

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**FRA NO.37/2019**

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Date

Order with signature of Judge  
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**12.02.2020**

Mr. Muhammad Amin Motiwala advocate  
Mr. Iftikhar Javed Qazi advocate

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Heard learned counsel for respective parties.

2. Learned counsel for petitioner has emphasized over evidence which reflects that there was no practice of issuing receipt with regard to rent and admittedly there is no claim of the respondent that default has been only of one month of October 2015.

3. Whereas counsel for respondent has relied upon 1994 SCMR 355, 1993 SCMR 67, 1989 SCMR 538, 1988 SCMR 819 and 2018 SCMR 1441 with the plea that the landlord is not bound to provide complete details of business which he intends to run in the demised premises after receiving its possession.

3. I am conscious that *default* is one of the grounds of ejectment, provided by Section 15 or 17 (as the case may be, per applicable law) of the Ordinance but it is one of the *grounds* only. Every ground, provided by the Ordinance, would require **substantial proof** but when the ejectment is sought on **personal bona fide need** the position becomes a little different. The burden stands discharged when the **landlord** the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-inn-evidence as prescribed by law and the tenant becomes burdened to disprove the same either by **shattering** the evidence or **rebutting** the same. The **shattering** would require destroying such claim only by

way of **cross-examination** while **rebutting** would require proof in shape of evidence by rival (*tenant*). The view is drawn from *guidance*, enlightened by Apex Court in the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925

6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-inn-evidence as prescribed by law, if it remains un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is needed to fortify this ..

The failure of the **tenant** in such proceedings would *surely* bring the consequence of his **ejectment**. Reference is may to case of *Messrs CARPET CENTRE V. Mustafa Farabi Tapu Javeri & Ors* 2016 SCMR 1926 wherein it is held as:-

“3. We have noticed that personal need of the respondent was duly explained in a very categorical manner by stating that the person for whom the premises is required comes from a family of jewelers but he has adopted the profession of photography and wants a commercial premises to set up his own photo studio. The statement of the respondent that he has a studio does not mean that such studio is in some commercial premises. No question was put in the cross-examination to suggest that respondent already has a commercial premises where he has set up his photo studio. In the circumstances, the failure to establish in evidence mala fide on the part of the respondent-landlord was sufficient to direct eviction of the petitioner from a commercial premises. ...

This leniency also has got two-folds reasons i.e every owner's desire to use his property for *personal* and *bona fide* use needs not be defeated merely on count of its being rented out for use / occupation by other (*tenant*) because *contrary* view may result failure of

guarantee, provided to an owner under all laws of the lands. The *other* reason is that the both Ordinance (s) do provide a right to apply restoration of *premises* within certain period, if the **landlord** rents out the *premises* to anybody else. Such *exception*, needful to add, is not available when ejectment is ordered under other grounds. The ground of reconstruction of *premises* is an exception when question of *ejectment* is not sought for any right or obligation of parties relating to *tenancy* and that of right of ownership, hence remedy to seek possession by tenant, provided for such ground, is an **exception**.

Having said so, now, it would be conducive to refer relevant portion of the impugned order which is that :-

“With regards to issue No.5, the applicant pleaded in para 11 of his affidavit in evidence stated that he requires the shop in question in good faith for his own personal use and occupation to open and run ladies garment business therein, to earn his livelihood for which business he has sufficient knowledge and expertise and the said shop is the most suitable place for doing such business. The opponent during cross examination deposed as follows:-

“I do not know whether the applicant has any other shop in his name in cantonment area”. “It is correct to suggest that I will not vacate the premises in question. Voluntarily says that unless someone talks to me in bonafide manner.”

The apex court held in 1992 SCMR 1296 that “On issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross examination, or disproved in rebuttal, written statement sufficient to prove that need was bonafide.

In the light of above the opponent is admittedly not in knowledge whether applicant owns any other shop in the cantonment area except the shop in question and also refused to vacate the said shop unless someone talks to him in a bonafide manner rather than disproving the personal need of the applicant through solid proof. Besides, the opponent also failed to put any question to the applicant during his cross examination regarding personal need given weight to the statement made by the applicant in eviction application as well as affidavit in evidence that the personal need of the applicant is genuine. Therefore, I am of the view that the personal

need of the applicant is bonafide and opponent failed to disprove it. Hence, issue No.5 is decided in favour of the applicant and against the opponent.”

The above, if is viewed with discussed legal position, makes it quite clear that adjudication of the appellate court with regard to personal bonafide need is in complete regard to settled principle for deciding ejection issue on ground of *personal bona fide need*; learned appellate Court was also justified in maintaining the order of *ejection* because failure of the tenant in shattering or rebutting the claim of the landlord, as detailed supra, would be sufficient for ordering ejection. Thus, appellate court has rightly adjudicated the issue and allowed the eviction application. With regard to case law relied upon by counsel for petitioner (2015 CLC 1786) it is pertinent to mention that in that case there were many properties of the landlord and sufficient earning was shown hence facts of the case are distinguishable and are of no help for the appellant. Accordingly appeal is dismissed.

**J U D G E**

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