

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-435 of 2019

Date	Order with signature of Judge
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1. For orders on CMA No. 1553 of 2019.
2. For hearing of main case.

09th December 2020

Mrs. Kausar Saeed, advocate for petitioners.
Ms. Shamim Akhtar, advocate for respondent No.1.

Instant petition is against conflicting judgments recorded by both courts below. Learned trial judge allowed eviction application on personal bonafide need while assigning the reasons which are that:-

“Point No.II

11. The applicants have taken the plea that premises in question is required for personal bonafide need and use of applicant No.4, as he has no source of income and wants to start his own business. In reply to ground, opponent has maintained that Applicant has other shops besides the premises in question for running his business and that opponent has paid the Pugree amount. Section 15 (2) (VII) of SRPO provides that if the landlord requires premises for his personal bonafide use or of his spouse or children, controller may order to evict the tenant and put landlord into possession of premises. Plea that applicant has other shops besides subject premises does not hold much water as sufficiency or insufficiency of accommodation available with a landlord is a matter of individuals taste and discretion with which no Controller would ordinarily interfere. All that Controller has to see is whether the landlord requires the premises in “good faith” for his own occupation or use or for children. *Referenec may be made to case of Shirin Bai Vs. Famous Art Printers (2006 SCMR 117)*. In the instant case the fact that Applicant No.4 has experience in business of auto parts and he is currently helping their brothers in running their auto parts business is admitted by opponent in his cross- examination. *It is correct to suggest that Furrkh has experience of running shop of auto parts*. No malice on part of applicant is established or SCMR even alleged.

12. The ground that Opponent took, that he has paid the purgree amount of Rs.2,87, 000/- to applicant and he would vacate the premises if the applicant returns his pugree amount at current market value. Though payment of pugree amount at the rate of Rs.2,87, 000/- has remained admitted from both

sides, but even then it cannot debar applicant from bringing his case for ejectment of tenant. Reference may be made to case reported as 1987 SCMR 307. Further, it is observed that as the pugree amount has not been recognized by the SRPO as such any question over recovery, entitlement could be resolved by the civil court only. **Reference may made to 2015 MLD 1313.** I would, therefore, prefer to leave it for the court competent to entertain, adjudicate and determine this question of pugree, in case opponent desire to recover his pugree amount, without further deeper appreciating the evidence on this point. Point No.2 is answered as affirmative.”

3. Whereas, appellate court reversed those findings, in paragraphs No.10 and 11 which are reproduced as under:-

“10. From the above quoted admission, a legal inference may drawn that respondents/landlord having seven shops out of the four are in their possession being enough to complete their personal requirement as the respondents are also four in numbers. It is also pertinent to mention here that claim of the respondents in rent application for bonafide requirement of shop and its personal use for Farrukh Nisar alias Faizan Ahmed Khan being their younger brother, in this respect, PW-1 adduced in his evidence that Farukh Nisar has experience of Auto parts ad doing business with his brothers in rented shop. This fact is the ignored side of trial court that respondent at one hadn deposed to have four shops in their possession and on the other hand, two of their brother are carrying business on a rental shop, seemed to bigotry of respondents to solicit the eviction of appellant from the shop that might on account of personal grudge as alleged that a quarrel which subsequently was compromised, but legislator defined itself around the rule of rental issues and merit of case. In support to prove the bonafide and personal requirement, respondent examined PW-2 being his relative, who after denial a question clarified that Farrukh sometime sit and lookafter the shop which is contrary to his affidavit in evidence wherein he stated him to have experiences of Auto parts and he saw him for last many (y)ears dong the said business. He further improved by saying that what he said in cros-examination is true and not what stated in para No.6 of his affidavit in evidence, which mean this witness being relative has been managed to get an eviction order and to prove the bonafide requirement of shop premises. PW-3 Farrukh Nisar alias Faizan examine himself and admitted during the course of cross-examination, he admitted as under:-

‘It is correct to suggest that Zamzama Autos is run my elder brother Mansoor. It is correct to suggest that Khurram and Farhan work together in Zahoor Autos.’

