

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

CP.No.S-520 & 521 of 2019

Date

Order with signature of Judge

26th January 2021

Mr. Muhammad Sadiq advocate for the petitioner
Mr. Zafar Iqbal Butt advocate for the respondent No.1

Salahuddin Panhwar J.-These petitions assail judgments dated 23.02.2019 passed by appellate Court in FRA No.03/2018 & FRA No.04/2018, whereby the orders dated 09.11.2017 passed by Rent Controller concerned in Rent Cases No.583 & 584 of 2016, were upheld and consequently, the FRAs were dismissed and present petitioner was directed to vacate the shops/demised premises. Being bound by common thread, I intend to dispose of both the above captioned petitions through this single Judge.

2. Precisely, the facts of the case are that the respondent is a private limited company and owner of Everyday Chamber situated at Muhammad Bin Qasim Road, Off I.I. Chundrigar Road, Karachi, through its authorized representative filed applications under Section 15 of the Sindh Rented Premises Ordinance, 1979 against the petitioner, who is tenant of Shops No.1 and 3 situated in the in the said Chamber, which were rented out to the petitioner on monthly rent of Rs.3113/- for each shop. The petitioner is son of Naseem Zaki who was previous tenant of the respondent. The respondent filed rent cases against Naseem Zaki but the same were dismissed when petitioner filed his affidavit and informed about the death of Naseem Zaki and accepted the actual possession of the demised shops. Legal notices were sent by the respondent to the petitioner for vacating the demised shops and petitioner signed Settlement Agreement and agreed to vacate the shops till November 2016. However, upon failure of the petitioner to vacate the demised shops, the respondent filed rent cases against the petitioner on the ground of *bonafide* personal need. After recording evidence and hearing the counsel for the parties, allowed the rent applications of the respondent and directed the petitioner to vacate the demised shops within 60 days and to hand over their peaceful vacant possession by separate orders dated

09.11.2017, which orders were challenged by the petitioner through F.R.As No.03 & 04 of 2018, which also met the same fate, hence these petitions.

3. Learned counsel for the petitioner argued that Mst. Naseem Zaki was tenant of the demised shops and after her death right of tenancy devolved upon her legal heirs; that both Rent Controller and the Appellate Court have failed to consider that rent case was filed by an authorized person; that respondent has concealed that there were other shops which were vacant and could be used by the respondent in case of acute need; that respondent failed to prove personal bonafide need; that impugned orders and judgments of both the fora are liable to be set aside.

4. The respondent, however, opposed the petition being not maintainable and while supporting the concurrent findings of the Courts below, argued that personal bonafide need of the respondent duly proved at trial and hence no interference is required in such findings; that the rent cases were filed through an authorized person who produced the relevant document in evidence; that the petitioner in order to linger on the matter has filed instant petitions without any cogent reason hence the same are liable to be dismissed.

5. Heard learned counsel for respective parties and minutely examined the material available on record as well impugned orders/judgments, recorded by both the courts below, whereby eviction applications have been allowed.

6. Since this is a writ of *certiorari* wherein concurrent findings of the courts are challenged. It is settled principle of law that question of facts, if not falling within the term of misreading and non-reading, cannot be questioned in writ petition, particularly in matter(s) of rent jurisdiction wherein the appellate Court is *final* authority. Reliance may be made to case of Shakeel Ahmed & another v. Muhammad Tariq Farogh & others 2010 SCMR 1925, wherein it is held as:-

“8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order

of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

Thus in such like matter (s), the burden becomes heavier upon challenger (petitioner) to *prima facie* establish a patent *illegality* in findings of two courts below which, too, should be shown to have resulted in some miscarriage of justice.

7. Before attending the merits of the case, I find it in all fairness to attend *legal* plea with regard to maintainability of ejection petition. Perusal of record shows that such *plea* was raised before the Rent Controller and even a point was framed in that regard. Here, it would be conducive to refer relevant paragraph of the order of the Rent Controller as under:

“POINT NO.1

As regards this point the opponent called into question the maintainability of this application on the ground that the same was not filed by the competent person duly authorized for the purpose. At first instance though has taken the plea that the rent application was filed by the incompetent person not duly authorized by the applicant/Ever Ready pictures. Before proceeding further I would reproduced the definition of landlord as provided under section 2 of Sec. 2 of Sindh Rented Premises Ordinance 1979 defines landlord as under:

“landlord” means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.
(Underline is supplied for emphasis).

The bare reading of the above reproduced provision of law shows that the definition of landlord is wide enough and not only includes the owner of the premises but also the person for the time being authorized or entitled to receive the rent in respect of the premises.

The applicant is admittedly the General Manager of the Applicant’s company Ever Ready Pictures and was authorized by the CEO & Chairman of the company and to that effect he submitted the **copy of delegation of Authority.**

In the case law reported in 2010 MLD 386, the Honourable High Court of Sindh has observed as follows:-

“if a Principal Officer, Secretary, Director or Attorney of a company filed ejection, it could not be said to be incompetently filed.”

Besides, the perusal of the “*Delegation of Authority*” letter shows that Ejectment application on behalf of company was filed under signature of one person in his capacity as General Manager of Company and the Delegation of Authority letter on record was showing that **person filling application was delegated powers by duly authorized person Mr. Satish Chandra Anand, the Chairman and Chief Executive Officer,** to sign, lodge FIR, complaints, submit applications, affidavits, given evidence, produced/exhibit documents and make statements on behalf of the company in all the Honourable Courts of Pakistan.

