

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

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

C.P. No. S-418 of 2016

M. Pervaiz Hayat  
Versus  
The VII-Additional District Judge & others

Date of Hearing: 21.02.2018

Petitioner: Petitioner M. Pervaiz Hayat in person

Respondents No.2 to 5: Through Mr. Iftikhar Javaid Qazi Advocate

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

**Muhammad Shafi Siddiqui, J.**-This petition involves eviction of tenant in terms of Section 14 of Sindh Rented Premises Ordinance, 1979. The petitioner filed ejectment application under section 14 of Sindh Rented Premises Ordinance, 1979 in respect of two shops i.e. Shops No.1 and 2 at Ground Floor of the premises situated at Plot No.797-C, Block-2, PECHS, Tariq Road, Karachi. Respondents No.2 to 6 claimed to be the tenant of two respective shops. The Rent Controller allowed the ejectment application in respect of both the shops whereas in appeal the order was modified to the extent of one shop. Both the tenant and landlords challenged the impugned order of the appellate Court, separately. The petition of the tenants/respondents was dismissed earlier vide judgment date 15.03.2016 maintaining the order of the appellate Court whereas instant petition of the landlord filed four days before earlier petition was heard for disposal on 15.03.2016 and then decided on 15.04.2016.

The petitioner appearing in person claimed that since the tenants of the two shops were common, therefore, for all intent and purposes only one tenancy is to be considered and hence since the fact that it was

only one tenancy it is distinguishable from other judgments/case law which involve different tenants with different premises and in all those cases the landlord could only avail benefit of invoking the provisions of Section 14 Sindh Rented Premises Ordinance, 1979 for acquiring only one premises/building.

The petitioner has taken me to the definitions of building and premises as defined under section 2(a) and 2(h) of Sindh Rented Premises Ordinance, 1979 and submitted that it is the building, which is to be taken into consideration rather than the premises. He argued that since instead of premises, as used in Section 15, the word building is inserted in Section 14 of the Sindh Rented Premises Ordinance, 1979, and hence it is distinguishable and an ejectment application can be maintained for entire building. The petitioner thus submits that it was not justified to withhold the eviction of one shop and allowing the other shop in terms of section 14 of Sindh Rented Premises Ordinance, 1979 as they (both the shops) are but situated in one building.

On the other hand learned counsel for respondents submitted that the very order impugned in this petition was maintained in other petition filed by the tenants/respondents and as such it does not call for any interference now.

Learned counsel further argued that in terms of section 14 the landlord could avail benefit of only one premises/part of the building as any other interpretation would make subsection 2 and 3 of Section 14 redundant. If the advantage of Section 14 could be stretch down to more than one premises or more than one portion of the building it may be misused. In support of his contentions, learned counsel for the respondents has relied upon the cases of Muhammad Ali Ahmad Khan v. Taufiq Engineering Works (1991 CLC 1051), Sabir Ali v. Zahoor Ahmad

Khan (1988 MLD 31), Zamir Ahmad Qidwai v. Ismail Bawa (1986 CLC 910), Partab Rai v. Kabir Khan (1986 MLD 2743), Muhammad Yaqeenuddin v. S. Akhtar Hussain Zaidi (1986 MLD 2771), Abdul Qayyum v. Jamilur Rehman Qureshi (1995 SCMR 212), Abdul Razzak v. Muhammad Aslam (1995 SCMR 201) and Razia Khatoon v. Roshan H. Nanji (1991 SCMR 840).

I have heard the petitioner appearing in person as well as learned counsel for respondents and have perused the material available on record.

The points that require consideration are as under:-

- A) Whether the landlord in terms of Section 14 of Sindh Rented Premises Ordinance, 1979 can avail benefit of seeking possession of more than one premises and/or more than one portion of the building by evicting the tenants or common tenant of different premises or portion of buildings?
- B) Whether allowing the landlord to avail the benefit by evicting the tenants from more than one portion of the building even though the tenant is common would violate subsection 2 of Section 14 of Sindh Rented Premises Ordinance, 1979?

The site inspection was carried out by the Rent Controller and the Nazir report dated 29.11.2014 provides a geometric view of the ground floor. There are two shops i.e. Shop No.1 and 2 bifurcated by a staircase. Shop No.1 is used for residence of laborers and Shop No.2 is used as godown by tenant, whereas the first and second floors are in possession of the landlord/respondents. They (shops) may be under tenancy of one tenant but are physically distinct and separate. The site plan, as available on record, also shows that the construction of the two portions of the building is bifurcated by a common staircase hence are

independent in nature having separate and independent entrance. One has no physical access to the other.

Section 2(a) of the Sindh Rented Premises Ordinance, 1979 provides the meaning of a building which means any building or part thereof, together with all fittings, and fixtures therein, if any, and includes any garden, garage, outhouse and open space attached or appurtenant thereto. Likewise section 2(h) describes premises as a building or land let out on rent but does not include a hotel. Thus even a portion of the building is defined as a building as being independent. The two portions/shops are being maintained and used, comes independently within the definition of a building, as being independent portion of the building. The word 'premises' may not have been used under section 14 of Sindh Rented Premises Ordinance, 1979 but the word building includes a portion or part of the building which would be sufficient for treating a portion as an independent tenancy.

