

HIGH COURT OF SINDH AT KARACHI

F.R.A No.01 of 2011

J U D G M E N T

Date of hearing: 04.11.2015.

Petitioner: Mst. Shaista Younus Khan through Mr. H. A. Rehmani, Advocate.

Res. No.1: Jawwad Khalid Mr. Ziaul Haq, Advocate.

IRFAN SAADAT KHAN, J. The instant First Rent Appeal (FRA) has been filed with the following prayers:

"i. Call for the record and proceedings in Rent Case No. 59 of 2007 from the learned Additional Controller of rents Clifton Cantonment Karachi.

ii. set aside the impugned order dated 13.8.2009 and allow the Appellant's application under section 17 of the Cantonments Rent Restriction Act 1963;

iii. Costs of the proceedings and other relief(s) as deemed appropriate by this Hon'ble Court during course of appeal are also humbly solicited".

2. Brief facts of the case are that the appellant is a widow, whose husband expired in the year 1991, and is having three children. That the appellant entered into an agreement on 1st August 2002 with the respondent for the period of three years in respect of the shops 3 and 4, Ground floor, Plot No.21-C, 6th Commercial Lane, (off. Main Zamzama Road) Phase V, DHA, Karachi admeasuring 850 square feet. (hereinafter referred to as the premises). That as per the said agreement the respondent was liable to pay a sum of Rs.32,000/- P.M. which was increased to Rs.35,000/- P.M. after the passage of some time. The water, conservancy and other utility charges were also payable by the respondent. It is also an admitted position that the appellant is a working woman and apart from having shares in Chishtia Flour Mills is also running a garments business from her home for her customers. It was claimed that the appellant has no shop for her said business and in order to run her garments business smoothly, since the same was not possible from her house, she approached the respondent with a request to vacate the subject premises, as she required the

same for her personal bona fide need. However, when the respondent refused to vacate it, the appellant filed an application under Section 17 of the Cantonment Rent Restriction Act, 1963 (hereinafter referred to as Act). The Additional Rent Controller (ARC) in Rent Case No.59/2007 after finding no merit in the matter dismissed the ejectment application filed by the appellant. It is against this order that the present FRA has been filed.

3. Mr. H. A. Rehmani, learned senior counsel has appeared on behalf of the appellant and submitted that the order passed by the ARC is illegal as the learned Judge has not considered various material facts going to the roots of the case and has also not considered the evidences placed before him and the statement of the appellant, had remained unshaken. As per the learned counsel, the order is based on misreading and non-reading of the evidences and is passed in violation of the principles of natural justice, equity, fair play and impartiality. He further states that perusal of the order would reveal that the same is not a speaking order and the learned Judge has failed to give any plausible reason to reject the application filed by the appellant on the ground of personal bona fide need. Learned counsel further states that the appellant required that the premises not only for her personal bona fide need but the respondent has also made a default in payment of water and conservancy charges which the respondents was under the obligation to pay the same. Learned counsel further submitted that the respondent also made some unauthorized construction/ structural changes in the property and also sublet the same to another person, which aspect has totally been ignored by the Rent Controller. He has further submitted that the appellant had not extended the rent agreement hence it was incumbent upon the respondent that after the expiry of the agreement period to vacate the said premises, which was not done. He submits that the appellant is a widow hence the ARC should have allowed the ejectment application. The learned counsel then read out the statement of the appellant, which is available at page 189 as annexure 'M' of the file, which according to him had remained unshaken. He submitted that in view of the above facts, this FRA may be allowed and the impugned order dated 13.08.2009 passed by the ARC, Cantonment Karachi in Rent Case No.59/2007 may be set aside. In support of his contentions, the learned counsel has placed reliance on the following decisions:-

1. *Mst. Saira Bai vs. Syed Anisur Rahman [1989 SCMR 1366]*
2. *Nisar Ahmed Khan Vs. Noor Muhammad Khan and 6 others [1990 SCMR 544]*
3. *Gul Begum Vs. Muhammad Riaz and another [2006 MLD 480]*

4. *Dost Muhammad Vs. Member Board of Revenue (Settlement and Rehabilitation Wing) and others* [1991 SCMR 84]
5. *United Bank Limited Vs. Mrs. Alafia Hussain* [1999 SCMR 1796].

