

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-891, 892 and 894 of 2019
United Business Machines

C.P. No.S-886 and 887 of 2019
M/s Khamisani & Sons

C.P. No.S-893 of 2019
Muhammad Aslam Qureshi

C.P. No.S-945 of 2019
M/s Anis & Hanif

C.P. No.S-968 of 2019
Muhammad Ashraf

Versus

Ghulam Hussain Hidayatullah & others (in all petitions)

Date of Hearing: 01.04.2021, 12.04.2021 and 22.04.2021

Petitioners: Through Mr. Hyder Raza Arain Advocate along with M/s Abdul Wajid Wyne, Muhammad Ali Cheepa, Muhammad Umair and Shehreyar Advocates. .

Respondent No.1: Through Mr. Abdullah Munshi along with M/s
(In all petitions) Imdad Ali Bhatti and Shajee Siddiqui Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-This bunch of petitions involve common question of fact and law and hence are being disposed of by this common judgment.

2. The bunch of rent cases for eviction of tenants/petitioners of a building known is Dilgusha situated on I.I. Chundrigar Road, Karachi, on Commercial Plot bearing No.1/25, Sheet No.SR-13 measuring 527 sq. yards, Sarai Quarters, was filed by respondent No.1 on the ground of personal requirement along with ground of impairment of material value

or utility of premises. The Rent Controller allowed the ejectment applications on the ground of personal requirement which led to filing of First Rent Appeals however it met with the same fate and hence against concurrent findings of two Court below, these petitions have been filed. No appeal was preferred by the landlord on the issue of impairment which was declined by Rent Controller. The rent cases include:-

- 1) Rent Case No.401 of 2017 followed by FRA No.242 of 2018 out of which CP No.S-891 of 2019 (M/s United Business Machines versus Ghulam Hussain Hidayatullah & others) is filed.
- 2) Rent Case No.402 of 2017 followed by FRA No.243 of 2018 out of which CP No.S-894 of 2019 (M/s United Business Machines versus Ghulam Hussain Hidayatullah & others) is filed.
- 3) Rent Case No.403 of 2017 followed by FRA No.244 of 2018 out of which CP No.S-892 of 2019 (M/s United Business Machines versus Ghulam Hussain Hidayatullah & others) is filed.
- 4) Rent Case No.787 of 2017 followed by FRA No.239 of 2018 out of which CP No.S-893 of 2019 (Muhammad Aslam Qureshi versus Ghulam Hussain Hidayatullah & others) is filed.
- 5) Rent Case No.398 of 2017 followed by FRA No.240 of 2018 out of which CP No.S-886 of 2019 (M/s Khamisani & Sons versus Ghulam Hussain Hidayatullah & others) is filed.
- 6) Rent Case No.400 of 2017 followed by FRA No.241 of 2018 out of which CP No.S-887 of 2019 (M/s Khamisani & Sons versus Ghulam Hussain Hidayatullah & others) is filed.
- 7) Rent Case No.399 of 2017 followed by FRA No.238 of 2018 out of which CP No.S-945 of 2019 (M/s Anis & Hanif versus Ghulam Hussain Hidayatullah & others) is filed.
- 8) Rent Case No.789 of 2017 followed by FRA No.234 of 2018 out of which CP No.S-968 of 2019 (M/s Muhammad Ashraf versus Ghulam Hussain Hidayatullah & others) is filed.

3. In cases at Sr. No.1 to 3, applicant/respondent No.1 being landlord/owner of the premises filed common affidavit-in-evidence, after recording of examination-in-chief wherein numerous documents were exhibited. He was subjected to cross-examination which cross-examination is also common in these three cases. On behalf of tenants/petitioners, Muhammad Aslam Qureshi, one of the partners of petitioner/tenant filed his same/common affidavit-in-evidence who was also subjected to cross-examination.

4. In case at Sr. No.4 though opponent/petitioner Muhammad Aslam Qureshi (witness in aforesaid cases at Sr. No.1 to 3) was same however he filed his independent affidavit-in-evidence and was subjected to separate cross-examination i.e. other than the cross-examination conducted in the first three cases. The deposition/cross-examination of respondent/applicant Ghulam Hussain Hidayatullah is however identical with that of aforesaid cases at Sr. No.1 to 3.

5. In cases at Sr. No.5 and 6 the applicant/respondent's witness is common i.e. Ghulam Hussain Hidayatullah who filed separate affidavit-in-evidence and was subjected to a separate cross-examination i.e. other than those recorded in the aforesaid cases at Sr. No.1 to 3. Similarly petitioner/opponent Jawed Khamisiani filed his affidavit-in-evidence in both these cases and was also subjected to common cross-examination in both the cases.

