

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-1106 of 2011

Present

Mrs. Justice Kausar Sultana Hussain

Usman and three others.....Petitioners

Versus

Mst. Safia Bai & anotehr.....respondents

Date of Hearing 26.02.2018

Date or Order 18.05.2018

Mr. Qazi Hifzur Rehman, advocate for petitioners

Mr. Juzer Q. Pishori, advocate for respondent No. 1.

ORDER

Mrs. Kausar Sultana Hussain, J. :- Through instant constitution petition, the petitioners have impugned judgment dated 17.08.2011, passed by learned Vth Additional District Judge South, Karachi, whereby First Rent Appeal No. 217 of 2010, filed by respondent No. 1 was allowed and judgment dated 24.3.2010 passed in Rent Case No. 609 of 2007 passed by learned VIIth Rent Controller South, Karachi was set aside.

2. The necessary facts spelt out from instant petition are that petitioners/respondents claimed to have purchased the building namely "Marium Manzil 161 Sheet MR-1, old survey No. C-6/92 Nepier Road, Karachi transmitted such information of change of ownership to the respondent No.1/appellant No. 1 by a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979. It was stated that the respondent No.1/appellant No. 1 is tenant in respect of Flat No. 1, Ist Floor, situated in the said building

at a monthly rent of Rs. 580/- from the period of previous owner and she was paying rent after every six month. It was alleged that respondent No.1/appellant No. 1 paid rent to the petitioners/respondents for January, 2004 to June, 2004, thereafter, failed to pay the rent from July, 2004 onwards and committed wilful default. It was also stated that petitioner No. 1/respondent No. 1, who is running business on the ground floor of the same building alongwith his brothers as co-sharer, unable to move freely and could not take rest, which is very necessary for his health, as such, he wants to shift his family in the demised premises, as it is suitable to him, hence requires the demised premises for his personal bonafide use in good faith. The petitioners/respondents filed ejectment application No. 609 of 2007 against the respondent No.1/appellant No. 1 on two grounds i.e. default in payment of rent as well as for personal bonafide need.

3. The respondent No.1/appellant No. 1 filed written statement, wherein admitted being tenant of the demised premises, so also receipt of notice under Section 18 of the Ordinance from petitioners/respondents. She also admitted to have paid monthly rent to the petitioners up to June, 2004, however, denied to commit any wilful default and asserted that she offered the rent for July, 2004 to the petitioners and on refusal, it was sent through Money Order which met with same fate, ultimately deposited in Court. She also denied claim of petitioners/respondents regarding personal need of demised premises, and she stated that petitioner No. 1/respondent No. 1 is healthy and living a comfortable life and alleged demand of so-called personal use by petitioners/respondents is malafide and based upon ulterior motives, hence rent application is liable to be dismissed.

4. To substantiate their claim, petitioners namely Usman and Irfan Raza filed their affidavits in evidence as Ex. A/1 and A/2 respectively. In rebuttal, respondent/applicant got examined her attorney Tafazul Hussain, who filed his affidavit in evidence, vide Ex. O/1.

5. Learned Rent Controller while passing order dated 24.03.2010, framed the following points for determination:-

- i. Whether the opponent has committed default in payment of rent?
- ii. Whether the applicant No. 1 requires the demised premises for his personal use ?
- iii. What should the order be ?.

6. After evaluating the evidence and arguments advanced by the learned counsel for the parties, learned Rent Controller on the ground of personal need, while declined the point of default vide order dated 24.3.2010, Respondent No.1/appellant No. 1 assailed said order through F.R.A. No. 217 of 2010, which was ultimately allowed by the Court of learned Vth Additional District Judge South, Karachi, vide impugned judgment dated 17.08.2011 and set aside the findings of learned Rent Controller and dismissed the rent application.

7. Mr. Qazi Hifzur Rehman, Advocate for petitioners argued that learned appellate Court has not appreciated the circumstances and evidence adduced by the petitioners/respondents while passing the impugned order. He has contended that learned Appellate Court relied on piece of evidence of petitioners/respondents in which it came on record that one Flat is lying vacant on 3rd floor, but failed to consider the legal position that as per law it was the choice of landlord to occupy and select the premises of his own choice.

