

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**First Rent Appeal No. 38 of 2017**

Appellant : Naseeruddin Jatoi,  
through Mr. Muhammad Irfan Advocate.

Respondent No.1 : Miss Reham Asad,  
through Mr. Muhammad Omer Soomro  
Advocate a/w Mr. Shahbakht Pirzada Advocate.

Dates of hearing : 15.03.2022 and 17.03.2022.

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

**NADEEM AKHTAR, J.** – Rent Case No. 68 of 2015 was filed by respondent No.1 against the appellant before the Rent Controller, Clifton Cantonment, Karachi, under Section 17 of the Cantonment Rent Restriction Act, 1963, (**‘the Act’**) seeking his eviction from Apartment No. K-202, Second Floor, Creek Vista Apartments, Phase VIII, D.H.A., Karachi, (**‘demised premises’**) on the grounds of personal need and also that he had failed to increase the monthly rent in terms of the rent agreement. Vide order dated 14.09.2017, the rent case was allowed by the Rent Controller only on the ground of personal need by directing the appellant to handover the vacant possession of the demised premises to respondent No.1 within thirty (30) days. The aforesaid order of eviction has been impugned by the appellant through this First Rent Appeal under Section 24 of the Act.

2. It was the case of respondent No.1 before the Rent Controller that she is the landlady of the demised premises ; vide agreement dated 25.07.2009 (**‘the agreement’**), the demised premises were let out by her to the appellant for a period of eleven (11) months at a monthly rent of Rs.31,500.00 excluding utility and other charges ; as per clause 11 of the agreement, either party could serve a written notice of one month to the other party in case the demised premises was to be or required to be vacated ; as per clause 14 of the agreement, the monthly rent was to be increased at the time of renewal of the agreement ; the appellant paid an amount of Rs.157,500.00 at the time of the agreement towards advance rent for five months and an amount of Rs.63,000.00 as security deposit ; after expiration of the period of eleven (11) months mentioned in the agreement, respondent No.1 repeatedly requested the appellant to renew the agreement, but he failed to respond nor did he increase the monthly rent in terms of clause 14 of

the agreement ; vide legal notice dated 02.07.2012, she called upon the appellant to pay the increased rent in terms of clause 14 *ibid*, but he refused to receive the said legal notice ; and, she informed the appellant that the demised premises were required by her for herself as well as for her sister, but he failed to vacate the same.

3. In his written statement, the appellant denied that he was liable to increase the monthly rent in terms of clause 14 of the agreement by asserting that as the agreement was never renewed there was no question of such increase. It was alleged by him that respondent No.1 herself was responsible for not renewing the agreement. It was stated by him that after expiration of the rent agreement, his status was that of a statutory tenant. It was further stated by him that the monthly rent was being tendered by him regularly through money order which was being received by respondent No.1. The claim of personal need of respondent No.1 was denied by him by alleging that the same was *malafide*. It was claimed by him that the sister of respondent No.1 had her own apartment in the same building, which was sold by her, therefore, the demised premises could not be sought for her.

4. In view of the divergent pleadings of the parties, five points for determination / issues were settled by the Rent Controller including those of the personal need urged by respondent No.1 and her claim with regard to increase in the monthly rent in terms of the agreement. Thereafter, the parties led their respective evidence. Respondent No.1 / applicant examined her attorney / mother, and the appellant / opponent examined himself. Both the sides were cross-examined by the other side. After evaluating the pleadings and evidence of the parties, it was held by the Rent Controller that as the agreement was not renewed, the appellant was not legally bound to increase the monthly rent by 10% ; whereas the ground of personal need urged by respondent No.1 was allowed by directing the appellant to vacate the demised premises within thirty (30) days.

5. It may be noted that the points for determination regarding the claim of respondent No.1 seeking 10% increase in the monthly rent in pursuance of the rent agreement, viz. point Nos. 1 and 4, were decided against respondent No.1 against which she did not prefer any appeal. Therefore, the findings of the learned Rent Controller on such points attained finality long ago. In any event, as the eviction of the appellant was ordered on the ground of personal need and not on the above-mentioned ground, the said ground is not the subject matter of the present appeal. In this view of the matter, the pleadings and evidence of the parties on the point of

increase in the monthly rent and the findings recorded by the learned Rent Controller in relation thereto are not being discussed in this judgment.

