

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 1050 of 2012

Date	Order with Signature of Judge
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Petitioner No.1 Gul Mohammad (CNIC No. 42301-4287415-3)
present in person.

Respondent No.3(b) Muhammad Iqbal S/O Muhammad Zaki Chishti
(CNIC # 42301-7349614-5) present in person.

Date of hearing : 23.09.2021.

ORDER

NADEEM AKHTAR, J. – Muhammad Zaki Chishti / landlord (**‘respondent No.3’**) filed Rent Case No.663/2010 for the eviction of the petitioners / tenants on the ground of personal need. As respondent No.3 has passed away, he is now being represented in this petition by respondents 3(a) to 3(h) who, being his widow and children, are his legal heirs and successors-in-interest. The aforesaid rent case was dismissed by the Rent Controller vide order dated 27.07.2011. However, First Rent Appeal No.219/2011 filed by respondent No.3 was allowed by the appellate Court vide impugned judgment dated 17.12.2012, whereby the petitioners were directed to vacate the demised premises viz. Flat No.G-6, ground floor, Plot / Survey No.84, Sheet No.RS-2, Arjun Singh Building, near Rajkot Hospital, Ramswami, Karachi, within sixty (60) days. Through this Constitutional Petition, the petitioners have impugned the aforesaid judgment of the appellate Court.

2. It was the case of respondent No.3 before the Rent Controller that he was one of the co-owners of the demised premises ; his mother had entered into a tenancy agreement in respect of the demised premises with the father of the petitioners ; after the death of their father / tenant, the petitioners retained the possession of the demised premises which was illegal ; he had requested the petitioners many times to vacate the demised premises on the ground that the same were required by him for his personal use ; at the relevant time, he was over seventy (70) years of age and he as well as his wife were suffering from serious diabetic and cardiac ailments ; and, despite his repeated requests and demands, the petitioners had failed to hand over the possession of the demised premises to him.

3. In their written statement, it was claimed by the petitioners that in addition to the rent of Rs.40.00 per month their father / tenant had paid a handsome amount on account of *pugri* to the mother of respondent No.3 ; they had never committed default in the payment of monthly rent ; and, respondent No.3 used to receive the rent from them after the death of his mother, however, upon his refusal they started depositing the rent in Court with effect from January 2003. The personal need pleaded by respondent No.3 was denied by the petitioners by asserting that he was not a heart patient and the premises already in his possession were suitable for his needs.

4. Both the parties led their respective evidence before the Rent Controller and were cross-examined by each other. After examining the material available on record and hearing the respective counsel for the parties, the rent case was dismissed by the Rent Controller vide order dated 27.07.2011. Perusal of the said order shows that instead of giving his own findings on the question of personal need claimed by respondent No.3, the Rent Controller had simply agreed with the contention of the petitioners' counsel that respondent No.3 had not produced any material to substantiate his ailment, and his claim of personal need was malafide.

5. As noted above, the aforesaid order of dismissal passed by the Rent Controller was set aside by the appellate Court through the impugned judgment dated 17.07.2012. It was held by the appellate Court that respondent No.3 had produced documentary evidence with regard to his wife's and his own old age and ailments which was not challenged by the petitioner at the time of evidence. Thus, it was concluded by the learned appellate Court that the order passed by the Rent Controller was not sustainable.

6. I have heard petitioner No.1 and respondent No.3(b) and have also examined the material available on record, particularly the impugned judgment of the learned appellate Court. The record shows that the averments made and the ground urged by respondent No.3 in his eviction application with regard to his personal need had throughout remained consistent and the same was further reiterated by him in his evidence, which could not be shaken in his cross-examination. The relevant documents pertaining to his medical treatment were produced by respondent No.3 at

the time of his evidence, but he was not cross-examined at all by the petitioners. Thus, the evidence produced by respondent No.3 had remained un-rebutted and unchallenged. In his cross-examination, petitioner No.1 had denied the ailment and personal need of respondent No.3 in an evasive manner. Such denial by him was meaningless and inconsequential as the petitioners had the opportunity to confront respondent No.3 in his cross-examination, but they chose not to do so. It is well-settled that if the statement made on oath by the landlord is consistent with the averments made by him in his ejectment application and neither his statement is shaken nor is anything brought in evidence to contradict his statement, it would be sufficient for the grant of his ejectment application ; all that the landlord has to show is that he required the demised premises of a particular tenant for his personal use and the choice was his as to the suitability of the demised premises which he required for his personal use, and that his need is reasonable and bonafide ; the landlord has the complete option to choose from any one of the several tenements occupied by the tenants in order to avail of the ground of personal need ; and, the landlord himself would determine in what way, subject to law, he wants to utilize his premises after eviction of the tenant.

7. The rent case was filed by respondent No.3 in the year 2010 by pleading that the demised premises were required by him for his personal use as he was over seventy (70) years of age and he as well as his wife were suffering from serious diabetic and cardiac ailments. In his cross-examination, it was admitted by petitioner No.1 that the petitioners had no intention to vacate the demised premises as they had paid the “goodwill amount” (*pugri*) to the landlord. Such statement on their part clearly shows that they wanted to retain the possession of the demised premises at all costs. It is unfortunate that during the pendency of the proceedings, respondent No.3 passed away without enjoying the benefit of using the demised premises. However, his widow viz. respondent No.3(a) is still alive who, according to the un-rebutted evidence produced by her late husband / respondent No.3, is of advanced age and is suffering from diabetic and cardiac ailments.

8. In my humble opinion, respondent No.3 had successfully discharged his burden in proving that his personal need was reasonable, genuine and bonafide, and the petitioners had failed in dislodging his claim or in proving him wrong. The petitioners have not been able to point any illegality or infirmity in

the impugned judgment of the learned appellate Court, and as such the same does not require any interference by this Court. Accordingly, the petition is liable to be dismissed.

9. Foregoing are the reasons of the short order announced by me on 23.09.2021 whereby the present petition and the application pending therein were dismissed with no order as to costs.

J U D G E