In this regard, he has relied upon PLD 1990 S.C 394 (Re-Haroon Kassam & another V/s Azam Suleman Madha), 1993 CLC 2272 (Re-National Bank of Pakistan V/s Sh. Muhammad Sharif & others), 1996 SCMR 1178 (Re-M/s. F.K. Irani & co V/s Begum Feroze), 1998 SCMR 2119 (Re-S.M. Nooruddin & others V/s Saga Printers) and 2012 SCMR 1498 (Re-Pakistan Institute of International affairs V/s Naveed Merchant & others). He has further stated that learned appellate court failed to appreciate the fact that applicant No. 1/respondent No. 1 is a patient of Spinal Cord and it was brought on record that demised premises is required for his personal use as he cannot go up and down of the stair case as lift facility is not available in the premises and he cannot travel long due to his business, and such claim of the petitioner No.1/respondent No. 1 on Oath gone un-questioned and un-rebutted, as such, his statement was required to be taken without any taint of malice. In this behalf, he has also relied upon 2000 SCMR 1613 (Re-Mehdi Nasir Rizvi V/s Muhammad Usman Siddiqui). Lastly, it was argued that in presence of above circumstances, learned appellate court erred in setting aside the findings of the learned trial Court on the point of personal need, as such, impugned order is liable to be set aside.

8. Conversely, the learned counsel for the respondent No.1/appellant No. 1, Mr. Juzer Q. Pishori Advocate has vehemently controverted the submissions so agitated by learned counsel for the petitioners/respondents and strongly opposed the plea of personal need as set forth by the petitioners/respondents. He has stated that the petitioners/respondents have concealed the material facts having deliberately failed to disclose about vacant flats available with them. He has further argued that petitioners/respondents failed to explain how the available vacant flats in the

same building not suitable to them. He has further submitted that learned trial court did not appreciate the ground of personal need in true perspective of law, on the other hand, learned appellate court after evaluating the evidence rightly set aside the ground of personal need based upon malafide. He has relied on 1998 CLC 410 Karachi (Re-Mst. Shamim Akhter V/s Zakaria Yousuf & others), 2006 SCMR 152 (Re-Allies Book Corporation through L.Rs V/s Sultan Ahmed & others), 2008 CLC 1271 Karachi (Re-Abdul Hameed Khan V/s Vth Addl. District & Sessions Judge Karachi Central & others), 2010 YLR 815 Karachi (Re-Sarwar Ali V/s IInd Additional District & Sessions Judge Karachi East & others) and 2015 YLR 2683 Sindh (Re-Muhammad Imran V/s Ghulam Mustafa & others).

9. It is noted that the only point requires consideration and has become the base for a divergent findings on personal need between learned Rent Controller and learned appellate court, that the latter which setting aside the affirmative finding of learned trial court on the ground of personal bonafide use termed absence of any explanation for not occupying the vacant flats, as malafide on the point of the petitioners/respondents. Perusal of material available on record, consideration of the submissions so advanced by the learned counsel for the parties, it appears that the petitioners/respondents in para No. 7 & 8 of eviction application have categorically stated that petitioner/respondent No. 1 (Usman) who is running his business in the same building intends to occupy the demised premises situated at first floor as he is sick and unable to move freely and could not take rest. The petitioner No. 1 (Usman) in his affidavit in evidence reiterated the same facts, duly supported by petitioner No. 2 (Irfan Raza) in his evidence as well. During the test of cross examination conducted upon petitioners No. 1 & 2/respondents No. 1 and

7 by the learned counsel for the respondent No. 1/applicant, not a single negating question was put about ailment of the petitioner No. 1/applicant No. 1, for whom personal need of the demised premises was set forth. It was suggested during cross examination of the petitioner No. 1/respondent No. 1 that in July, 2007 one Tayab vacated a flat, to which, the tenure was denied, however, factum of vacation of flat was admitted; likewise, it was also admitted by him that in October, 2007 one Muhammad Bhai vacated one flat. It is relevant to mention here that Rent Controller finding the personal need in good faith answered such point in favour of the petitioners/applicants, whereas the learned appellate court on the basis of availability of the other flats in the same building, set aside such findings of the Rent Controller.

