

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

(1) C.P. No.S-650 of 2004

Yasmin Sharfuddin

Versus

Dr. Ehtesham Naseerul Haque & others

(2) C.P. No.S-651 of 2004

Shahid Sajjad

Versus

Dr. Ehtesham Naseerul Haque & others

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(3) C.P. No.S-654 of 2004

Ch. Iqbal Hussain (through legal heirs)

Versus

Dr. Ehtesham Naseerul Haque & others

Date of Hearing: 17.10.2017

Petitioners in C.P. No.S- 650 and 654 of 2004: Through Mr. Shehanshah Hussain along with Mr. S. Arshad Ali Advocates.

Petitioner in C.P. No.S- 651 of 2004: Through Mr. Muhammad Nishat Warsi Advocate

Respondents No.1 and 2 in all three petitions: Through Mr. Abdul Razzak Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These are three connected petitions, which involve ejectment applications on personal requirement of respondents No.1 and 2/landlords. The ejectment applications under section 15 of Sindh Rented Premises Ordinance, 1979 were filed by respondents No.1 and 2 through their attorney Rizwan Haider son of Ali Haider on the ground of personal requirement and re-construction. Upon service, the written statements were filed by the petitioners/tenants and accordingly trial commenced. The same were dismissed by learned V-Rent Controller Karachi East vide order dated 30.03.2002 against

which First Rent Appeals were filed which were allowed vide impugned judgment dated 09.09.2004.

In response to their personal requirement an affidavit-in-evidence was filed by respondents through their attorney in the rent case who was subjected to cross examination and so also the tenants/petitioners who filed their respective affidavits-in-evidences.

Mr. Shehanshah Hussain in C.P. No.650 and 654 of 2004 argued the case on behalf of petitioners therein that a case of personal requirement is not made out on the basis of pleadings and evidence that was recorded. He attempted to scrutinize the contents of the Power of Attorney as well as affidavit-in-evidence and the cross-examination and submitted that mere ipse dixit of the landlord would not be sufficient to have the tenants evicted from the demised premises on account of personal requirement. He submitted that the Power of Attorney, no doubt, is a registered document but it is a general Power of Attorney and not specifically meant for filing the rent applications. The schedule of the properties, involve both moveables and immovables, suggests that it pertains to a number of things to be done by the attorney on behalf of the owners.

Learned counsel has further relied upon the contents of the depositions/cross-examination to establish that one of the prime property such as Bungalow No.45-A, South Central Avenue, Phase-II DHA, Karachi, was disposed of by the respondents in the year 1996 and they could have opted to occupy the said bungalow, which is situated in an equally developed and posh area which also serve the suitability of the respondents/landlords. He further submitted that the Rent Controller has dismissed the ejectment application whereas the appellate Court has reversed the findings and hence it is a case of conflicting judgments.

Mr. Muhammad Nishat Warsi, learned counsel appearing in C.P. No.S-651 of 2004 adopted the arguments as advanced by Mr. Shehanshah Hussain.

On the other hand, Mr. Abdul Razzak, learned counsel appearing for respondents No.1 and 2, has supported the judgment of the appellate Court and submitted that the contents of the Power of Attorney are comprehensive as it includes all actions to be taken on behalf of the landlords in respect of the demised property including but not limited to filing of the ejectment applications and proceedings therewith. He has further relied upon the contents of paragraphs 4, 5, 6 and 7 of the affidavit-in-evidence which, per learned counsel, remain unchallenged.

In respect of Bungalow No.45-A, referred above, learned counsel for respondents submitted that though it was disposed of much earlier in the year 1996, in comparison to the date of filing of the ejectment applications, yet it cannot undermine the suitability and choice of the landlords. The evidence in respect thereof remained unshaken.

I have heard the learned counsel for the parties and perused the material available on record.