6. In case at Sr. No.7 of the aforesaid chart, the landlord/owner filed his affidavit-in-evidence. The cross-examination of the applicant/landlord in this case is similar to those recorded in the first three cases whereas the cross-examination of opponent/petitioner namely Muhammad Hanif is separate.

7. In case at Sr. No.8 the applicant/landlord Ghulam Hussain Hidayatullah filed his separate affidavit-in-evidence and was subjected to cross-examination and so also the opponent/petitioner recorded separate evidence.

8. The gist of the affidavit-in-evidence of respondent/landlord/owner is almost common in all cases i.e. he being an owner of the subject building on account of a gift from Begum Moeena Hidayatullah seeks eviction of respective tenants/petitioners for personal bona fide need. He has stated that he requires premises for his personal bona fide use and for that of his family members. The notices of attornment were

sent by Begum Moeena Hidayatullah vide letter dated 08.10.2016 via TCS whereas the present respondent/owner/landlord also sent notices of change of ownership under section 18 of Sindh Rented Premises Ordinance, 1979 on 17.10.2016 via TCS.

9. The defence raised by the tenants through their respective written statements and/or affidavits-in-evidence/cross-examinations of the landlord is that for the purposes of seeking eviction on personal bona fide need unambiguous title of the landlord as being owner has to be established. Furthermore, entire building is being claimed for personal bona fide use of the landlord as well as of his family members, which is claimed to be a premature as one of the daughters had not reached age of majority at the time of filing of the eviction applications as well as at the time when the cross-examination of landlord/owner was conducted and was studying.

10. On these set of pleadings and evidence, I have heard the learned counsel for parties and perused material available on record.

11. The first and primary objection of petitioners' counsel is that the title of respondent/landlord in seeking eviction on the ground of personal requirement was not established as it is only a letter of attornment that was issued which does not establish the title of respondent to seek eviction on the ground of personal bona fide need.

12. In paragraph 2 of the affidavit-in-evidence of rent case No.401 of 2017 it is stated by the applicant/respondent that previous owner namely Begum Moeena Hidayatullah sent a notice of attornment dated 08.10.2016 to the tenants/petitioners. It is not only a letter of attornment but it incorporated a reason of issuing such letter as she had relinquished all rights in the subject property by gifting the same as donor to the respondent/Donee being her only son namely Ghulam Hussain Hidayatullah son of late Mumtaz Hussain Hidayatullah. In

paragraph 5 of the affidavit-in-evidence the landlord has further stated that he required premises for his personal bona fide use and for that of his family members.

13. In the cross-examination it was inquired that no instrument or registered document under which title of the property was transferred in favour of respondent was disclosed or filed along with affidavit-in-evidence. At the very outset when a letter of attornment was issued by previous owner to tenants, it does not lie in the mouth of tenants to challenge the title being transferred to her son/respondent. Letter of attornment is a notice from a landlord/owner to a tenant that the property has been sold/transferred and which directs the tenant not only to pay rent but acknowledges his/her (landlord's) rights in the property. Attornment occurs when a tenant acknowledges a new owner of the property as his/her new landlord/owner. By all actions of the tenants, the new owner's rights in the property were acknowledged.

14. There are many ways by which a property can be transferred to a beneficiary and one of those ways is by way of a gift which may be by way of a written/registered instrument or by way of an oral deposition. The transfer of title by way of an oral gift is recognized under the law including but not limited to Transfer of Property Act. Such rights, as being lawful, done on the basis of an oral gift cannot be taken away by tenants. Mohammedan Law recognizes the transfer of title by way of a gift which could be oral as one of the way of transferring the property along with all benefits. Hence it is not conceivable on the basis of material available on record that for the purposes of transferring the subject property in favor of respondent, no lawful requirements were taken into consideration. In case the tenants/petitioners were so adamant that there was no such gift executed by the donor, nothing prevented them to summon the donor i.e. Begum Moeena Hidayatullah.

This set the controversy at rest that on the facts disclosed above, the tenants had no right to object to the transfer of property in favour of new owner/landlord.

15. In the cross-examination in Rent Case No.401 of 2017 of which CP No.S-891 of 2019 was filed, the landlord/owner deposed that he was/is an electronic engineer by profession as well as an agriculturist and that he was doing general business in the office at R-15 of the same building in respect of agriculture technology. The business includes the sustainable energy which includes solar pumps instrument devised to monitor irrigation and crop condition. He claimed to have filed ten different cases against tenants of the same building in respect of their respective tenements.

