

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui

C.P. Nos. S-846, 847 and 975 of 2009

Zafar Malik, Sohailur Rehman  
and Muhammad Iqbal respectively

Versus

Azhar Abbas Butt & others

Date of Hearing: 09.02.2018

Petitioners: Through Mr. K.A. Wahab Advocate

Respondent No.1: Through Mr. Muhammad Zahid Khan  
Advocate.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- These are three petitions filed by the tenants/petitioners against the concurrent findings of two Courts below. The Rent applications filed by the respondent No.1 were allowed followed by dismissal of appeals of the petitioners.

The landlord/respondent No.1 filed three ejectment applications on the ground of personal requirement only. Rent Case No.102 of 2002 (CPC No.847 of 2009) was filed for the personal requirement to establish business for his brother namely Farhat Abbas and himself. In Rent Case No.103 (CP No.846 of 2009) landlord Azhar Abbas Butt pleaded in paragraph 5 that the premises i.e. Shops No.3 and 7 required for personal use to do business of "cold spot" as the present shop in occupation is not large enough to conduct the business. The third ejectment application bearing No.104 of 2002 (C.P. No.975 of 2009) was filed by the landlord/respondent No.1 again for requirement of Shops No.2 and 6 for his brother Farhat Abbas who was jobless and was not doing any business.

The landlord/respondent No.1 filed his affidavit-in-evidence and has taken the stance that though it is stated that the demised premises are required for personal bona fide use but that is for use of his brother Farhat Abbas as he has no means to earn the livelihood.

Petitioners' counsel has attempted to establish that even the personal requirement of the landlord was not bona fide in view of claim of enhanced rent at the rate of Rs.40,000/-. The counsel has relied upon paragraph 1 of the ejectment application as well as annexures at page 129 and notice at page 133 of CP No.S-846 of 2009 wherein demand of execution of fresh tenancy agreement at the rate of Rs.40,000/- was made on 16.01.2002 whereas the ejectment application was filed only a month later i.e. 16.02.2002 hence since the initial notices do not disclose the personal requirement it could not be said to have been required within 30 days of issuance of notice hence the claim of personal requirement even for the landlord/respondent No.1 himself was mala fide.

Counsel for petitioners further submitted that there is no provision seeking ejectment of the tenant on the ground of establishing business for brothers. He has relied upon definition of personal use as incorporated in Section 2(g) of Sindh Rented Premises Ordinance, 1979 and has relied upon the cases of Muhammad Iqbal v. Saeeda Bano (1993 SCMR 1559) and Khurshid Ahmed v. Himandas (2001 YLR 2157).

On the other hand, learned counsel appearing for respondent No.1 submitted that it is not only need of the brother but the need of landlord himself as well, as it was jointly required both by the landlord as well as for his brother.

He further submitted that insofar as claim of Rs.40,000/- is concerned that has been incorrectly recorded by the Rent Controller,

though in the ejectment application as well as in the notice he (landlord/respondent No.1) insisted upon tenants/petitioners to execute rent agreements at the rate of Rs.40,000/-. He conceded to the extent that before instituting Rent Case and the legal notice, the landlord/respondent has not pleaded their case of personal requirement.

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

Insofar as C.P. No.S-846 of 2009 is concerned though in the ejectment application landlord claimed that the rent was payable at the rate of RS.40,000/- but he has not provided any justification as to on what basis such rent was claimed. Certainly that was not the amount payable when the landlord/respondent acquired ownership rights and such amount was demanded through a legal notice and other prior notices of November, 2001 hence there is no lawful justification to claim such amount however such claim cannot overshadow the claim of personal requirement even if it has not been pleaded in a notice, sent a month before filing ejectment application, if such personal requirement is otherwise established through evidence and has not been shattered. The landlord/respondent may have asked for exorbitant rent but the case of the personal requirement has to be seen on the basis of independent evidence as pleaded and established by the landlord. The demand of fair rent until the premises is vacated cannot overshadow the personal requirement.

Insofar as personal requirement of the landlord in CP No.846 of 2009 is concerned, no substantial questions as to any mala fide was raised to disentitle him (landlord/respondent No.1) from claiming possession of the two shops to establish his business of cold spot. The initial burden of bona fide requirement of two shops was established and

then it was up to tenants/petitioners to dislodge/challenge such entitlement and claim of two shops, which the petitioner in this case failed. It has been specifically pleaded by the respondent/landlord that he required two shops for his personal bona fide need which claim and need remained consistent and un-shattered.

Insofar as other two petitions i.e. C.P. No.S-847 and 975 of 2009 are concerned, the landlord/respondent No.1 has filed application for the need of his brother. No doubt in the application he (petitioner) has stated that the two brothers (i.e. respondent No.1 and his brother) had been doing business of garment as Cheap Jan previously till 1995 but in terms of paragraph 6 of the ejectment application it is asserted that as their elder brother was jobless and has no business to earn his livelihood therefore it was decided within the family that the ejectment applications be filed on such ground for his brother's need which stance was maintained at the time of filing affidavit-in-evidence.

