

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-977 of 2020

Date Order with signature of Judge

1. For hearing of CMA No. 5273 of 2020 (Stay).
2. For hearing of main case.

01st March 2021

Mr. Atif Hanif, advocate for petitioner.
Mr. Nasir Ahmed, advocate for respondent No.1.
Mr. Ali Zardri, Asst. A.G. Sindh.

Salahuddin Panhwar J.- This petition assail judgment dated 12.11.2020 passed by Appellate Court in FRA New No. 46 of 1999, whereby the judgment dated 20.02.2020 passed by Rent Controller concerned in Rent Case No.126/2019 was upheld and consequently, the FRA was dismissed.

2. Learned counsel for the petitioner has inter alia, contended that appellate court failed to provide opportunity of hearing though plea of default was not established, however, on personal bonafide need, concurrent findings have been recorded by both courts below which are flimsy and have been passed without taking into consideration the contentions raised by the counsel for the petitioner; that petitioner was harassed by the landlord to vacate the demised premises upon which the petitioner filed suit for declaration with regard to such harassment; that the landlord only wants to evict the petitioner from the demised premises in order to rent out the same on higher rent. In support of his contentions he relied upon case laws reported as 2001 SCMR 1301 and 2017 SCMR 902.

3. Conversely, learned counsel for the respondent/landlord argued that finding of both the Courts below are reasonable and cogent and no interference is required in such findings; that the landlord intends to gift the demised property to his daughter and hence he cannot be deprived of with the possession of the demised property. He therefore, prayed for dismissal of the petition.

4. Heard learned counsel for the respective parties.

5. Since this is a writ of *certiorari* wherein concurrent findings of the courts are challenged. It is settled principle of law that question of facts, if not falling within the term of misreading and non-reading, cannot be questioned in writ petition, particularly in matter(s) of rent jurisdiction wherein the appellate Court is *final* authority. Reliance may be made to case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925, wherein it is held as:-

“8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

Thus in such like matters, the burden becomes heavier upon challenger (petitioner) to *prima facie* establish a patent *illegality* in findings of two courts below which, too, should be shown to have resulted in some miscarriage of justice.

6. In the present case since *prima facie* the question of *personal* bonafide need is involved therefore, I find it in all fairness to refer the relevant provision of Sindh Rented Premises which is Section-15(vii) of the Ordinance which reads as:-

*“the landlord requires the premises in good faith for his own **occupation** or **use** or for the **occupation** or **use** of his spouse or any of his children.”*

7. The words ‘*occupation*’ and ‘*use*’, since not been defined by the Ordinance, hence their *ordinary* meaning would be taken. Since the *terms* have deliberately been used *independently* therefore, *prima facie* former appears to be relating to a case where eviction is being *sought* to ‘**occupy**’ while the *later* i.e ‘**use**’ appears to deal with cases where eviction is being sought for using the premises for purpose business/earning purpose, as was being used by *tenant*. At this *point*, I would insist that the *criterion* for establishing a case of *eviction* on count of ‘*requirement of premises for his own **occupation***’ would be much *lighter* from that of ‘*requirement of premises for his own **use***’ because the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of

his valuable right to acquire, deal and possess his property which right is *otherwise* guaranteed by Article 23 of the Constitution. Reference may well be made to the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui 2000 SCMR 1613 wherein it is held as:-

“4. ... It is well-settled that the landlord has the absolute right to acquire and deal with his property in the manner best suited to him and a tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is again guaranteed by Article 23 of the Constitution.”

8. Here petitioner is tenant, he filed suit for declaration with regard to harassment caused by the landlord, whereas landlord seeks possession of demised premises on the plea of personal bonafide need as he intends to gift the property to his daughter. Plea of personal bonafide is properly dealt with by the two forums below and I do not find any infirmity and illegality in such findings. The case law relied upon by the learned counsel for the petitioner is distinguishable from the facts and circumstances of the instant case. Accordingly, petition is dismissed alongwith pending application(s).

9. Since demised premises is dwelling house and petitioner being landlord cannot be deprived of with possession who wants to hand over the same to his daughter. At this juncture, landlord undertakes that in case landlord fails to use demised premises for his personal need this court may issue rider that respondent will be fined of Rs.500,000/- and possession would be restored to the petitioner. However, petitioner shall evict the premises within three months. With regard to any outstanding between the parties, they would be at liberty to approach the same court under Rent Premises Ordinance 1979 which provides such remedy.

J U D G E

SAJID