16. He (landlord/respondent) stated in the cross-examination that his wife is also doing her own business of coalmine and that he has two children one namely Umer Hussain Hidayatullah aged about 21 and the daughter Mst. Baby Noor Sughra Hidayatullah aged about 17 years. His son was studying mechanical engineering and at the time of cross-examination (26.09.2017) it was stated that he is likely to be graduated in summer of 2018 and he anticipated that his son after completing his studies will join him in the business.

17. It is suggested in the cross-examination that neither names of family members nor the requirement of spouse or children is mentioned either in the eviction application or in affidavit-in-evidence. I have perused the eviction applications and found that the respondent/landlord pleaded specifically that he required subject premises for his personal bona fide use and that for his family members. Names of the family members are immaterial for the purpose of seeking eviction on the ground of personal bona fide as it is only the honest intention of landlord which is material. However, even if it was a missing it was

fulfilled during cross-examination when not only the names of family members but their academic qualifications were also disclosed. Thus, it does not remain a lacuna at all as cross-examination forms part of the evidence.

18. The objection that names of family members and their educational qualification was not disclosed in the eviction application as well as in the affidavit-in-evidence has no force. Firstly, it does not amount to suppression of material facts. Secondly, it is a cumulative effect of pleadings that include the examination-in-chief and cross-examination whereafter the Court may form a view as to whether suppression was material or it is insignificant.¹

19. Cumulatively the examination-in-chief of the respondent/ landlord/owner is almost common in all rent cases filed for the eviction of the tenants on the ground of personal bona fide need. Similarly a primary cross-examination was recorded in Rent Case No.401 of 2017 of which CP No.S-891 of 2019 is pending and is being disposed of by this judgment along with other connected petitions. The best defence of a tenants that could be seen and perused is the one recorded in Rent Case No.401 of 2017 and even if this cross-examination is applied as common in all cases, it is unlikely that a tenants/petitioners would be able to demonstrate that it was a bad and dishonest intention of the landlord/owner seeking eviction on the ground of personal bona fide need.

20. Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness. From the statement of landlord/owner for the purpose of eviction of a tenant on the ground of personal bona fide need only an honest intention is to be deduced and there is no other formula

¹ PLD 1988 Karachi 364 Asif v. Mst. Raisa Khatoon Jafri

to adjudge good and bad faith, for the purpose of eviction on the aforesaid count. If the Court on the scrutiny of the evidence comes to the conclusion that it was an honest intention then it would be immaterial whether he remained successful in achieving the object or not that is whether his son or daughter would join him in the business after completing their education. This requirement would be immaterial in the sense that the intention of the father in evicting the tenant was an honest one.² Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as “honesty of intention”.

21. The primary requirement and condition precedent for invoking provision of Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 claiming relief on the ground of personal bona fide need of landlord in good faith is that the landlord should be honest in his approach and sincerity of his purpose should be manifested by irreversible evidence and surrounding circumstances.³

22. The requirement of premises in good faith is not capable of being confined to precise, identical or invariable definition nor any hard and fast rule can be propounded as to encompass all possible eventualities which could arise due to particular facts and circumstances of the case.⁴

23. Sufficiency of accommodation either for a commercial/industrial activity or for residential purpose is to be adjudged best by the landlord himself and it may vary not only on case to case basis but also on the basis of nature of business that one intends to establish an honest idea about future growth of the business and its prospects. Someone may have an idea of establishing humongous business set up and he may or may not be successful in achieving his object and plan but what is

² 1998 SCMR 2119 S.M. Nooruddin v. SAGA Printers

³ PLD 1993 Karachi 491 Nawadat Khan v. Mst. Surraya

⁴ PLD 1996 Karachi 340 Muhammad Amin v. Mst. Nafeesa Khatoon

important, as a test, is the honesty of intention and there is nothing on record in the shape of cross-examination of the landlord/owner to demonstrate that it was not an honest and genuine intention for extending and enhancing business for himself and for his family members.

24. In view of above facts and circumstances, these petitions in view of concurrent findings of two Courts below carry no weight and are accordingly dismissed along with pending applications. However, since petitioners are conducting business in their respective demised premises since last many years and the premises are of commercial nature, I allow the petitioners to retain possession of their respective premises for another period of six months subject to payment of monthly rent in advance on or before 10th of each calendar month and all the conservancy/utilities/maintenance charges etc. as and when become due failing whereof writ of possession shall be issued forthwith without fail with permission to break open the lock with police aid.

Dated:

Judge