4. Mr. Ziaul Haq Makhdoom, advocate has appeared on behalf of the respondent and has submitted that the appellant has approached this Court with unclean hands as the ARC was quite justified in dismissing the ejectment appeal of the appellant. He submitted that since the application was filed by the appellant under Section 17 of the Act, and not under Section 17-A of the said Act hence no preferential treatment could be given to her on the ground that she is a widow. Learned counsel further submitted that all the issues raised in the appeal are misconceived as firstly appellant is a rich and wealthy woman and possess a number of other properties and only with the mala fide intention has approached the Court to get her property vacated from the respondent by hook or by crook. He further submitted that the ground taken in the instant petition with regard to doing business from her house is an afterthought as the appellant is a house hold lady who is looking after her children only and is not engaged in any business activities. He further contended that no evidence with regard to making unauthorized construction/structural changes have been brought on record by the appellant. He has further submitted that the place from where the respondent is doing his business of selling carpets is his family business. He further submitted that the cheque of Rs.105,600/-, being rent for the months from April to June 2007, was sent by none other but the father of the respondent which illegally was made the basis of filing of ejectment application on the ground that the respondent has sub-letted the premises to his father. Learned counsel for the respondent has categorically denied that the premises has been let out to any outsider or he has charged any rent from either any one of his family members or that from any outsider. He therefore submitted that this appeal is wholly misconceived and is liable to be dismissed, as the element of good faith is missing in the present appeal. In support of his contention, the learned counsel has placed reliance on the decision given in the case of *Mst. Shirin Bai Vs. Famous Art Printers (Pvt) Ltd.* (2006 SCMR 117). However before concluding his arguments the learned counsel gave a proposal that since the respondent is running his business since quite some time if the appellant gives her one year's time the respondent is ready to vacate the said premises. However, the learned counsel for the appellant stated that his client is ready to give only three months' time to the respondent to vacate the said shops.

5. I have heard both the learned counsel at considerable length and have perused the record and the decisions relied upon by them.

6. It is an admitted position that the appellant is a widow whose husband expired in the year 1991. I agree with the submissions of the learned counsel for the respondent that Section 17 of the Act, does not give any preferential right to a widow and only a preferential right to a widow has been provided under Section 17-A of the Act, and the present ejectment application has not been filed under that section. It is also an admitted position that both the parties have not denied the relationship of a landlord and a tenant. Without commenting on the issue whether the property was sub-let and that the respondent had made some structural changes and that the water tax and conservancy charges were not paid by the respondent, I confine my decision to the extent of personal bonafide need only.

7. It is a settled proposition of law that a landlord is not obliged under the law to give the details with regard to requirement of a premises. A landlord only has to move an application to the Rent Controller that since a place given by him on rent to a tenant is required in good faith for personal bona fide need and if his this statement remains unshaken before the Rent Controller, it is incumbent upon the Rent Controller to allow the said ejectment application of the landlord and require the tenant to vacate the said premises in accordance with law within stipulated period. There are plethora of judgments on this issue that for proving personal bonafide need the landlord has to step into a witness box and to prove personal bonafide coupled with good faith if that assertion remains unshaken during the proceedings before the Rent Controller, the decision has to give in favour of the landlord.

8. The assertion or a claim of a landlord, on oath, as held in various judgments, which will be discussed on the later part of the judgment is held to be enough to prove bonafide need of the landlord until and unless good faith of the landlord is proved to be otherwise. While proving bonafide need it is not necessary for a landlord that he should or should not have other shops or premises as the authority to choose among various shops which best suits him rests with the landlord. It is always the prerogative of the landlord to choose among various shops or premises which suits best for his requirement and the tenant cannot object on the landlord's desire to have a particular shop for his business etc. on the ground that the landlord possess other shops. Apart from considering the decisions relied upon by the counsel for the appellant and the respondent, I also made a research on my own and would like to discuss the issue in detail as under:

In the case of Lt. (Col.) Muhammad Hassan Safdar Vs. Malik Shabbir Ahmed and another (1994 CLC 286) wherein it was held as under:

"The statement made by the appellant on oath which is quite in consonance with the averments made in the petition accompanied by the protection as given under section 17(5) of the Act referred to above to establish beyond doubt that the appellant requires the shop in question for his personal use and occupation in order to do his own business".