6. It was contended by learned counsel for the appellant that the sister of respondent No.1 used to own an apartment in the same building where the demised premises are situated which apartment was sold by her ; therefore, the claim of personal use urged by respondent No.1 for her said sister was malafide and not genuine. It was further contended by him that respondent No.1 did not come in the witness box to prove her alleged personal need, and instead she examined her attorney whose evidence was liable to be rejected. It was urged by him that the above important aspects were not appreciated by the learned Rent Controller while passing the impugned order. It was further urged by him that the impugned order, being not sustainable in law or on facts, is liable to be set aside. In support of his submissions, the learned counsel placed reliance on Mrs. Noor Jehan Bi V/S Muhammad Yousaf (2002 SCMR 1933), Dr. Abdul Hafeez V/S Province of Punjab through the Secretary Education, Lahore and others (PLD 1991 S.C. 165), Nisar Ahmad Khan V/S Noor Muhammad Khan and 6 others (1990 SCMR 544), Dr. A. R. Khan V/S Muhammad Ishaque (1972 SCMR 437), Mrs. Maryam A. Munif V/S Mrs. Ghazal Bukhari through Attorney (2015 CLC Sindh 1786), Mst. Sardar Jehan Begum V/S Dr. Muhammad Javaid and 2 others (2013 YLR Sindh 2275), Mehboob Alam V/S Miss Tehseen Shafqat Khan and others (PLD 2001 Karachi 238), Raja Shahbaz Khan V/S Muhammad Fazal Kiani (1988 CLC 811), Mrs. Nadira Farooqui V/S District & Sessions Judge, Karachi South and another (1987 MLD Karachi 616), Muhammad Ilyas Alvi V/S Zafar Pasha (1982 CLC Karachi 1324) and Ghulam Mohy-ud-din V/S Muhammad Ishaq and 3 other (1980 CLC Lahore 241).

7. Conversely, it was contended by learned counsel for respondent No.1 that the said respondent had successfully discharged her burden in proving that her personal need was genuine and bonafide and the evidence led by her could not be dislodged in her cross-examination by the appellant. Regarding the contention of the appellant that the evidence of respondent No.1 was liable to be rejected on the ground that she did not examine herself and instead examined her attorney, it was submitted by him that the evidence of respondent No.1 could not be ignored or rejected merely on such ground in view of the law laid down by the Hon'ble Supreme Court in Mst. Jehan Ara through Attorney V/S Raja Zafarullah Janjua (PLD 2003 S.C. 277) and Syed Abdul Rauf V/S Abdul Sattar (1998 SCMR 2525).

8. I have heard the learned counsel for the parties and have examined the material available on record, including the record and proceedings of the case received from the Court of the learned Rent Controller, as well as the law cited at the bar.

9. I shall first deal with the contention of the learned counsel for the appellant that the evidence produced on behalf of respondent No.1 was liable to be rejected as she did not appear in the witness box herself and instead examined her attorney. In this context, it would be advantageous to discuss the following two authorities cited and relied upon by the learned counsel for respondent No.1.

A. In Syed Abdul Rauf (supra), ejection was sought on the grounds of personal bonafide use and default in payment of the monthly rent. The eviction application was allowed and the appeal filed by the tenant was dismissed. Before the Hon'ble Supreme Court, it was urged by the tenant that the landlord had failed to establish his bonafide personal use because he did not appear in the witness box and got the statement recorded through his attorney. The appeal of the tenant was dismissed by the Hon'ble Supreme Court by holding that it cannot be held that the non-appearance of the landlord and his representation in Court through attorney was fatal to his case. In paragraphs 6, 7 and 9 of this authority, it was held as under :

