

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-2038 of 2015

Before: Mr. Justice Muhammad Shafi Siddiqui

Ashraf Suleman	-----	Petitioner
	Versus	
Wajihuddin Chishty & another	-----	Respondents

Date of Hearing: 07.05.2018

Petitioner: Through Mr. Muhammad Ali Lakhani
Advocate

Respondent: Through Muhammad Ali Waris Lari, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: Petitioner/tenant has challenged the order of the appellate Court passed in FRA No.76/2011 disposed of vide order dated 04.11.2015.

Originally respondent No.2 filed an ejectment application under section 14 of the Sindh Rented Premises Ordinance, 1979 through his attorney Ghous Muhammad Khan son of Nazar Muhammad Khan. He has not pleaded to be a co-owner of premises but has filed this application as a landlord. The eviction application was contested by the petitioner and the parties recorded their respective evidence. The rent case was disposed of on 12.3.2011 whereby the application was dismissed on the

ground that the applicant's attorney in his cross has admitted that the shop in the name and style of "Wooden Taste" is in possession of the respondent No.2/applicant where he is running business through him as his attorney and the property tax and other taxes of the shop are being paid by the attorney of respondent NO.2/applicant on his behalf. The Rent Controller also relied upon the inspection report dated 26.3.2008 which revealed that shop No.2 on Plot No.20/3 is in possession of the applicant/respondent No.2. The inspection was carried out in presence of respondent No.2.

Aggrieved of the order, the respondent No.2 filed an appeal bearing FRA No.76/2011. During pendency of the appeal a statement dated 19.8.2011 was filed by one Mst. Shazia Chishti D/o G.M. Chishti and she declared herself as co-owner being daughter of deceased G.M. Chishti. Another statement dated 01.10.2011 was filed by the Counsel for the petitioner that the appeal is not maintainable in view of the statement of a co-owner and withdrawal of Power of Attorney. A letter was also addressed by her Counsel to Mr. Tariq Ali Mujahid Advocate and the petitioner Ashraf Suleman. She claimed to have revoked General Power of Attorney on her behalf and on behalf of her sister Mrs. Naheed Akhtar Khan. A public notice was also issued with reference to the revocation of Power of Attorney and an application for withdrawal of rent was also filed in MRC No.270/1999. On the strength of these documents, petitioner's Counsel sought dismissal of the appeal as being not maintainable. The application was perhaps dismissed and a review application dated 28.3.2012 was filed for review and recalling the order dated 06.3.2012 however main appeal was heard and decided and the order of the Rent Controller was reversed. Hence this petition.

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

The scope of Section 14 of the Sindh Rented Premises Ordinance, 1979 is quite different and distinct as far as scope of Section 15 of the Sindh Rented Premises Ordinance, 1979 is concerned. Section 14 *ibid* enabled a landlord of a building who may be a widow or a minor whose both parents are dead or a salaried employee due to retire within next six months or has retired or a person who is due to attain the age of 60 years within next six months or has attained the age of 60 years, may, by notice in writing and by instituting the proceedings under section 14 of the SRPO, 1979 sought eviction of the premises. This personal use as defined under section 14 *ibid* is different from the use or own occupation in terms of Section 15(2) (vii) of the Sindh Rented Premises Ordinance, 1979 which is dependent upon good faith and bona fide. The provision of Section 14 has not been subjected to such restriction of bona fide and good faith. All that is required is to fulfill the prerequisites of Section 14 *ibid*. If the two provisions are to be kept at par, the intent of the legislature would be frustrated.

Mr. Lakhani has relied upon the cases of Syed Israr Alam v. S.M. Hussain reported in 1983 CLC 468, Saadat Ali Baig vs. S. Bux Ellahi reported in 1991 CLC 623, Arshad Butt v. Manzoor Ahmad reported in 1992 CLC 723 which discussed the issue of personal need which is required to be established in terms of Section 14 of the SRPO, 1979 as well.