In the case of Muhammad Haleem Siddiqui and another Vs. Dr. Huma Khusro (1997 CLC 905) it was held as under:

"It is settled legal position that the assertion or claim of the landlord /landlady on oath that he/she required the premises for his/her personal use should be accepted by the Controller as bona fide if such claim or assertion, although by itself may be insufficient, yet consistent with his/her averment in the ejectment application and is not shaken in the cross-examination or disproved in rebuttal".

In the case of Noman Ansari and another Vs. Mst. Mukhtar Begum and 3 others (1999 MLD 3269) it was held as under:

"For the purposes of resolving the controversy in this appeal principles governing to examine the bon fide need of a landlord are that if statement of a landlord on Oath has been made and the same is consistent with the application for ejectment and is not been shaken in cross-examination or disproved in rebuttal, the same ought to be sufficient on part of the landlord who establishes the bona fide need. Yet another principle to examine the personal need to have been established is that suitability depends to be determined by the landlord and it is for the landlord to decide which particular property is bona fide required by him and for what particular purpose. Such is the position for determining the sufferings or otherwise in terms of requirement of a landlord in respect of the pleadings. It is only for the landlord to urge such requirement and it is for the Court to determine the proprietary of such requirement".

In the case of Dr. Raja Javed Kayani Vs. Muhamad iqbal (2000 CLC 2005) it was held as under:

"The landlord has the prerogative to decide which one of properties, he would like to occupy for the business or personal use and for his purpose he need not be guided to or advised by the tenant. Even this prerogative cannot be taken away by the Rent Controller who has only to consider if the need was bona fide"

"It is observed that the entire evidence on record was not considered by the Rent Controller while dealing with the question of personal use, for seeking personal use, landlord has to make statement on oath, deposing material facts and also to take the Rent Controller in confidence and if the statement is not shaken in cross-examination and is also consistent with

the pleadings, then the question of personal need has to be read in context with the protective clause which provides adequate check against mal fide eviction. In these circumstances, it is the duty of the Rent Controller, to consider the entire evidence in affirmative and also the evidence in rebuttal by the tenant and to thereafter conclude if the personal need is made out or not. Without reference to any statement or without giving any impression that the evidence was minutely examined, the plea of bona fide requirement cannot be repelled, on surmises and conjectures”.

In the case of Sardar Muhammad Yaqoob Vs. Muhammad Saleem (PLJ 2000 Peshawar 81) it was held as under:

"It is well settled legal proposition that the assertion or claim of the landlord on oath that he requires the premises for his personal use should be accepted by the Controller as bona fide if such claim or assertion although by itself may be insufficient, yet consistent with his statement in the ejectment application and is not shaken in the cross-examination or proved in rebuttal. Reliance is placed on "Muhammad Haleem Siddique and another Vs. Dr. Huma Khusro" 1997 CLC 905 and "Gohar Rashid Vs. Fazal Hussain Mazhar" PLD 1995 Lahore 469"

"It is the choice and prerogative of the respondent to choose a shop/shops for his business and in the case in hand the shop in dispute along with shop No.33 which are small in width would be amalgamated into one by removing the Parda Wall was thus the respondent would start his business therein. Reliance is placed on "Dildar Hussain Dar Vs. Niaz Muhammad Dar and another" 1985 SCMR 1969 wherein it was held,

"Landlord seeking eviction of three tenants from three adjoining shops on ground of his personal need of all three shops. Landlord--, held, had a choice and if he need three shops at same time, it had to be considered rather in a pragmatic manner--"

In the case of Mushtaq Ahmed Malik Vs. Muhammad Sunawar Choudhary and another (2003 YLR 406) it was held as under:

"There is no cavil with the proposition canvassed by the learned counsel for respondent No.1 that it the choice of the landlord which should be the guiding factor of deciding as to which shop he wants to occupy. There is also no objection to the proposition that a landlord is not obliged to disclose the nature of business for which he wanted to utilize the premises. When however, it is found that it is not a question of mere exercise of choice but a landlord has been letting and re-letting his tenement on his whims which is not suitably explained through evidence, he is not entitled to an order of eviction in his favour."

