

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-819 of 2018

Present: Mr. Justice Nazar Akbar

Petitioner : Aziz Arshad Butt,
Through Mr. Khalid Mustafa, advocate.

Versus

Respondent No.1 : The III-Addl. District Judge, (Central) Karachi

Respondent No.2 : The VII-Rent, Controller, (Central) Karachi

Respondent No.3 : Shamim Ahmed, through
Mr. Muhammad Asghar Malik, advocate

Date of hearing : **09.05.2019**

Date of decision : **20.05.2019**

J U D G M E N T

NAZAR AKBAR,J:- The Petitioner through this constitutional petition has challenged the findings of Rent Controller dated **03.10.2017** in Rent Case **No.163/2016** which has been affirmed by IIIrd Addl. District & Sessions Judge (Central) Karachi by order dated **31.01.2018** in F.R.A. **No.249/2017** whereby the Petitioner was directed to vacate the demise premises i.e two shops No.1 & 2 at ground floor of the building on Plot No.46 and handover its peaceful physical possession within 60 days to Respondent No.3/ landlord.

2. Brief facts of the case are that petitioner as tenant is in possession of two shops No.01 & 02 at ground floor of the building upon Plot No.46, Block-11, F.B Area, Karachi (the tenement) owned by Respondent No.3. Respondent No.3 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 default, sub-letting and personal bonafide need.

3. The Petitioner was duly served with eviction proceedings and he filed written statement wherein he raised preliminary objections as **(a)** that father of Respondent had let-out the demises premises to the petitioner through oral agreement, therefore, relationship is disputed; **(b)** the Respondent No.3 did not serve any notice u/s. 18 of SRPO 1979; and **(c)** that the ejection application is without valid cause of action. He denied not only the claim of the default and personal need but also relationship of landlord and tenant.

4. After recording evidence and hearing learned counsel for the parties, learned Rent Controller by order dated **03.10.2017** allowed the rent case on the ground of personal bonafide need of Respondent No.3 and directed the petitioner to vacate the tenement and handover its vacant and peaceful possession to Respondent No.3 within 60 days. The order of Rent Controller dated **03.10.2017** was challenged by petitioner in F.R.A. **No.249/2017** before IIIrd Addl. District Judge (Central) Karachi, which was also dismissed by the impugned order dated **31.01.2018**. The petitioner has challenged the concurrent findings through the instant petition.

5. I have heard learned counsel for the parties and perused the record. The parties were also directed to file their written synopsis of their arguments. The only point determined by the two Courts below against the Petitioner is that Respondent No.3 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.3/landlord has not adduced any evidence except that in the cross-examination somewhere the Respondent/landlord has stated that the school run by the Respondent is now having only hundred students and not 150 students as it was mentioned in the rent case. He has also argued that there is no lawful permission with the Respondent/landlord to run the school in the premises. It is, however, not disputed that the Respondent/landlord is running the school in the same premises, therefore, if the Respondent can run the school without permission in the portion of the said building, the very existence of permission or no permission would not render the need of the premises for extension of the school as malafide. 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.

7. In view of the above, 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, already seized of the

execution No.07/2018, on expiry of **30 days** shall issue writ of possession with police aid with permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi, Dated: 20.05.2019

SM
Ayaz Gul