

## IN THE HIGH COURT OF SINDH, AT KARACHI

### Constitutional Petition No.546 of 2004

Dates of hearing : 22.08.2013 & 27.08.2013.

Date of decision : .09.2013.

Applicant Mst. Shah Jehan through : Mr. Syed Haider Imam Rizvi, Advocate.

Respondent No.2 Syed Aqeel Ahmed through : Mr. Munir-ur-Rehman, Advocate.

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

**IRFAN SAADAT KHAN, J:** This Constitutional Petition has been filed against the judgment passed by the District Judge, Karachi East, in FRA No.663/2001, dated 20.05.2004, whereby the First Rent Appeal filed by the appellant against the order dated 17.10.2001, passed by the Rent Controller in Rent Case No.53/1998 was dismissed.

2. Briefly stated the facts of the case are that the petitioner is the owner/landlady of the building on plots No.207 & 208-C, Block-II, Central Commercial Area, P.E.C.H. Society, Karachi which she purchased in 1993 and respondent No.2 (hereinafter referred to as “the respondent”) is the tenant in respect of shop No.1 in the said building since 1992. The husband of the petitioner and her two sons were engaged in the business of party decoration. The husband of the petitioner (now deceased) was carrying on his business in shop No.1 on plots No.371 & 372-C, Block-II, Central Commercial Area, P.E.C.H. Society, Karachi, whereas the petitioner herself is a tenant of shop No.6 on plot No.51-D, Block-VI, Nomania Masjid, Nursery, P.E.C.H. Society, Karachi. The petitioner after obtaining the building on plots No.207 & 208-C decided to carry on business of party decoration herself with the help of her husband and two sons and since the place available with the petitioner was too short to carry on such business the petitioner asked the respondent to vacate the said shop, as she required the same for her own personal bonafide use. However, the respondent refused to vacate the said shop. The petitioner then

filed rent case No.53/1998 against the respondent. The said rent case was dismissed on 17.10.2001. Being aggrieved with the order of dismissal of the Rent Controller the petitioner filed appeal before the District Judge, Karachi East, who also vide order dated 20.5.2004 dismissed the same. It is against this order that the present petition has been filed.

3. Mr. Syed Haider Imam Rizvi, Advocate has appeared on behalf of the petitioner and stated that the two Courts below were not justified in dismissing the rent appeal without considering the merits of the case and without considering the fact that the said shop was required by the petitioner for her own personal bonafide use in good faith. While elaborating his viewpoint, the learned counsel submits that the two Courts below have passed the orders in total disregard of law and thus committed misreading, non-reading and non-appreciation of the evidences. He stated that since the orders have been passed without appreciating the grounds raised by the petitioner, the petitioner is competent, under Article 199 of the Constitution, to file a petition in this regard and this Court has ample jurisdiction to set aside the impugned orders. He further states that though concurrent findings of the two Courts below are against him but since there is a clear misreading and non-reading of the evidences by the lower authorities, this Court has the jurisdiction under Article 199 to set aside the orders and this Constitution Petition is maintainable. He states that it is always the prerogative of the landlord to choose among the available places the best place for his use and occupation. He further states that it is always the landlord, who is best judge to determine as to which premises is suitable for him/her. He states that there are plethora of judgments given by this Court as well as by the Hon'ble Apex Court on this score. In support of his above contentions the learned counsel has relied upon the following decisions:

1. *Dilawar Jan Vs. Gul Rehman (PLD 2001 S.C. 149)*
2. *Ghulam Dastgir Vs. Muhammad Zakria Javed (1987 SCMR 796)*

3. *Irshad Ahmad Vs. The Settlement Authority (1981 SCMR 758)*
4. *Mst. Mussarat Vs. Muhammad Naeem (PLD 2010 Karachi 10)*
5. *Liaqat Ali Vs. The Additional District Judge (2000 YLR 2084)*
6. *Waheed-ur-Rehman Vs. Muhammad Ashraf (PLD 2001 Peshawar 42)*
7. *Muhammad Ijaz Dar Vs. Mrs. Naseem (2009 CLC 111)*
8. *Khurshid Ahmed Vs. Masooda Begum (1994 CLC 495)*
9. *Abdul Majeed Vs. Iftikhar Ahmed (2002 CLC 1206)*
10. *Mian Muhammad Lateef Vs. Mst. Naseem Warsi (2009 CLC 279)*
11. *Messrs F.K. Irani & Co. Vs. Begum Feroze (1996 SCMR 1178)*
12. *Haroon Kassam Vs. Azam Suleman Madha (PLD 1990 SC 394)*
13. *Wasim Ahmed Adenwalla Vs. Sheikh Karim Riaz (1996 SCMR 1055)*
14. *Zarina Ayaz Vs. Khadim Ali Shah (2003 SCMR 1398)*
15. *Mst. Saira Bai Vs. Syed Anis-ur-Rehman (1989 SCMR 1366)*