In the case of Merajuddin Vs. Ali Ahmad Siddiqui and others (2013 MLD 882) it was held as under:

"More so, in view of the safeguard provided in section 17(6) of the Cantonments Rent Restriction Act, 1963, the assertion on oath by the landlord that he requires the property in good faith for his personal use

shall be sufficient to accept his bon fides if such assertions are consistent and in conformity with the averments of the application."

In the case of M/s Captain PQ Chemical Industries (Pvt.) Ltd Vs. Mrs. Romana Amjad and another (1997 CLC 905) it was held as under:

"Landlord can file an application for ejectment of the tenant on the ground of his personal bon fide use in good faith, if he can prove that the premises in his occupation is not suitable for his need, order of ejectment can be passed by the Rent Controller. However, it is desirable that all necessary facts in respect of personal requirement be sufficiently stated in the ejectment application."

9. Now coming to the decisions relied upon by the learned counsel for the appellant, in the case of Mst. Saira Bai Vs. Syed Anisur Rehman (1989 SCMR 1366) it was held that non mentioning the details with regard to kind of business, it was only intended to be carried on in the premises was not legal ground for interference with the findings of fact.

In the case of United Bank Limited Vs. Mrs. Alafia Hussain (1999 SCMR 1796) it was held as under:

"This Court has laid down through its earlier pronouncement that in the case of personal requirement of the landlord, the initial burden for the landlord to prove his bona fides is very light and what is required to be considered by the Court in this regard is that the evidence adduced on the landlord's behalf is unshakable and consistent with the averments made by him in the ejectment application. in that case the burden would be shift to the tenant to establish that the claim of the landlord is not bon fide. In Messrs F.K. Irani & Co. v. Begum Feroze (1996 SCMR 1178) it was held by this Court that desire of landlord to establish and run a departmental store in the premises occupied by tenant could not be ruled out unless with cogent evidence and sufficient proof that it was not possible and practicable to run such a business. Otherwise the Court would be inclined to hold that requirement of the landlord was bona fide. It was further held in this case that on the issue of personal need if the statement of the landlord is consistent with ejectment application and the same is not shaken in cross-examination or dislodged in rebuttal, such statement would be sufficient to prove his bona fides. In Juma Sher v. Sabz Ali 1997 SCMR 1062, the requirement for the landlord to disclose nature of business which he intends to start in the premises or to show experience in any trade or business which he intends to set up in the premises after eviction of the tenant was held to be unnecessary"

10. From the observations recorded above, it has become clear that a landlord has to prove two things, firstly that his claim is bona fide coupled with good faith, secondly his statement should remain unshaken. The term good faith has been defined in the judgment of Mst. Shirin Bai to be 'an honest act'.

11. Now coming to the facts of the present appeal, it is seen that the issue about doing of garment business and requirement of the place has remained uncontroverted and unshaken. It is also an admitted position that she was doing her business from her house. The landlord has further stated that though she has other shops but the same are in New Karachi which are at some distance from her house since she resides at Clifton and it is very difficult for her to go to New Karachi every day from her house at Clifton. She has further stated that her family consist of five members, three are her children and one is her dependent brother. She has further admitted that she never approached the respondent for enhancement of rent but only required the respondent to vacate the shop on the basis of mainly personal bona fide requirement. Apart from the objection that she possess other shops from where she could run her business of garments no other objection on genuine personal bona fide need has been noted. Hence in my view the order passed by ARC is not in accordance with law and is liable to be vacated.

12. I, therefore, allow this FRA and hereby set aside the impugned order. Since the respondent is carrying on his business since 2002 therefore he is directed to vacate the shops within a period of six months from 04.11.2015, which is that date onward I have allowed the appeal through a short order. However there shall be no order as to costs.

Above are the reasons of my short order dated 04.11.2015.

JUDGE