent the personal bonafide need of landlord in respect of the property which he needs to be acquired

from the tenant on the ground of personal bonafide need. Once the Respondent has stated on oath regarding his personal bonafide need and nothing is contradicted in the cross-examination, the burden is always shifted on the Petitioner/tenant to prove malafide in need of the Respondent/landlord. The Petitioner on the point of malafide on the part of Respondent No.1/landlord has not adduced any evidence. The contention of the Petitioner that there were some other premises available with Respondent No.1/landlord does not cast any malafide on the part of Respondent No.1/landlord to seek ejectment of tenant from the tenement. In any case the evidence which has convinced the two Courts below to come to the factual controversy that the need has been established, this Court in its constitutional jurisdiction is not supposed to re-examine the same evidence and come to a different conclusion. By now it is a settled law that the constitutional Court is not supposed to substitute its own findings of facts on the basis of evidence given by the two 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 tenement 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 extra-ordinary circumstances in which there is something like jurisdictional defect in the proceedings.

7. In view of the above, this constitution petition is dismissed alongwith pending application(s). The Petitioner is directed to vacate the tenement within **45 days** from the date of passing of this order. If the Petitioner fails to vacate the tenement within **45 days**, the Executing Court, already seized of the execution, on expiry of **45 days** may issue writ of possession with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

SM
Ayaz Gul