11. The above admission is categorically emphasizing that when all appellants arc setup their business one in one shop Zammzama Autos and two in one shop Zahoor Autos, the question of personal requirement of tenement

became vague. Here, I would like to discuss the contention raised by learned counsel for respondents that it is the choice of landlord to claim any shop amongst the other rented out to his other tenant. But the legal issues under controversy are invariably to be decided through keeping in view the evidence, documents, respective contentions raised by the litigant for proving or disproving the eviction of tenant from the tenement. It has come in the evidence of PW-4, the rent collector of respondents that there is one other shop adjacent to the shop of opponent in the possession of Pervaiz Siddiqui, which fact proved the malafide of respondent to get eviction of the only shop premises of appellant on account of quarrel occurred between both parties and as admitted by all the respondents in their affidavits in evidence, besides, when all respondents have been already been in possession of the shop running their business and without narrating suitability and appropriateness only to the shop of appellant to run the business which they have already jointly and separately running and the indulgence of Farhan with them, no bonafide need and personal use of shop premises does arise for the respondent Farhan, as two brothers are jointly running business in one shop and elder one running separately with whom Farhan is also sitting since two years as come in evidence.

4. Learned counsel for the petitioners (landlord) contends that joint business of brothers is not a ground to deprive an owner from possession of the property when he had established that shop is in his name; he is jobless and intends to open his own business in his premises.

5. In contra, learned counsel for the respondent contends that clause 8 of Tenancy Agreement shows that petitioners received pugri and will be competent to transfer that premises on the basis of pugri and further she contends that findings of appellate court is in accordance with law.

6. Heard learned counsel for the respective parties.

7. Since *prima facie* the question of *personal* bonafide need is involved therefore, I find it in all fairness to refer the relevant provision of Sindh Rented Premises which is Section-15(vii) of the Ordinance which reads as:-

*“the landlord requires the premises in good faith for his own **occupation** or **use** or for the **occupation** or **use** of his spouse or any of his children.”*

8. The words ‘*occupation*’ and ‘*use*’, since not been defined by the Ordinance, hence their *ordinary* meaning would be taken. Since the *terms*

have deliberately been used *independently* therefore, *prima facie* former appears to be relating to a case where eviction is being *sought* to ‘**occupy**’ while the *later* i.e ‘**use**’ appears to deal with cases where eviction is being sought for using the premises for purpose business/earning purpose, as was being used by *tenant*. At this *point*, I would insist that the *criterion* for establishing a case of *eviction* on count of ‘*requirement of premises for his own occupation*’ would be much *lighter* from that of ‘*requirement of premises for his own use*’ because the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is *otherwise* guaranteed by Article 23 of the Constitution. Reference may well be made to the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui 2000 SCMR 1613 wherein it is held as:-

“4. ... It is well-settled that the landlord has the absolute right to acquire and deal with his property in the manner best suited to him and a tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is again guaranteed by Article 23 of the Constitution.”

9. I would further say that in such like cases the landlord would only require to *establish* that requirement is *reasonable* and does not appear to be *mala fide* one. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such occupation. This would carry presumption of *truth* hence strong evidence would be required from *tenant* to rebut it. Conclusion is drawn from case of Mehdi Nasir Rizvi supra wherein it is held as :-

“4. ...there is no circumstance available on record tending to show that the desire of the respondent to use his own property is tainted with malice or any evil design. In fact respondent’s statement on oath has not been seriously challenged and in law it being consistent with the case pleaded by him must be accepted on its face value and given due weight. In the absence of any strong evidence to rebut the presumption of truth in the statement of the respondent it is difficult to dislodge the conclusion drawn by the learned Rent Controller as well as the learned High Court.

10. Keeping in view the above settled principles, I have examined both judgments in juxtaposition and found that the findings recorded by the trial court were *splendid* and categorical reasons were assigned with regard to vacation of the premises as landlords were competent to receive the possession of shop for business and they were agreed to return the amount of Rs.2,87,000/- received as a goodwill. Whereas, findings of the appellate court are unjustified under the law, since joint business is not sufficient ground to deprive a landlord from running his own business in his own premises which is his prerogative. Moreover, since petitioners are ready to return the goodwill amount of Rs.2,87,000/- and further undertake that in case, after taking possession, the petitioner for whom the premises is required does not open his business, they will pay a fine of Rs.500,000/- to the tenant and will return the possession back within three months. Under these circumstances instant petition is allowed; impugned judgment of the learned Appellate Court is set aside. However, tenant shall vacate the premises within eight months from today and shall pay future rent regularly, whereas goodwill amount shall be returned by the landlords to the tenant in the last month at the time of taking possession.

J U D G E

Sajid