

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No. S-599 of 2019

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Date: Order with signature of Judge

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1. For orders on office objection
2. For hearing of MA No.2330/19
3. For hearing of main case

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29.5.2019

Mr. Muhammad Arif Sheikh for petitioner  
Mr. Tariq Ali Jakhrani for respondent  
.X.X.X.X.

This petition is arising out of the concurrent findings of two Courts below. The Rent Case bearing No.700/16 was filed by the respondent No.1 on the ground of default, sub-letting and personal requirement. The matter was contested on behalf of the petitioner as opponent. Apart from contesting the case on merits, some preliminary objections were also raised regarding maintainability of the application as the premises was claimed to be a factory outlet.

In the ejectment application default of last two years, prior to the filing of ejectment application was claimed. The issue of sub-letting and personal requirement have also been pleaded. The evidence of the parties were recorded. One additional witness namely Falak Ali being husband of the landlady was also examined. The lengthy cross examination of the landlady as well as of her witness being her husband was conducted by the Counsel.

Let's first scrutinize the case of personal requirement. In para-12 of the application the landlady pleaded that she required the subject premises for renting it out to somebody else in accordance with law as there were so many tenants willing to execute agreement on better terms. If these are the pleadings then this is not a personal requirement. At the most it is a case that a fair rent is not being tendered by the

tenant and resort could be made under section 8 of the SRPO, 1979. Under Qanoon-e-Shahadat, the evidence at best could support pleadings but additional case can not be made. The witnesses have taken U-turn in evidence when they deposed that premises are required for personal use. Pleadings of the parties cannot be ignored and evidence cannot be read in isolation.

The case of personal requirement was already destroyed when the application on such pleadings as far as the personal requirement is concerned, was filed, hence such belated statement and that too in cross examination does not constitute evidence in support of the pleadings. Even affidavit-in-evidence is in line with application under section 15 of the SRPO, 1979. There are serious doubts over the personal requirement of the respondent NO.1 when cumulative effect of the pleadings and evidence is seen.

The next issue in the matter is default on the basis of which the application was allowed and maintained by the appellate Court. In the ejectment application two years default was pleaded from the date of filing of the application. The application was filed in December, 2016 and under the law the petitioner was supposed to prove satisfactorily that such amount of rent was tendered to the landlady. It is claimed in the pleadings as well as in the evidence that the rent of the subject premises was being tendered to the landlady in three modes i.e. (i) through cross cheque, (ii) online deposit and (iii) cash payment. In case there was no rent receipts claimed to have been issued, a cash payment could be excluded from the consideration however there is no proof as to the payment of rent through cross cheque or online deposit. Very conveniently the petitioner could have attached the statement of account from where the rental amount was being deducted and transmitted to the account of landlady and also online payment or deposit which is claimed to have been made through his account in the

account of landlady and/or directly. However, there is not an iota of evidence to establish this fact. This burden has not been discharged by the petitioner/tenant. Online payment could have been proved by summoning the witness of the concerned bank to verify such transactions.

Insofar as the defence of the petitioner that a huge amount was spent over renovation, repair and construction of the premises, needless to say that such amount could only be adjusted in case the petitioner was permitted through written agreement. This defence is otherwise contrary to earlier defence where rent claimed to have been paid in three modes. There is no such evidence available that he was given permission by the landlady or her father that he is allowed to repair, renovate or raise construction on the subject premises which may be adjusted towards rent.

As far as the argument with regard to the maintainability is concerned, the agreement does not talk about factory premises so as to exclude it from purview of SRPO, 1979. It is an industrial plot but the use is not defined as "factory".

As far as the utility charges, the witness and the landlady has failed to point out any number of electricity meter installed in the premises. Witness of the landlady stated that there was no gas meter and said that perhaps there is no PTCL/landline connection and the evidence in support thereof was very shaky hence the findings of the trial Court to the extent of default in payment of utility charges is not sustainable hence the findings are reversed to that extent also.

In view of the above, the application is allowed on the ground of default and order of the trial Court and the appellate is maintained whereas the order to the extent of personal requirement and utilities is set aside.

Judge