*“6. The issue on the question of default in payment of rent by the appellant was decided against the respondent, therefore, we need not dilate upon it and the only question for consideration in this appeal is that fact of non-appearance of the respondent in the witness-box and having got himself examined through an attorney. We have considered the above question in the light of the case-law cited by the learned counsel for the appellant. We are of the view that every case is to be decided keeping in view its peculiar facts and circumstances and no hard and fast rule can be laid down. There can be legitimate causes and reasons for a suitor to a cause for non-appearance in Court. Mental or physical disability as well as the case of a female would stand on a different footing. The Courts are meant for the citizens from where they seek justice and, therefore, to put a clog or non-suit them on account of non-appearance even in genuine cases without any valid and cogent reasons would be a dangerous proposition for administering justice with even hands between the parties. In our opinion, it will not be in the interest of justice to lay down that in every case where a party does not appear or arranges his appearance through attorney, an adverse inference should be drawn against him. Such a rule if laid down, would result into great hardship in cases where the parties, for instance, reside abroad, who will have to sue and defend themselves through their attorney.”*

7. Adverting to the circumstances of this case, we have gone through the power of attorney executed by the respondent landlord in favour of his brother Abdul Manan and the statement recorded by him on behalf of the respondent. He deposed about the bona fide personal use of the respondent. He was cross-examined at length, but no question was put by the appellant with regard to any circumstance on account of which the power of attorney had been executed. Nothing was elicited as to the exact nature of the domestic problems of affairs which precluded the respondent from entering the witness-box. The respondent landlord constituted his real brother Abdul Manan as his attorney who is well versed with the circumstances of the family and is not a stranger and in our view he satisfactorily deposed about the bona fide personal use of his brother.” (emphasis added)

B. In Mst. Jehan Ara (supra) also the eviction of the tenant was sought on the grounds of personal need and default in payment of the monthly rent. The eviction application was allowed on the ground of personal bonafide need. However, the appeal filed by the tenant was allowed by this Court by dismissing the eviction application. Thereafter, the landlord filed a civil appeal before the Hon'ble Supreme Court which was allowed by restoring the order of eviction passed by the Rent Controller. In paragraph 9 of this report, the Hon'ble Supreme Court was pleased to hold as under :

“9. We are afraid the appellant cannot be non-suited only on the ground of non-examining herself in support of her personal bona fide need and that her representation through attorney was fatal to her case. The record reveals that the appellant has been able to establish her case by producing sufficient evidence of her attorney, namely Altaf Hussain and one Dr. Tehsin-ur-Rehman in support of her contention. Not even a single question was put to the attorney of the appellant to rebut the claim of her personal bona fide need as such the judgment of the learned High Court is not sustainable and it has traveled beyond the scope of the pleadings of the parties. Above mentioned witnesses, namely, Altaf Hussain and Dr. Tehsin-ur-Rehman had categorically stated in their evidence that the appellant needed the premises for her bona fide personal need and she demanded the premises many a time for vacating the premises in question but the respondent refused to vacate the same. This version was never controverted by the respondent in his evidence as such the finding recorded by the High Court is not sustainable in law and is thus set aside whereas the judgment of the Rent Controller being based on sufficient reasoning is maintained.”  
(emphasis added)

10. In the instant case, it was not disputed that the eviction application was filed, and the evidence was produced by respondent No.1 through her duly constituted attorney who was her real mother. The authority of the attorney to file the eviction application and or to depose on behalf of respondent No.1 was not disputed by the appellant, which, in any event, could not be questioned by him.

The attorney, being the real mother of respondent No.1 and not a stranger, was well-versed with the circumstances relating to subject tenancy and the need of her daughters. In my view the attorney satisfactorily deposed about the bonafide personal need of her daughters viz. respondents No.1 and her sister. In view of the law laid down by the Hon'ble Supreme Court as discussed above, the evidence produced by respondent No.1 through her attorney was admissible and was not liable to be rejected or discarded. Accordingly, the contention of the appellant in this behalf, being not sustainable in law, cannot be accepted and is hereby rejected.