The only question that requires consideration was whether the Sindh Rented Premises Ordinance, 1979 provides any room for the ejectment of the tenants on the ground of requirement of brothers of the landlord. The definition 2(g) of Sindh Rented Premises Ordinance, 1979 describes the personal use of a landlord as under:-

*“Personal use, means the use of premises by the owner thereof or his wife, or husband, son or daughter.”*

The legislature has limited the definition of personal use of the landlord to the extent of spouse and son and daughter. It thus cannot be extended to use of brother as a personal use. The personal use of the respondent himself was satisfied/proved in CP No.S-846 of 2009 in relation to Rent Case No.103 of 2002, as observed above, however the bona fide of the landlord insofar as other two applications are concerned required a strict test.

In the case of Muhammad Iqbal v. Saeeda Bano reported in 1993 SCMR 1559 the Hon'ble Supreme Court has held that the landlady/ landlord's application for two shops separately, without specifying in either of the applications that one shop would not be sufficient for her/his son's need and there being no evidence that she required both the shops, she was allowed to have possession of one shop only and the eviction in relation to other shop was set aside in the circumstances.

In the instant case the requirement of the landlord for personal need in Rent Case No.103 of 2002 (C.P. No.S-846 of 2009) was satisfied however he is unable to satisfy as far as other two rent applications for four additional shops are concerned, either for himself or for his brother in terms of section 2(g) of Sindh Rented Premises Ordinance, 1979.

In the case of Khurshid Ahmed v. Himandas reported in 2001 YLR 2157, learned Single Judge has observed as under:-

*“On the issue of personal requirement, appellant has not been able to convince me, that he has made out any case. The need of brothers has not been envisaged under the definition of ‘personal use’ as given in the Ordinance, section 2(g) which reads as under:--*

*‘persona use’ means the use of the premises by the owner thereof or his wife, or husband, son or daughter.’*

*From the above definition it is clear that law does not recognize the need of brother for the purpose of maintaining ejectment on this ground. I am afraid ejectment on such ground cannot be granted.”*

Similarly, in the case of Allies Book Corporation v. Sultan Ahmad reported in 2006 SCMR 152 the Hon'ble Supreme Court has observed as under:

*“13. We are mindful of the settled law that it is the prerogative of the landlord to choose a particular house, shop or building for his bona fide personal occupation and use in case the landlord has more than one premises but*

*for exercising such prerogative it is the duty of the landlord to give plausible and satisfactory ground/ explanation for his insistence to occupy a particular premises in preference to occupy any other premises available for occupation and use. From perusal of the material on record it transpires that not a single word has come from the respondent as to why the shop on the first floor, which is in their occupation would not be sufficient and would not meet the demands of the business sought to be established by respondent Mansoor Ahmed. With regard to Shop No.6 on the ground floor the respondents even did not make a mention of the same having fallen vacant and let out during the litigation going on between the parties. The respondents instead of providing plausible, satisfactory and cogent grounds for not occupying the shops which had become available for occupation did not even disclose the factum of a shop on the ground floor having become vacant which completely negated their good faith and bona fides. This Court in the case of Mst. Saira Bai v. Syed Anisur Rehman 1989 SCMR 1366 and Ghulam Haider v. Abdul Ghaffar and another 1992 SCMR 1303 categorically pronounced, that concealment by the landlord of one or more premises having fallen vacant during pendency of the ejectment proceedings would reflect adversely on the bona fide personal need and good faith of the landlord and would be detrimental to his case.”*

Similarly in the case of Shirin Bai v. Famous Art Printers (Pvt.)

Ltd. reported in 2006 SCMR 117, it has been held as under:-

*“8. "Good faith" means an honest act. Honesty is a state of mind and is capable of proof or disproof only by evidence of conduct. If requirement of landlord is found to be genuine, Rent Controller is bound to order eviction of tenant notwithstanding the fact that he had also made a demand for enhancement of rent or any other demand from the tenant. The expression "good faith" is abstract term not capable of any rigid definition. The ordinary dictionary meaning of the expression "good faith" is honesty of intention and, therefore, what is required under clause (vii) of subsection (2) of section 15 of the Ordinance is that the landlord should have a genuine need of the premises, which should certainly be more than a mere wish or desire. The expression "good faith" has been used in the Ordinance purposely meaning an act performed honestly without fraud, collusion or participation in wrong doing. The words "desire" or "need" have not been used, which would negate the two extreme views which are pleaded in cases of this nature. The expression "good faith"*

*employed in clause (vii) must be interpreted in the light of definition thereof as embodied in section 2(28) of the West Pakistan General Clauses Act, 1956, which provides that "a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not". Strictly speaking it means honesty and when a person is in occupation of another premises, generally speaking he cannot be said to be acting honestly when he asks for another premises unless the premises in his occupation is not sufficient for his need. Mere whim or fancy, wish or convenience of the landlord should not be adequate to demonstrate that the landlord requires the premises in "good faith". He must plead and prove his requirement by sufficient and satisfactory evidence inspiring confidence. It is a state of mind, which may be inferred from circumstances attending to each case and Courts ordinarily accept requirement of landlord without imputing bad faith unless strong circumstances indicate to the contrary. Right of landlord to claim possession from a tenant is regulated by Rent Controller only to the extent to examine whether the request of landlord for possession is inspired with "good faith", or is frivolous or mala fide."*

Hence, while considering facts involved the instant matter in the light of the above observation of the Hon'ble Supreme Court, the element of bona fide requirement is missing in the other two cases.

Consequently, in view of the above CP No.846 of 2009 was dismissed while CP No.847 and 975 of 2009 were allowed vide short order dated 09.02.2018 for the above reasons.

Dated:

Judge