

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-1007 of 2011

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

Before: Mr. Justice Nazar Akbar

Petitioner : M/s. Ebrahim Haji & brother through
Mr. Sikandar Khan, Advocate.

Versus

Respondent No.1 : Syed Sirajuddin through
Mr. Abdul Wajid Wyne, advocate.

Respondent No.2 : Vth Addl. District Judge, South Karachi.

Respondent No.3 : IIIrd Senior Civil Judge/Rent Controller,
South Karachi.

Date of hearing : 13.11.2018

Reasons/Decision: 15.11.2018

JUDGEMENT

NAZAR AKBAR, J. The petitioner through this constitutional petition has challenged the order dated **20.8.2010** passed by Vth Additional District Judge, South Karachi in FRA No.112/2009, whereby appeal filed by Respondent No.1 against the order dated **26.3.2009** passed by IIIrd Rent Controller, South Karachi in Rent Case No.307/2006 was allowed and the Petitioner was directed to hand over the vacant and peaceful possession of the demised premises to Respondent No.1 within 30 days.

2. Briefly stated the facts of the case are that Respondent No.1 filed Rent case No.307/2006 before the Rent Controller stating therein that he is the owner of the building known as MILLS WALA MARKET constructed on Plot No.SB-3/24 Fakhri Matri Road, New

Neham Road, Karachi, whereas the Petitioner was tenant in respect of Premises No.18 of the said building (demised premises) at the rent of Rs.50/- per month. It was further averred that Respondent No.1 required demised premises for his personal need for carrying on and expending business therein as the premises No.9, Lotia Building Serai Road, Karachi in which presently Respondent No.1 carries on business was a rented one and the owner thereof can demand vacant possession of the said premises. Respondent No.1 already has a dispute with the said owner of the said building and, therefore, he was depositing monthly rent in Court. In this background he required his own premises for his personal bonafide use to expend his business also on the ground that rented premises in his use is very small for expansion of his business. Respondent No.1 made several requests but the Petitioner avoided, therefore, he filed the rent case.

3. The Petitioner/opponent filed written statement and denied the version of Respondent No.1 and contended that Respondent No.1 is not running his business in a rented premises and the MRC allegedly filed by the Petitioner is a fake/bogus. He is running business by the name and style of Balochistan Transport Company and the demised premises is not suitable for him and besides the demised premises, Respondent No.1 has many other properties and he filed rent application with malafide intention.

4. After recording evidence and hearing learned counsel for the parties, trial Court dismissed Rent Application filed by Respondent No.1. Against said dismissal Respondent No.1 filed FRA No.112/2009 before the appellate Court which was allowed by order dated **20.08.2010**. The said order is impugned herein this constitution petition.

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

6. Learned counsel for the Petitioner has advanced only one argument that the rent case on personal bonafide need was not maintainable since in 1998 father of present Respondent No.1 has filed a rent case on personal bonafide need and he has lost. The perusal of trial Court's order, the relevant part whereof has been reproduced by the appellate Court, also shows that the Rent Controller has also dismissed rent application on the same ground. No other argument was advanced by the learned counsel for the Petitioner.

7. I have gone through the record and it is an admitted position that Respondent No.1 has not filed any case for personal bonafide need prior to the one bearing rent case No.307/2006. Rent case filed in 2006 by a different person cannot be treated as hit by provisions and resjudicata, if at all, by the previous proceedings on the question of personal bonafide need between the father of the applicant/ Respondent No.1 and the tenant in 1998 were on personal need. The world never ends and the needs multiply with the passage of time. The personal bonafide need of father, who has died and with him also died his needs. The need of present Respondent No.1 in 2006 was altogether a fresh and different cause of action and, therefore, the observations of the trial Court in rejection of rent case has rightly been set aside by the appellate Court in FRA No.112/2009.

8. In view of the above facts, the findings of the appellate Court do not call for any interference, consequently this constitution petition was dismissed by short order dated **13.11.2018**, whereby the

Petitioner was directed to vacate the demised premises within **30 days** from passing of the said short order and above are the reasons for the same.

JUDGE

Karachi
Dated:15.11.2018

Ayaz Gul/P.A