Furthermore, while cross examination the opponent himself has admitted that **Aziz Pasha deals the matter in respect of tenancy.** The opponent though said that after some time he stated paying rent to one Mushtaque Khan, but when the counsel for the opponent put the suggestion before the opponent that there is no one employee in the company of the applicant namely Mushtaque the opponent replied that he is not sure about the name. The opponent further admitted while cross examination that Aziz Pasha came under the heading of ever Ready Pictures therefore there was no need to write any letter to the Ever Ready Picture for filing the rent case by an authorized person. **The opponent further admitted that he tendered the rent to Aziz Pasha.**

In the case of Ali Akbar v. Noor Ahmed & 4 others (2017 MLD 1215), the Honourable High Court of Sindh has observed as follows:-

“landlord would include a person receiving rent on his own account or on behalf of any other person.”

Hence the applicant is authorized being officer of the company so also comes within the definition of landlord as discussed above, hence the case laws relied upon by the advocate for the opponent reported in 2000 SCMR 472, 1993 CLC 66, NLR 1989 AC 857(DB), PLD 2013 Lahore 110 and 2015 SCMR 1698 are not attracted to the circumstances to the present case. In view of above discussion, the point No.1 is answered As Discussed.

The above findings of the Rent Controller were also stamped by the Appellate Court which, otherwise, are not only in detail but provide proper reasoning for the conclusion to the effect that ejectment application (s) have been filed by proper person, therefore, it would suffice to say that such *plea* is not tenable.

8. As regard merits of the case, it would be conducive to refer relevant findings of the Rent Controller which reads as:-

POINT NO.2:

As regards this point, the applicant has stated that the applicant is affiliated with "show business" and is involved in the business of making/producing/filming, of Drama Serials, Feature films and advertisements etc for their valued clients, distinction at attributable to the credit of the applicant to produce the most lucrative, prestigious and heart catching stories, soaps, family drams for the general public. Due to his good and acceptable product a number of well-known TV channels, and other clients have in the past and are still ready for the agreements with the applicant to provide them required "Materials and ads for their products to telecast on their respective channels or any other medium that they wish for. The said premises is needed by the land lord for his personal bonafide use; keeping in view his expansion of business and that the applicant needs to set up in house studios to avoid/save heavy rents of the studios available in Karachi.

Though it was admitted by the applicant that *"it is correct to say that I have not mentioned either in rent application or affidavit in evidence that the applicant is running studio in the said building.*" However the opponent has nowhere denied the plea of the applicant being running the business of showbiz.

As regards the plea taken by the opponent that the applicant/landlord has so many other vacant premises though the applicant admitted that *"It is correct to say that in this rent case nowhere is mentioned as to how many shops and flats are vacant in this building"* and also admitted that *"At present there are so many premises vacant which have been vacated in compliance of court orders"* however, denied the same time *"It is incorrect to say that many other places already lying vacant within possession of the applicant which have not been utilizes to set up studio there.*" Even otherwise it is not the tenant to dictate the applicant /owner to choose the premise. The applicant has categorically stated that the subject premise is required for the expansion of his business and the applicant needs to set up in house studio. Such plea of the applicant as set up in his application for ejection so also affidavit in evidence went uncontroverted and **unshattered** and the opponent could not bring on record or establish that the purpose of personal need of the applicant for the requirement of the subject premises can be served by the use of other premises even if available even the learned advocate for the opponent did not any single suggestion before the applicant while cross examination that the demised premises is not required by the applicant for his personal bonafide use. The opponent while cross examination instead of

denial of the requirement if the subject premises by the applicant for his personal use point blank stated that he will not vacate.

The case law relied upon by the advocate upon by the advocate for the opponent reported in 2006 SCMR 152 is distinguished to the circumstances of the present case as the applicant has furnished the sufficient reason for requirement of the subject premises despite the other vacant premises if any that he wants to expand his business and such plea of the applicant has neither been controverted nor been shattered.

In the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui (2000 SCMR 1613) the Honourable Supreme Court has observed as follows:-

“No circumstance was available on record to show that desire of landlord to use his own property was tainted with malice or any evil design. Landlord’s statement on oath had not been seriously challenged and same being consistent with the case pleaded but him must have been accepted on its face value and given weight.”

In the case of MUHAMMAD FAREED versus NAUSHAD ALI reported in 2017 YLRN 63 KARACHI-HIGH COURT-SINDH; it was held as under;

“Burden to prove personal bonafide need of demised premises would stand discharged when landlord appeared in the court and had given evidence on oath which remained un-shattered in the cross examination-----landlord had prerogative to choose any of the premises which was suitable for his personal use and tenant had no right to raise any objection----.”

What is gathered from the above discussion is that the applicant has proved the requirement of subject premises for her personal bonafide hence in view of above discussion; the point No.2 is answered in Affirmative.

Since, it is well established principle of law that it is *always* the prerogative of the landlord to choose and select any of the tenement for his personal need and for this purpose the tenant or the Court have no *locus standi* to give their advice for alternate accommodation, as held in the case of Pakistan Institute of International affairs v. Naveed Merchant & Ors 2012 SCMR 1498, hence the findings of the Rent Controller, *duly* stamped by Appellate Court, on such point are proper and legal.

9. Further, counsel for the petitioner has failed to point out any material illegality or irregularity in the concurrent findings of the Courts below, therefore, the captioned petitions are not maintainable and are dismissed alongwith pending application(s). Since petitioner is an old tenant, therefore he shall vacate the demised shops within six months from today.

J U D G E

Sajid