In the case of Muhammad Ali Ahmad Khan (Supra) it has been held as under:-

*“The main question for consideration is whether a landlord within the purview of section 14 is entitled to file ejectment application in respect of one or more than one premises at the same time. In my view in cases which fall under section 14 the requirement and need should be restricted to one premises. If it is extended to more than one premises then it is likely to create serious complications and dishonest claims may be pressed taking benefit of the summary procedure of section 14. In the present case it is an admitted position that respondent is a tenant in respect of three interconnected shops. This is what has been stated in the application. Therefore there are three shops which have been let out to one person. Mr. Sadiq contended that there is only one tenancy. It seems to be one tenancy because three shops have been rented to one person. So far premises are concerned they are three, and tenancy is always created in respect of building and premises. Therefore, in my view the order of the*

*Controller is justified in granting ejectment in respect of one shop.*

*Mr. Sadiq contended that the option should be left to the appellant. In such circumstances if the option is left to the landlord it, may be disastrous to the tenant and may ruin his entire business. Therefore, considering the facts, convenience and the nature of business, the Controller was justified in holding that the option was left to the tenant-respondents. The appellant case is covered by section 14 and his claim for eviction in respect of one shop is legal and proper. Both the appeals are dismissed. The tenant shall vacate the premises within 60 days from today. Mr. Qureshi has stated that the tenants namely Taufiq Engineering Works shall vacate the shop which is adjacent to Dr. Firdous's clinic. In case they do not vacate within a period of 60 days writ of ejectment shall be issued without notice.”*

Similarly in the case of Sabir Ali (Supra) while dealing with the issue has been held that:

*“It is well-settled that under section 14 a landlord is entitled to only one premises because under subsection (2) a landlord is not entitled to the benefit of section 14(1) if he is in occupation of any building owned by him in any locality. On this aspect of the case authoritative and instructive discussion can be found in Bakhsh Ali Elahi v. Qazi Wasif Ali 1985 SCMR 29 t. In the present case as the respondent has exercised his option in respect of Shop No.1 which is in possession of Sabir Ali in view of the judgment referred above ejectment will be granted so far this appellant is concerned and further that ejectment in respect of Shop No. 2 occupied by Iqbal Ali shall not be granted.”*

Insofar as the case of Abdul Qayyum (Supra) is concerned the headnote suggest that it was case under section 14 of Sindh Rented Premises Ordinance, 1979 however the judgment reveals that it was an application under section 14(4)(b)(i) of Cantonments Rent Restriction Act, 1963 and further that the ejectment order was passed by Addl. Controller of Rents, Clifton Cantonment. Sindh Rented Premises Ordinance, 1979 does not have any provision as 14(4)(b)(i) and it can only be an application under provisions of 1963 Act whereas the headnote shows it otherwise.

Similarly in case of Abdul Razzak (Supra) the headnote is not in consonance with the judgment. The headnote said it to be an application under section 14 Sindh Rented Premises Ordinance, 1979 and further elaborate it as a personal bona fide need of landlord whereas the judgment shows it otherwise to be an eviction application on the ground of default and personal bona fide use of landlord. The ground of default was not established whereas the application was granted on the ground of personal use. Such grounds are not part and parcel of section 14 Sindh Rented Premises Ordinance, 1979 and hence the area of two shops was considered for considering the bona fide requirement of landlord under section 15 of Sindh Rented Premises Ordinance, 1979.

Case of Razia Khatoon (Supra) is distinguishable on both the counts as it was a case involving two tenancies of different characteristics i.e. residential and commercial.

In case the two tenements of same nature are allowed to be evicted under section 14 of Sindh Rented Premises Ordinance, 1979 it would be in defiance of a restriction in terms of subsection 2 of Section 14 of Sindh Rented Premises Ordinance, 1979 that he (landlord) is not in occupation of a building (or independent portion) owned by him in any locality. Once he (landlord) got possession of an independent portion of the building or a premises then he automatically ceased to be entitled under the said provision for a second shop. He may avail benefit under other provisions of Sindh Rented Premises Ordinance, 1979 for eviction of tenant but at least for the purposes of Section 14 Sindh Rented Premises Ordinance, 1979 his remedy ceases when one portion of the building or an independent premises got vacated.

Insofar as objection of learned counsel for respondents that an independent petition of the tenant impugning the same order was

dismissed, therefore, no interference is required, is concerned, I am not in agreement with such contention. The impugned order in the earlier petition was seen from the angle as to whether the eviction of even one shop was lawful or not as agreed by respondent in that case, whereas in the instant petition the question involved is whether in terms of Section 14 of Sindh Rented Premises Ordinance, 1979 the landlord could avail benefit by evicting the tenant of two independent premises or portions of building even if the tenant is common.

In view of the above no interference is required in the order impugned here and resultantly the petition is dismissed along with pending applications.

Dated:

**Judge**