11. A perusal of the eviction application filed by respondent No.1 shows that she had specifically pleaded in paragraphs 5 and 7 thereof that the demised premises were required by her for her personal use as well as for the personal use of her sister who was unmarried at the relevant time. Her said stance was specifically reiterated by her witness in her evidence and the witness categorically denied the suggestion made to her by the appellant that the need of respondent No.1 was malafide. It is significant to note that no specific question was put by the appellant to the respondent No.1's witness regarding the personal need specifically pleaded by respondent No.1 for self and for her unmarried sister. Only a vague and general suggestion was made to the witness that the personal need urged by respondent No.1 was malafide. The tenor of the cross-examination of the respondent No.1's witness reflects that the entire emphasis of the appellant was on the issue of increase in the monthly rent claimed by respondent No.1. The evidence on record, as noted above, clearly indicates that the claim of respondent No.1 regarding her personal need and that of her unmarried sister could not be dislodged by the appellant during the cross-examination of her witness. Moreover, the appellant could not produce anything convincing in his evidence to rebut the respondent No.1's claim of bonafide personal need. In my view, respondent No.1 had successfully discharged her burden in proving her personal need whereafter the burden shifted upon the appellant, but he failed to discharge the same.

12. It is well-settled that if the statement made on oath by the landlord is consistent with the averments made by him in his ejection application and neither is his statement shaken nor is anything brought in evidence to contradict his statement, it would be sufficient for the grant of his ejection application ; all that the landlord has to show is that he required the demised premises of a particular tenant for his personal use and the choice was his as to the suitability of the demised premises which he required for his personal use, and that his need is reasonable and bonafide ; the landlord

has the complete option to choose from any one of the several tenements occupied by the tenants in order to avail of the ground of personal need ; and, the landlord himself would determine in what way, subject to law, he wants to utilize his premises after eviction of the tenant. In the instant case, respondent No.1 had successfully discharged her burden in proving that her personal need was reasonable, genuine and bonafide, and the appellant had failed in dislodging her claim or in proving her wrong.

13. I shall now discuss the following cases cited and relied upon by the learned counsel for the appellant. In Mrs. Noor Jehan Bi, it was held by the Hon'ble Supreme Court that under Section 17(4)(b)(i) of the Act the landlord of a commercial building can file an eviction application on the ground of his personal use and not for the use of any member of his family including spouse etc. Admittedly, the demised premises is a residential apartment and not a commercial building. In Dr. Abdul Hafeez, the Hon'ble Supreme Court was pleased to hold that the first appeal preferred under Section 24(3) of the Act cannot be disposed of without summoning and examining the record of the case. The record and proceedings in the instant case were called by this Court vide order dated 15.03.2019 from the Court of the learned Rent Controller, which were received pursuant to the said order and are not only available on record but have also been examined by me as noted in paragraph 8 of this judgment. The above-mentioned cases cannot be applied to the instant case as the facts and circumstances thereof are clearly distinguishable from those of the present case. The case of Nisar Ahmad Khan is actually against the appellant as it was held therein by the Hon'ble Supreme Court that the demand of increased rent by the landlord would not make his subsequent demand of eviction on the ground of personal requirement malafide. In Dr. A. R. Khan, the principle that the landlord has to prove his bonafide requirement was laid down ; in Maryam A. Munif, it was held by a leaned Single Judge of this Court that the landlady could not prove that her claim of personal use was bonafide as she had made contradictory statements ; and in Raja Shahbaz Khan, Mrs. Nadira Farooqui and Muhammad Ilyas Alvi, the landlord could not prove that his claim of personal need was bonafide. Whereas, in the instant case I have already held that respondent No.1 had successfully discharged her burden in proving her personal need whereafter the burden shifted upon the appellant, but he failed to discharge the same. The cases of Mst. Sardar Jehan Begum, Mehboob Alam and Ghulam Mohy-ud-din are *per incuriam*, it is said so with utmost respect, in view of the law laid down by the Hon'ble Supreme Court in Syed Abdul Rauf and Mst. Jehan Ara. In any event, these cases, having been authored by learned Single Judges of this Court and the learned Lahore High

Court, are not binding on me. In the last mentioned case of Ghulam Mohy-ud-din, the landlord did not submit to cross-examination ; whereas in the instant case the respondent No.1's witness was cross-examined. Thus, the cases cited and relied upon on behalf of the appellant are of no help to him.

14. After thoroughly examining the record and all the aspects of the case as discussed above, I am of the firm view that the findings of the learned Rent Controller are balanced, well-reasoned and in accord with the evidence on record and the law laid down by the Hon'ble Supreme Court. Therefore, the impugned order does not require any interference by this Court.

15. Foregoing are the reasons of the short order announced by me on 17.03.2022 whereby this appeal was dismissed with no order as to costs.

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