

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

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**

C.P. No. S-576 of 2011

Mohammad Nadeem & others

Versus

V-Additional District Judge & others

Date of Hearing: 30.10.2017

Petitioners: Through Mr. Zahid Iqbal Akhtar Advocate

Respondent No.3: Through Mr. Abdul Wajid Wyne Advocate

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

Muhammad Shafi Siddiqui, J.- The ejectment application was allowed on the ground of impairing the value and utility of the premises and personal bona fide need in terms of order of Rent Controller dated 01.10.2010. Aggrieved of the decision of the Rent Controller, respondent No.3 filed an appeal bearing F.R.A. No.393 of 2010 which was allowed vide impugned judgment dated 18.03.2011 and the ejectment was declined on both the grounds.

I have heard the learned counsel and perused the material available on record and have also gone through the evidence.

As far as question of impairing value and utility of the premises is concerned, learned counsel for petitioner has relied upon photographs of the subject Shop No.5 and 6. The photograph at pages No.83, 85 and 87 shows that from Shop No.6 an entrance had been carved out at the back side of the tenement. However, the premises i.e. tenements No.5 and 6 and the rear portion was never inspected to ascertain as to whether it has caused any impairment in its value and utility. Respondent No.3 has of course denied to have carved out any room from their premises and they never claimed to have occupied the adjacent Shop No.6. The

bifurcating wall between Shops No.5 and 6 admittedly is in existence. The burden of this issue was heavily upon the petitioner who has not deposed in evidence anything to that effect to the satisfaction of the appellate Court. The inspection of the subject premises has also not been carried out. The ejectment application is also absolutely silent as to whether such alteration and addition caused irreparable loss to the demised premises. There is no evidence as to whether such alteration and addition, if at all carried out by the respondent/tenant of Shop No.5, have impaired the material value or utility of the subject premises. This alteration, though was vehemently denied by the respondent who claimed to be occupant and tenant of Shop No.5 only, the entrance/removal of a portion of wall was shown from Shop No.6 towards its rear side. Hence, the petitioner failed to prove any addition/alteration at Shop No.5 impairing the value and utility of the demised premises.

Insofar as personal requirement is concerned, the applicant/petitioner Muhammad Nadeem and Abdul Sattar Akhtar, attorney of applicants, have examined themselves and they were subjected to cross-examination. It is the case of the respondent that the application was not made bonafidely as applicants/petitioners have concealed the fact that they were in possession of another shop bearing Shop No.2. Though it is claimed that the prerogative of the petitioners/landlords as to the suitability of the premises is with landlord, yet in case they are already in possession of any other shop, adjacent to the shop in question, possession of which is being claimed, the suitability or non-suitability of the shops already in possession should have been explained but since it was missing and concealed from the Court, therefore, the question of prerogative would come later than of bonafide need. Counsel for respondent has relied upon the judgment of *Allies Book Corporation v. Sultan Ahmad* reported in 2006 SCMR 152, *P.K. Irani & Company v.*

Begum Feroze reported in 1996 SCMR 1178 and Mst. Shirin Bai v. Famous Art Printers reported in 2006 SCMR 117, which has laid down the test of good faith.

In order to thrash out the bona fide need of the petitioners it is necessary that the contents of their affidavit-in-evidence and the cross-examination be considered. In Paragraph 9 of the affidavit-in-evidence the witness Abdul Sattar Akhtar/attorney of applicants/petitioners stated that the applicant No.1, the co-owner, is jobless and required the tenement for his own use in good faith to establish his own business and that the applicant/petitioner No.1 Nadeem has no other premises in possession. This applicant/attorney who is also the father filed his affidavit-in-evidence and was cross examined. He stated that Shop No.2 was vacated and was in his possession. He further stated that it is incorrect that he bifurcated the shops. His son stated to be using the same as godown. It was neither asked nor stated as to which son was occupying the godown. He has also stated that Shop No.2 on Plot No.NP 13/83, Shah Muhammad Street, Judia Bazar from where Akhtar & Sons operates, was “his” business concern. In the cross-examination applicant/petitioner No.1 Muhammad Nadeem, for whom the premises was required, stated that he is a co-owner and has also stated that it is incorrect to suggest that Shop No.2 is vacant in the building. It may have been got vacated but it is not shown as to when it was vacated.

Hence, the bona fide of the applicants/petitioners in view of above evidence cannot be challenged on the ground that Shop No.2 was vacated at some point of time and the premises is in possession of the attorney of the applicants. The father of the applicants, in fact is doing his business under the name and style of Akhtar & Sons.

The judgments, as relied upon by the respondent’s counsel are not applicable to the facts and circumstances of the instant case as the

respondent has failed to establish that it was lying vacant before filing of the ejectment application.

As far as dishonesty or non-existence of good-faith is concerned, the burden was upon respondent to show that good faith is missing or that the tenant vacated Shop No.2 prior to filing of the ejectment application and hence it was required to be disclosed as to non-suitability of Shop No.2. It is clearly stated in the cross-examination that the attorney of applicants, who is also their father, is conducting business in the name and style of Akhtar & Sons. The respondent has not cross examined about the genuine need of attorney's son Muhammad Nadeem/petitioner No.1 as he has also denied that Shop No.2 is vacant in the building. It is the cumulative effect of evidence of the parties, which is to be looked into.

In view of above facts and circumstances, the petition is allowed to the extent of personal requirement and the ejectment application is allowed accordingly however the finding of the appellate Court is maintained as to the ground of impairing the value and utility of the demised premises. R & P be sent back to respective Courts.

Above are the reasons of short order dated 31.10.2017.

Dated:

**Judge**