With utmost respect to the observations and the reasoning, where two provisions are kept at par, I do not agree with the reasoning that in order to avail a remedy under section 14 of the SRPO, 1979 the applicant/landlord is required to establish his personal need. In that case there would be no distinction left between section 14 and 15(2)(vii) of the SRPO, 1979 and the object of scheme and the purpose for which it was provided would be frustrated. The provisions of Section 14 is meant for a particular class of a landlord and hence the burden of establishing

bona fide requirement or even a requirement was lifted. Section 14 has its own barrier and it is not an un-probed provision. Subsection (2) of Section 14 of the SRPO provides that nothing in this subsection shall apply where the landlord has rented out a building after he has retired or attained the age of 60 years or, as the case may be, i.e. landlord has become widow or orphan. Similarly in terms of subsection (2) the landlord shall not be entitled to avail the remedy under subsection (1) if he/she is in occupation of the building owned by him in any locality.

In the case of Bakhsh Ellah vs. Qazi Wasif Ali reported in 1985 SCMR 291 a Bench of Hon'ble Supreme Court discussed the subject issue as under:-

“-----In the case of this special class of landlord the law presumes the urgent need of the landlord in the contingencies set out, on the happening of which the right thereby created is accrued. This intention is clear from subsection (2) of section 14 which has the effect of withholding the benefit created by this provision if the landlord “is in occupation of a building owned by him in any locality”. The object of Section 14, therefore, seems to be to relieve this class of landlords from the rigours of an elaborate inquiry as to the good faith of their plea for requirement of the premises for personal use and to put them in possession thereof in the shortest possible time.-“

Similar view was taken by a Bench of this Court headed by Salim Akhtar, J (as he then was) in the case of Muhammad Habib v. Muhammad Afzal Farooqui reported in 1986 CLC 905.

“-----In view of the admitted position that the appellant is the owner and in occupation of the ground floor of the building and is seeking ejectment in respect of the first floor, which is a building, the ejectment application is clearly hit by section 14(2), and the appellant is not entitled to avail the remedy under section 14(1). The appeal is, therefore, dismissed.

Insofar the contention of the petitioner's Counsel with regard to the revocation of Power of Attorney is concerned, I do not agree that on this count alone i.e. on count of renovation of the Power of Attorney an application is liable to be dismissed as being not maintainable. The landlord being co-owner can maintain an application in terms of Section 14 of the SRPO, 1979 as well. This interpretation is ascertainable from the language of Section 14 of the SRPO, 1979 itself. A widow may not be sole owner of a tenement, yet can maintain an application under section 14 ibid. Mere revocation of General Power of Attorney thus would not cast any shadow on the maintainability of the eviction application. The Hon'ble Supreme Court in the case of Abdul Ghani Vs. Abrar Hussain reported in 1999 SCMR 348 observed as under:

“-----Same view was taken by this Court in the case of Ghulam Rasul and others v. Hajan Bakhtawar and another (supra) mentioned at serial No.(v) and the case of Bashir Ahmad v. Abdul Hamid and another (supra) mentioned at Serial NO. (vi). In the above remaining Re[ports, more less same views have been taken. It seems to be a well-settled proposition of law that a co-owner can file ejectment proceedings against a tenant without impleading his other co-owners under the Rent Laws whereas a suit for possession cannot be field without impleading all the co-owners.-----”

The crucial point however is subsection (2) of Section 14 of the SRPO, 1979. In the cross examination of Ghous Muhammad Khan appeared as attorney of respondent No.2/applicant namely Wajihuddin Chishty. He admitted that he was present at the time of inspection carried out by the Nazir. He admitted that the applicant/respondent is in possession of shop which he is running as his attorney in the name and style of “Wooden Taste”. He further admitted that he is in possession of shop as being attorney of the applicant/respondent. He also admitted that the property tax and other taxes are also being paid by him on behalf of the respondent No.2/applicant. He further admitted that the

respondent No.2/applicant had given him money for his business and payment of taxes. This piece of evidence is sufficient to disentitle the respondent No.2/applicant to avail the benefit of Section 14 of the SRPO, 1979. Reliance is placed on the case of Buksh Ellahi reported in 1985 SCMR 291. The appellate Court has erred in allowing the appeal without considering aforesaid piece of evidence which is material as far as Section 14 of the Sindh Rented Premises Ordinance, 1979 is concerned.

In view of the above the petition is allowed and the ejection application is dismissed and the order of the Rent Controller is restored.

Dated: __.5.2018

Judge