

ORDER SHEET

IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.

C.P. No. S—638 of 2017.

DATE	ORDERS WITH SIGNATURE OF JUDGE
OF HEARING. 04.10.2017.	

FOR ORDERS ON OFFICE OBJECTIONS.
FOR KATCHA PESHI.
FOR HEARING OF M.A. 1360/2017.

Mr. Khait Kumar Khatri, Advocate for the petitioner.
Mr. Jhamat Jethanand, Advocate for the respondents.

MUHAMMAD SHAFI SIDDIQUI, J.- This petition involves the tenancy issues of petitioner. He was re-inducted in the premises in terms of an agreement dated 1st June 2006. The respondent preferred an application under section 15 of the Sindh Rented Premises Ordinance, 1979 bearing Rent Application No.02 of 2013, on the ground of default and personal requirement. Respondents have pleaded that the petitioner has defaulted in the payment of rent at an enhanced rate of Rs.1400/- per month. In para-8 of the application the respondent/landlord has pleaded that w.e.f. May 2008, the petitioner/tenant is required to enhance the rate of rent as agreed in the agreement and the petitioner/tenant has defaulted, firstly; in the payment of rent at an enhanced rate and, secondly; that the tender of rent in Court was without refusal of the respondent and that too has rendered the petitioner as defaulter. The other ground agitated by the respondent is in relation to the personal requirement of the respondent as they required the subject shop for “Darul Uloom” for the sale of religious books as.

The written statement was filed by the petitioner and both the grounds were denied. In relation to default it is claimed that since he is a statutory tenant therefore, the clause of enhancement at the rate of 15% would not apply and would also be against the standard statutory terms. He further submits that the “Darul Uloom” is already running a “Kutub

Khana” and as such this shop is not suitable for their need and requirement.

The Rent Controller has allowed the application on both the counts and so also the appellate court. The primary questions available for consideration of this Court is as to whether (i) the terms of enhancement of rent at the rate of 15% would continue to apply despite the tenancy agreement being an unregistered one and (ii) as to whether the respondent No.2 require the premises for opening the shop for the sale of religious books.

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

Admittedly, at one point of time this subject property/premises was disposed of by the respondent. Although the cross examination of respondent’s attorney reveals that the subject property was disposed of by previous attorney of the respondent No.1, however, the period is not mentioned nor the respondent filed any sale deed. It is also not available on record as to when the subject sale deed was allegedly cancelled and the property reverted back to “Darul Uloom Hussainia” Since the cut off dates are not available in the evidence nor the subject sale deed is available, therefore, it will be difficult to ascertain about the non continuity of the terms of the present rent agreement as it is not ascertainable as to whether it was before the subject rent agreement or thereafter as he was also enjoying possession before 2006. In terms of the Judgment reported in P.L.D. 1988 S.C. 190 the terms of the agreement which are not contrary to the statutory or standard term of Sindh Rented Premises Ordinance, 1979 would continue to operate. However, in the discontinuation of such relationship by virtue of sale of the property, those terms which may not be in conflict with the statutory terms of the Rent Ordinance 1979, would also come to an end. However there is no sufficient evidence to show that such continuity of term of the last agreement of 2006 had come to an end hence the contention of the respondent’s counsel that the rent is required

to be enhanced in terms of the agreement would bind the parties including the petitioner. The Rent Controller, as such, was justified in allowing the application on this ground.

The second ground which was considered by the two courts below is a ground of personal requirement. The status of respondent No.1 "Darul Uloom Hussainia Shahdadpur" as an entity was never objected by the petitioner/tenant. The authority of a person who has filed the application of ejectment was never challenged. The authorization of the person who has filed the application was never challenged. These questions could have arisen as the ejectment application appears to have been filed by "Darul Uloom Hussainia Shahdadpur" through Mahfooz Ahmed s/o Abdul Rasheed as Attorney of Naib Mohtamim/Nazim of Madarsa. How such powers were being delegated and by whom such powers are being delegated were never questioned or challenged by the tenant/petitioner. In the absence of such challenge, the interference in respect of concurrent findings of two courts below on personal need is uncalled for. In the absence of all these challenges it is difficult to hold that the property was/is not required bonafidely by the respondent. The provision of Sindh Rented Premises Ordinance, 1979 are applicable and are to be construed keeping in view the nature of registered body/trust and its need which were not challenged. This property is required to carry out the business of sale of religious books for the benefits of "Darul Uloom". Reliance is placed on the case of **The DARUL ULOOM NAEEMEA TRUST v. MUNIR AHMED** reported in 1984 C.L.C. 3483.

In view of the above and in view of the concurrent findings of two courts below I do not find any reason to interfere in the orders of the two courts below. Hence, the petition is dismissed.

Judge

A.