10. In case of *S.M. Nooruddin & others V/s Saga Printers (1998 SCMR 2119)*, the Hon'ble apex Court has set the dictum that landlord has a complete option to choose from one of the several tenements occupied by tenants to avail of the personal requirement and the discretion is not assailable, except in the rarest cases of bad faith. Likewise, in another case of *Kassam & another V/s Azam Suleman Madha (PLD 1990 S.C. 394)*, it was also held by the Hon'ble apex court that, if the landlord possesses more than one premises, it is surely matter within his prerogative and discretion and the law does not give either to the tenant or the Rent Controller the power to determine where the landlord should personally reside and the question as to which portion of the building would suit landlord better must be left to his discretion.

11. On minute examination of material brought on record, it appears that there was no case of the respondent No. 1/applicant No. 1 at all in the written statement that the petitioners/respondents have other premises in their

possession, even as per suggestion of the respondent's side first flat fell vacant in July, 2007, whereas other admittedly in October, 2007. The learned appellate court did not appreciate the fact that eviction application was instituted in the month of April, 2007 much before vacation of flats, referred above, in such circumstances no malafide and/or concealment of facts on the part of petitioners/respondents could be put forward. As to the suitability of the demised premises as compare to the flats fell vacant during the proceedings, though it was not the case of the respondent No. 1/applicant No. 1, yet it is noted that the demised premises is situated at first floor, on the contrary flat vacated by Muhammad Bhai situated on 3rd floor, whereas the location of other flat did not clarify by the respondent's side. To a common state of mind, in either case for an ailing person or proper in health, it is obvious facts that flat situated on lower floor in the absence of lift always better in suitability. The learned appellate court did not appreciate that the claim of the petitioners/respondents remained consistent, yet erred in deciding the point of personal need in the light of true perspective as provided under the law while saying so, I am guided by the verdict of the Hon'ble apex court given in the case of Mehdi Nasir Rizvi V/s Muhammad Usman Siddiqui (2000 SCMR 1613), wherein the principle was set that where landlord's statement on the Oath consistent with the case proceeded by him and same has not been seriously challenged must be given weight. Besides above, the Sindh Rented Premises Ordinance, 1979, provides safe-guard to the tenant under the proviso 15-A, which envisage where the landlord who has obtained the possession of a building under section 15 (VII) of the Ordinance, re-lets the premises to other person or put it to a use other than personal use, the tenant will be entitled to get the possession restored to him. In the above

circumstances, the plea raised by the petitioners/respondents for personal requirement of the demised premises to the petitioner No. 1/respondent No. 1 found in good faith and in absence of the any concrete evidence no presumption could be drawn that the claim of the landlord/owner for personal use of the demised premises is un-fair and clipped with any sort of malafide intention. As regards, the case laws relied upon by the learned counsel for the respondent No. 1/applicant No. 1 viz; 1998 CLC 410 Karachi, 2006 SCMR 152, 2008 CLC 1271 Karachi, 2010 YLR 815 Karachi and 2015 YLR 2683, I may say that same emphasized to adjudge the plea of personal need must be in good faith and requirement of sufficient explanation available beside the premises in question. In the present case, admittedly, the premises vacated by the other tenants during the proceedings of the Rent Case, as such, element of concealment did not exist, rather it was not the case of the respondent No. 1/applicant No. 1 in written statement. As such, the factual controversy and circumstances of the reported cases are quite distinguishable from the case in hand, as discussed above.

12. In the result, his appeal is allowed and the orders of the Appellate Court is set aside, while maintaining the order of the Rent Controller for eviction of the respondent No. 1/appellant No. 1 from the demised premises on the ground of personal bonafide need in good faith. However, the respondent No. 1/appellant No. 1/tenant is allowed four months' time to vacate the demised premises provided due rents are paid regularly. Order accordingly.

J U D G E