

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S- 481of 2017

Before: Mr. Justice Muhammad Shafi Siddiqui

Mst. Suriya Amin & others ----- Petitioner

Versus

Shaukat Paper Mart & others ----- Respondent

Date of Hearing: 02.11.2017

Petitioner: Through Mr. Naeem Suleman Advocate

Respondent: Through Moiz Ahmed, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: This petition is filed by the landlords/co-owners of the subject premises on the basis of conflicting findings of two Courts below

1. The petitioners filed an application under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 on the ground of personal requirement which was denied. The petitioner filed the affidavit-in-evidence of one Masood Ahmed witness of petitioners/co-owners and he was subjected to cross examination and similarly on the respondent side one Shakil Muhammad Raza filed his affidavit-in-evidence and was subjected to cross examination. The trial Court after considering and appreciating the evidence and cross examination allowed the application and granted 60 days' time from the date of passing of the order to vacate the premises. On preferring an appeal the judgment was reversed by the appellate Court that a bona fide need was not established in view of the findings available on record.

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

3. In order to see whether an honest bona fide need was established by the petitioner or otherwise, it is necessary that the contents of the application, affidavit-in-evidence and the cross examination of the landlord be seen. In para-5 of the affidavit-in-evidence, the petitioner has pleaded that the premises in occupancy of the respondent is required for personal need of Rais Sultan, Hafiz Mansoor Ahmed, Manzoor Ahmed, Maqsood Ahmed and Masood Ahmed. These applicants/petitioners and co-owners claimed to have been carrying their business under the name and style of "Building Hardware Store" in Gali No.3, Marriott Road, Karachi and since they are engaged in the business of hardware they require the premises for keeping their goods for storage i.e. aluminum, shapes, sections, angles as well as pipes etc about 12 to 18 feet in length. They have also stated in their application that presently those goods are housed in a rented godown No. G-8 located in Mustajab Mansion, Frere Road, New Chali, Karachi and annexed a rent receipt and that godown was stated to be in dilapidated condition. It is also stated that it being in dilapidated condition as mentioned, the landlord of that godown is also pressurizing to vacate the premises and as such they require their own premises which is in possession of respondent. Similar instance was taken by Masood Ahmed who filed affidavit-in-evidence on his behalf and on behalf of co-owners. The witness was tested and went through rigors of cross examination at the hands of opponent/respondent's Counsel. He admitted the suggestion of respondent that a rent case was filed in respect of godown Nos.3,4,5 and 6 and that the FRA of the tenants of that godown was dismissed and so also the appeal before the Hon'ble Supreme Court and the execution is pending. He has also admitted a suggestion that they have other commercial places but they are not in the same vicinity. They are stated to be located at "Plaza" however the partners in the said building are not same for whom the subject premises is required. As against this evidence the respondent/opponent also filed affidavit-in-

evidence of Shaikh Muhammad Raza who was also subjected to cross examination. Though most of questions and suggestions of the petitioner's Counsel were stated to be incorrect but he has no idea about the height of the entrance/gate of the building which was stated to be 10 feet and that the material which was required to be housed at the subject premises are much more in their length to be kept at any other place or premises including the godown bearing No.3,4,5 & 6. He also showed his ignorance that to lift all these goods of aluminum from the store a crane is being used, which conveniently cannot have access to godown No.3,4,5,6.

4. Perusal of these contents including ejectment application, affidavit-in-evidence, cross examination of both the petitioners' witnesses and respondent's witness it was nowhere established that before or soon after filing the rent case for the subject premises the other premises i.e. godown No.3,4,5 & 6 were got vacated. The cross examination shows that the execution application was pending. How and under what circumstances, he was required to disclose about the availability or non-suitability of that premises is inconceivable. It is also not ascertainable as to on which grounds the ejectment application in respect of godown No3,4,5 & 6 was filed.

5. As far as the other buildings are concerned two legitimate distinction was raised. Firstly it was far-away from the place of their work. They operate from Marriot Road and nearest place where they could keep their goods is the subject premises and not the building in the vicinity of area called "Plaza". Furthermore the partners for whom this premises is required are not the partners of those buildings which are situated in vicinity of an area called "Plaza". The suitability of the premises is always prerogative of the landlord. The tenant however has not been able to establish the suitability of both the premises he referred to.

6. The case of Mst. Shirin Bai vs. Famous Art Printers (Pvt.) Ltd. & others (2006 SCMR 117) which is landmark judgment to explain the “good faith” whereas West Pakistan General Clauses Act, 1956 provides a definition of “good faith” as “a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it done negligently or not. The judgment further highlighted the issue that “honesty” means when a person is in occupation of another premises, generally speaking he is not stating honestly unless the premises in his occupation is not sufficient for his need. The respondent has not proved this beyond reasonable doubt that the applicants at the time of filing an application were in possession of godown No.3,4,5 and 6. Even the cross examination provides that the execution application was pending at the time of cross examination. It is also not shown as to on which ground the application was filed. Though the petitioner attempted to explain despite the fact it was not required that he was never in possession and that the premises are not suitable, in cross examination of the respondent. The landlord explained in his affidavit-in-evidence through a series of paragraphs started from para-5 to para-12 that the subject premises is required. The aforesaid judgment further went to hold that “where a landlord wants to carry on his business in his own premises, instead of rented accommodation, to deprive him of the use and enjoyment of his property would be against all canons of justice unless he is expressly prevented by law from carrying on such business or there are circumstances to reflect that his need is not bona fide”.

7. In the cross examination the requirement to have additional space for the storage purpose is not denied. Filing of an application for personal need is considered to be honest demand unless otherwise established by the tenant. Once a landlord is able to satisfy the Controller about the truth and genuineness of the requirement the later is left with no discretion but to order ejectment of a tenant. The truth that a premises is required for the storage purpose is not denied. It is

not established that they were ever in possession of any adjacent tenement i.e. godown Nos. 3,4, 5 and 6 at the time of filing an ejectment application until cross examination of the petitioner at least hence it is inconceivable that the landlord could have explained about any such premises which is argued to have fallen vacant.

8. The case of Zohra Bibi vs. Additional District Judge & others (1990 SCMR 1243 is distinguishable on the grounds that in the referred case landlady had offered to accommodate the tenant in one of the shops she owned in other locality yet there is no explanation as to why after obtaining eviction order on the ground of personal need she and her son failed to occupy the premises in question had rented it out to another person.

9. The parties are under litigation since 2004 and it is almost more than a decade that the landlord is litigating for the premises and the order of the appellate Court whereby the case was remanded to trial Court to record further evidence of the parties on an application moved by respondent under Order 41 Rule 27 CPC is nothing but to fill up the lacunas left by the tenant.

10. In view of the above, I find sufficient material in the matter to consider the personal bona fide need of the petitioner, consequently the order of the appellate Court is set aside and that of the Rent Controller is restored hence the petition is allowed in the above terms.

Judge