This is a case of conflicting findings of two courts below hence I am inclined to peruse the depositions/evidence available on record, particularly that of the attorney of the respondents. In paragraph 4 of the affidavit-in-evidence the attorney stated on oath that the subject premises was required in good faith for the personal need and use of the landlords and for their children as they have no other place to stay in Karachi. In paragraph 5 of the affidavit-in-evidence the attorney stated that they (respondents) wish to move to Pakistan having worked abroad for more than 25 years. In paragraph 6 it is stated that two applicants/ landlords wish to make two independent units on the subject premises,

which is approximately 50 years old structure, for themselves and for their children. In paragraph 7, the attorney stated on behalf of the owners/landlords that there is no other accommodation in Karachi for these two applicants/respondents and their children and at times when they visit Karachi/Pakistan they are coerced to stay at different places at the mercy of their relatives. In paragraph 8 it is stated that the plans for the purpose of construction could only be made when the architect is allowed to operate and visit the subject property and see the existing structure and see if any of its structure is required to be demolished. Although witness was subjected to cross-examination but these paras on oath almost remain unchallenged.

Furthermore it appears that throughout the cross-examination the deponent/witness was inquired about the authority and the delegation of powers to file the subject applications. For the purposes of the authority clause 5 of the General Power of Attorney is relevant, which is reproduced as under:-

“To sign and verify complaints, written statements, petitions of claims and objections, memorandum of appeal and petitions and applications of all kinds, file them in any such Court or office and to swear affidavits and give evidence.”

This General Power of Attorney authorizes the attorney, amongst many other things, to file all kind of applications in any Court or office and to swear affidavits and give evidence. This is a registered Power of Attorney and since one person was appointed as attorney in respect of several other moveable and immovable properties, therefore, common Power of Attorney was executed. Separate and independent Power of Attorney is not required for the institution of rent applications when the contents of subject Power of Attorney are sufficient to authorize the attorney to file and institute rent applications and take all necessary

steps in furtherance thereof. Therefore, this contention that a special Power of Attorney is required is misconceived.

Mr. Shehanshah Hussain, learned counsel for petitioners, has relied upon a judgment in the case of Unair Ali Khan v. Faiz Rasool reported in PLD 2013 SC 190 to establish that Power of Attorney should be construed strictly and only such powers, which are expressly and specifically mentioned in the Power of Attorney, must be exercised by the agent as considered to have been delegated to him. Applying the same principle, as observed by the Hon'ble Supreme Court, paragraph 5 of the Power of Attorney provides an authority for the attorney to sign and verify plaints, written statements, petitions of claims and objections/memorandum of appeal and petitions and applications of all kinds and to swear affidavits and give evidence. Paragraph 5 of the General Power of Attorney is comprehensive in respect of the properties mentioned in the schedule at the end of this Power of Attorney. Hence, applying the principle, as laid down, all such powers are expressly provided in the Power of Attorney and were accordingly exercised by the agent/attorney.

A Power of Attorney generally delegates all such powers which are required to be done on behalf of principal and the contents of the Power of Attorney would be such that all such things, which claimed to have been done by attorney on the basis of the Power of Attorney, could be construed from the language and meaning of the contents of the powers, which were delegated through different paragraphs. However, it needs not to be an encyclopedia that even a minor and insignificant act in furtherance of a main object is to be incorporated in the body of the Power of Attorney. For example if an attorney is authorized to file an application under the law then it is not required to be mentioned that it

should be sworn and verified as it is the requirement of law. However, the important factor is that powers must be delegated expressly.

Insofar as the personal requirement of the landlords is concerned needless to mention that it is the prerogative of the landlord who discloses the suitability of the premises. A landlord cannot be compelled to occupy any other premises which in his (landlord's) wisdom or desire may not be suitable. The prerogative or choice to select the premises for the use and occupation of the landlord or for the use and occupation of their children cannot be questioned by any reasonable hypothesis. Besides this, in the instant case the cross-examination insofar as personal requirement is concerned is absolutely silent and could not be shattered.

In view of the above facts and circumstances the petitioners failed to make a case to interfere in the impugned judgment. The petitions therefore were dismissed vide short order dated 17.10.2017 of which these are the reasons. The petitioners however are allowed six months' time to vacate the respective demised premises subject to payment of monthly rent in advance and payment of utility bills as required under the agreement and under the law, failing whereof the writ of possession shall be issued forthwith with police aid with permission to break open the lock, if required.

Dated: 20.10.2017

Judge