

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Salahuddin Panhwar

C.P. No.S- 206 of 2019

Mansur Akhund

Versus

Fouad Sayeed

Dates of Hearing: 06.02.2020

Date of announcement 06 02.2020

Petitioner: Through Mr. Tariq Ahmed Memon,
advocate.

Respondent: Through Mr. Danish Nayyar, advocate.

J U D G M E N T

Instant petition is against conflicting findings, recorded by both the Courts below; eviction application preferred by the landlord was allowed vide order dated 25.04.2018 by learned Rent Controller-II, Karachi South on personal *bonafide* need, whereas such findings were reversed by the appellate Court by order dated 16.01.2019 in FRA No. 166 of 2018.

2. Precisely, the facts of the case are that the petitioner, claiming himself to be owner of Bungalow No.C-116, measuring 600 square yards, Block-2, Clifton, Karachi, filed a Rent Case bearing No.1083 of 2017 against the respondent No.1 on the grounds of personal *bona fide* need, to which respondent No.1 filed his objections/written statement, inter alia, denying therein the claim of the petitioner /landlord with regard to the need of the premises for personal use. Thereafter, in order to prove their assertions, parties led their evidence and ultimately the learned Rent Controller vide order dated 25.04.2018, allowed the ejection application directing the respondent No.1 to vacate the subject premises. Against such order, an appeal bearing FRA No.166 of 2018 was preferred by the respondent No.1 before the appellate Court, which ended in his favour vide judgment dated 16.01.2019, which is impugned in the instant petition.

3. Heard learned counsel for the respective parties and perused the record.

4. At the outset, it needs to be reiterated that the appellate Court is, *no doubt*, final authority in rent hierarchy but such status doubles the burden upon the *appellate authority* to make an order of Rent Controller *illegality* free which, *too*, by following the settled principles of law as well commandments of law *itself*. This has been the reason that the Constitutional jurisdiction of this Court, though limited, yet can, competently, be exercised if the findings of the appellate Court are not standing well with such settled principles of law. Reference is made to case of Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors PLD 2006 SC 214.

“8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 **can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law** which can always be corrected by the High Court. The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible. The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

5. Here, it is worth to add that rent hierarchy must always keep in mind the settled propositions of law which includes that landlord cannot be deprived of possession of a tenement on personal *bonafide* need which, *alone*, if established would be sufficient to take possession / control of tenement because landlord has preferential rights to *first* satisfy his own *personal bona fide* needs / requirements which (*preferential rights*) can't be denied merely on ground that landlord has, *happily*, been residing in another accommodation of his brother etc. It is also important to clarify here that phrase '**personal bona fide need**' includes the word '*need*' which *itself* is indicative that it would entirely depend upon '**circumstances / situations**' which may vary even on *passing* of a single day. One may prefer in renting out his *premises* so as to meet other '**needs**' but this shall never be a bar in

pressing such *ground* if the developed circumstances so permit him. Here, it is relevant to refer the Section 15(2)(vii) of Ordinance which reads as:-

“the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children.”

The above provision, *itself*, widens the term ‘*need*’ and the need of ‘*Spouse*’ and even ‘*one of children*’ can independently be pressed by landlord without referring to any of his *own* need / requirement.

6. Having affirmed said legal position, it would be conducive to refer adjudication made by learned appellate Court, relevant paragraph of the judgment is reproduced as under:-

“6. On the other hand it has been admitted by respondent No.1 that he has been residing at his present accommodation for more than a decade and had not denied the execution of a second rent agreement with the appellant dated 29.09.2015. It has been deposed by respondent No.1 before trial court during his cross examination that the said agreement bears his signature but again said that it did not belong to him. The said agreement had been executed for five years and shall expire on 30.09.2020. Learned counsel for respondent No.1 vide his objections before this court or before trial court had not denied execution of the said agreement for five years. Rather it is stated that respondent No. 1 had sent a notice as well as an email to the appellant requiring him to vacate the subject property after expiry of lease/tenancy agreement.”

7. Likewise, it would be significant to refer adjudication of the trial Court, which is reproduced as under:-

“The burden of proving this issue lies upon the applicant. The perusal of record reveals that the applicant has claimed that the demised premises which was rented out to the opponent is required to him for his personal bonafide need and he in compliance of term 11 of the lease agreement also sent a notice dated 01.01.2017 to the opponent for vacation of it followed by legal notice dated 11.10.2017 but he did not vacate it whereas the opponent has claimed that the demised premises is not required to the applicant for his personal bonafide need in good faith as he is already residing in his own house and the premises is also situated in commercial area which is designed as an office. The opponent also claimed that the applicant’s mother had approached him several times to tell that they are

unhappy with the amount of rent which he has been paying to them and demanded to increase in it and on his refusal to increase against the agreed amount of rent of second agreement, the applicant with ill will and malafide intention asked him to vacate the premises on the fictitious ground of personal bonafide need and further claimed that the applicant has failed to give any explanation as to why the premises already in his possession is not sufficient or suitable therefore need cannot be regarded as bonafide and further denied the receiving of notices attached by the applicant.

The learned advocate for the opponent cross examined the applicant wherein he showed him the lease agreement dated 29.09.2015 in which the applicant initially admitted the signature affixed over it to be his signature but again in same breath he disowned it. He also admitted that he has been residing at the house No. B-86, Block-5, Clifton Karachi since 10 to 15 years but clarified it that the said house belongs to his brother who wants him to move out from there. The learned counsel for opponent further cross examined the applicant but failed to bring on record to prove that the need of the applicant is based on malafide and ill will and the house where the applicant is currently residing is his own house but not of his brother. The learned counsel for the applicant cross examined the opponent on the issue of second lease agreement dated 29.09.2015 to which the applicant claims to be managed one wherein the opponent admitted that the said tenancy/lease agreement dated 29.09.2015 is neither notarized nor any witness has been cited in it. It appears that the opponent during cross examination has denied the receiving of notices sent by the applicant but voluntarily disclosed that the applicant had sent him an email for vacation of demised premises which was duly replied by him. From the above replies given by the opponent it appears that the applicant has already informed him to vacate the premises on the ground of personal bonafide need but the opponent is not vacating it. Record also shows that the opponent in support of his contention regarding the alleged execution of second agreement has also failed to produce any witness."

8. Keeping in view the discussed legal position, I have perused the above operative parts of lower forums, coupled with the evidence which reflects that landlord is residing in his brother's house since 10 to 15 years and intends to shift in his own house. Plea of the appellate court that landlord is residing in his brother's house and what happened after five years to require subject property for his personal use, if allowed to hold the field, it would seriously prejudice the term '*need*'; residing with his family in his brother's house by renting out his own accommodation is not a ground

to deprive landlord from enjoying his privacy and his personal property at subsequent time because, as already stated, variation in circumstances, including *likely* of any dispute between brothers, can competently compel one in reshuffling of his *preferences*. Such wrong view, so drawn by learned appellate Court, cannot be stamped for keeping the reasoned view of the Rent Controller. Accordingly, impugned order is unwarranted under the law, hence, the same was set aside by a short order dated 06.02.2020 and these are the reasons thereof.

J U D G E

Sajid