4. Mr. Munir-ur-Rehman, Advocate has appeared on behalf of the respondent and submitted that concurrent findings are in his favour and the scope of the Article 199, under such situation, is quite limited. He, therefore, prays that the instant petition may be dismissed. While elaborating his viewpoint, the learned counsel submitted that the landlady has not disclosed the correct facts, as, according to him, she owns a number of properties and has filed the rent case as well as the instant petition with malafide intention. He states that the petitioner has approached this Court with unclean hands. He further states that since the husband and sons of the petitioner were engaged in the same business, as that of the respondent, the petitioner developed a professional jealousy against the respondent therefore, she wants to oust the respondent. He thereafter read out the written statement and the cross-examination of the evidences and submitted that malafide is apparent from the said documents. He states that the malafide on the part of the petitioner is also evident from the fact that on one hand she is getting her properties vacated from various tenants and thereafter letting out the same on higher rent to some other tenants. He further submitted that Ameeruddin, husband of the petitioner, has since expired, the ground taken by the petitioner that the said

shop was required for business has now been done away with. He further states that both the Courts below have decided the issues after detailed deliberation and since the concurrent findings have been given in his favour, the petition is liable to be dismissed with cost. He further stated that there is no misreading or non-reading of the evidences and under Article 199 this Court has no jurisdiction to substitute its findings over the findings already recorded by the two Courts below. In support of his above contentions the learned counsel has relied upon the following decisions:

1. *Nasrullah Jan Vs. Mst. Farzana Begum* (2002 CLC 1523)
2. *Kamal Husain Vs. Mst. Arshi Abu Saad @ Uzma* (SBLR 2004 Sindh 235)
3. *Sardar Hussain Vs. Mst. Parveen Umer* (PLD 2004 Supreme Court 357)
4. *Syed Abdul Qadeem Vs. Additional Secretary & Member Judicial, Government of Pakistan* (SBLR 2004 Sindh 623)
5. *Muhammad Atique Vs. Muhammad Hanif Khan* (1996 SCMR 1260)
6. *Muhammad Yousuf Vs. Muhammad Iqbal* (PLD 1979 Karachi 430)
7. *Muhammad Sharif Vs. Muhammad Afzal Sohail* (PLD 1981 Supreme Court 246)
8. *Haji Ibrahim Vs. Habib Bank Ltd.* (PLD 2008 Karachi 361)
9. *Tariq Hussain Hashmi Vs. Ali Ammar* (2001 SCMR 664)
10. *Ahmad Azeez Zia Vs. Messrs Bisvil Spinners Ltd.* (1987 SCMR 542)
11. *Malik Abdul Kadir Vs. Atique Ahmed* (PLD 2004 Karachi 555)

5. Mr. Haider Imam Rizvi in his rebuttal stated that the documents, which have been produced before the Court today are hardly reliable, since the same have not been produced before the lower Courts. He further states that the husband of the petitioner had expired during the course of the proceedings hence no adverse inference in this regard could be drawn. He states that though it has been alleged that the petitioner is in the habit of getting her property vacated from the sitting tenants and letting out the same to other tenants on higher rent but the same is incorrect, since the said shop is required for her own personal bonafide use and even if it is assumed, for arguments sake, that petitioner would let out the said place to some other tenant on higher

rent, for that purpose remedy is available to the tenant under the Sindh Rented Premises Ordinance, 1979, giving authority to the tenant to move an application against the landlord for seeking redressal of his grievance. He further states that the instant petition has been filed under Article 199 since the said provision of law is an omnibus provision under which relief could be granted to the citizens against the infringement of any provision of the law or the Constitution. In the end, he prayed that the instant Constitutional Petition may be allowed.

6. I have heard both the learned counsel at considerable length and have perused the record, the law, the decisions relied upon and the written synopsis filed by the petitioner.

7. In my view, the only point involved in the instant Constitutional Petition is that whether the petitioner required the said shop for her personal bonafide need in good faith or not. What is good faith has been explained in case of *Mst. Shirin Bai Vs. Famous Art Printers (Pvt.) Ltd.* (2006 SCMR 117) by the Hon'ble Supreme Court of Pakistan wherein the term "good faith" has been explained to be that the person should have genuine need of the premises which should certainly be more than a wish or desire and that act should be honest and without fraud, collusion or participation for wrong doing. As explained above while granting or rejecting the ejectment application the element of good faith plays a pivotal role. Though no hard and fast rule or any yardstick could be applied but, in my view, the facts and circumstances of each case speak for itself. Good faith should be reasonable and would not be tainted to deprive the tenant to eject him from the property only on the wish and desire of the landlord if the said good faith and personal need is not proved. Once this good faith is proved and the statement given on oath has neither been shaken nor anything has been brought on record to contradict the same, these aspects are sufficient to allow the said ejectment application but in the case where the above parameters are not fulfilled then in such case no lease

could be granted to the landlord. Personal need, in my view, depends upon the facts obtaining in each case. It is open to the Court that in given circumstances and looking to the facts it may hold that personal bonafide requirement of a landlord has been proved. It is also equally open to the Court to reject the said application after coming to the conclusion that such personal need on the basis of good faith has not been established. Personal bonafide need should not, in my view, be tainted with malice and there should be a genuine need of the landlord. There are a plethora of judgments in this regard that the landlord is entitled to decide the place, which suits him best for his or her business and is entitled to get the same vacated from the tenant on account of personal bonafide need. The law framers have also given such authority to the landlord but the said requirement has to be in good faith which has to be seen on the basis of facts obtaining in each case.

8. The trial Court, after examining the parties and perusing the evidences, observed that personal bonafide need coupled with good faith is the prerequisite condition for ejectment of a tenant which is lacking in the case.

9. The trial Court, after examining the matter minutely, has come to the conclusion that honest belief coupled with good faith is lacking, as it was not established through the record that the present petitioner requires the place for personal bonafide need in good faith. It is a settled proposition of law that the Rent Controller has the jurisdiction, under the law, to refuse ejectment where essential ingredients of good faith is lacking and in the instant case the trial Court, through an elaborate and exhaustive order, has come to the conclusion that the said requisite condition of good faith is missing in the present matter.

JUDGE