

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P No. S-817 of 2013

Date	Order with signature of Judge
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1. For Hearing of CMA No.5412/2013
2. For Hearing of Main Case.

13th February, 2020

Mr. Muhammad Aqil Zaidi, advocate for the petitioner
Mr. Muhammad Yaqoob, advocate for respondent No.1.

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

2. Instant petition is against conflicting findings recorded by both the Courts below; eviction application preferred by the landlord was allowed by order dated 04.01.2012, on personal bonafide need, whereas findings were reversed by the appellate Court by order dated 27.05.2013. For better understanding, it would be conducive to refer relevant portion of the trial court's order which is that:-

“Upon service the opponent by defending him filed written statement in which he has stated that the application is not maintainable. It is stated that applicant is not owner and can not file Ejectment application on the ground of personal use, and has come to the court with unclean hands and also suppressed material facts. It is also stated that he is in possession and occupation of one commercial unit in the same building, not only that but also tenant of Shop No.3, has vacated the same and handed over its vacant possession to the applicant, but applicant instead of occupying it, has rented out on higher rent after getting purgree from new tenant. The opponent has denied that he has sub let the demised shop to some other person. The opponent has stated that he has not committed any default in payment of rent. Further stated that the applicant being not owner nor co-owner, can not file ejectment application on ground personal need. It is also mentioned that the rent of shop in question was Rs.700/- in the year 2006, but the greedy applicant pressurized him to increase the rent to Rs.770/- and again in the year 2008 applicant forced him to increase the rent to Rs.847/-. However he paid the rent at the rate of Rs.847/- up to June, 2008 but all of sudden the applicant refused to receive the rent then he sent the rent of the months July 2998 (2008) to December 2008 amounting to Rs.5082/- through money order vide postal receipt No.943 dated 13.8.2008. The applicant stated in money order coupon that in case it was refused by the applicant, the rent will be deposited in court. However, applicant refused the same on which he deposited the rent in MRC No.1001/2008 in the court of VIIth Rent Controller Karachi South and since then he is depositing the rent in court regularly. This fact is intimated by the court to the applicant through post as well as court bailiff. Lastly the opponent has prayed for dismissal of this ejectment application.”

3. In juxtaposition, paragraph No.8, which is of judgment passed by the appellate court is that:-

“8. As regards, the point of personal need on which the learned trial Court allowed eviction application, I've carefully gone through the record, observation of the learned trial Court in the light of submissions of the learned counsel for the parties, and see that the appellant in his affidavit in evidence has not uttered a single word specifically negating the claim of the appellant so contended in his written statement viz. that the respondent is in possession/occupation of one commercial unit in the same building and also recently one Ameeruddin, tenant of shop No.3 vacated the said shop and handed over possession thereof to the respondent, who instead of occupying the same, let it out further on higher rent after receiving huge pugri amount. It is also matter of record that the respondent during his cross-examination admitted that he never sent any notice to Imran Rafi. Under above circumstances, I found substance in the contention of the learned counsel for the appellant that such ground of personal need created suddenly is based upon malafide. While concurring with the said contention of the appellant, I'm fortified with the case law reported in 2000 CLC 764. More over, it is also matter of record that the respondent in his eviction application took numerous grounds for eviction of the appellant, whereas the learned trial Court declined all the grounds and only allowed eviction application on the ground of personal need, which was required to be proved by the respondent, but over all discussion and substance available on record, explicitly shows that the respondent failed to prove the fact of personal requirement bonafidely, rather it is visualized that the respondent has failed to specifically explain what is pleaded by the appellant in defence and remained on mere denial simply. Under the above circumstances, the findings of the learned trial Court on point No.4 is not requirement of law, as such. same is hereby set aside.

4. Mainly, plea of the Petitioner is that he is co-owner and requires property for personal bonafide need but his plea was turned down by the learned appellate Court on the ground that no details are provided.

5. In contra, counsel for the respondent while relying upon case law reported as PLD 1993 Karachi 300 contends that petitioner is not absolute owner in fact father of respondent was tenant, after his death he is continuing as a tenant in the demised premises.

6. Perusal of orders passed by the Rent Controller and Appellate Court reflects that findings of the appellate Court are arbitrary and against the settled principles of Rent laws. The grounds of personal need were sufficiently demonstrated/established by the petitioner, hence, there was no reason to reverse the findings of the rent controller. Accordingly, instant petition is allowed; impugned judgment recorded by the appellate Court is set aside. Respondent shall hand over the possession of the demised premises to the petitioner within three months.

J U D G E