

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 331 of 2021

Petitioner : Shahzad Siddiqui through Mr. Umar Farooq advocate

Respondent No.1 : Zafar Khan through Mr. Muhammad Azam advocate

The State : Mr. Zahid Farooq Mazari, AAG

Date of hearing : 10.10.2022

Date of judgment : 10.10.2022

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 02.04.2021 passed by learned District Judge Karachi South in FRA No. 19 of 2021 and order dated 23.12.2020 passed by learned VI-Rent Controller Karachi South passed in Rent Case No.1177/2018, whereby the petitioner was directed to vacate the demised premises and handover its peaceful possession to the respondent No.1.

2. Briefly the relevant facts are that respondent No.1/landlord being owner of shop at Plot No.140-A-1, Mehmoodabad Gate, Karachi, filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller on the ground of personal bonafide need against the petitioner.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned judgment/ order without taking into consideration the material brought before them; that actually the demised premises were obtained by the father of the petitioner from the respondent No.1 after obtaining huge amount of Rs.10,000/- towards *Pagri* hence there is no relationship between the parties as tenant/landlord; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned judgment/order; that the respondent No.1 falsely alleged that the demised premises are required for his sons, which he has failed to prove at trial, hence he prayed for setting aside the judgment/order of the Rent Controller/ Appellate Court.

4. On the other hand learned counsel for the respondent No.1 while supporting the impugned judgment contended that the learned Rent Controller

and learned Appellate Court passed well-reasoned judgement/order, which is based on cogent findings and do not require any interference by this Court.

5. Heard and perused the record.

6. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

“20. As per Section 15(2) (vii) of Sindh Rented Premises Ordinance, 1979, the landlord/owner is under obligation to prove the ground of personal requirement in good faith. The respondent No.1/landlord on oath have established that he residing in the premises on the upper portion of the said property & want to run his business for his personal bonafide use, occupation & possession to establish his business in the said shop and the respondent No. 1/landlord is an old person & jobless and also requires the demised premises for his personal business on the ground that he is aged person and did not frequently moving the areas of city of Karachi, hence, he required the said shop as he resided upper floor of the said said shop. The version of the appellant/landlord regarding the personal bonafide need of the demised premises has been found in good faith. There was no substantive valid evidence that the demand of the landlord in respect of the demised premises is malafide or for some motivated purpose. In absence any concrete & tangible evidence no presumption would be drawn that the claim of the landlord/owner for personal use of the demised premises is un-fair and not in good faith. The Rent Controller in the impugned order has properly appreciated the material on the point of the personal use of the landlord/owner according to law, required no interference. The point is answered accordingly.

21. In the result of the above discussion, I have reached to the conclusion that the impugned judgment/order is not suffering any irregularity or illegality, hence, instant first rent appeal merits no consideration, stands dismissed. Order accordingly.

7. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:

“ In order to substantiate his own version, the opponent produced affidavit in evidence denying the averments of the ejectment application. He also denied the relationship of landlord and tenant between the parties by stating in the contents of Para No.11 of his affidavit in evidence that:

“ Neither the applicant had delivered the possession of the property to me nor I obtained the possession of the premises from the applicant on rent, hence, the ejectment application is not sustainable in the eyes of law.

There is no document has been produced by the applicant before this Honorable Court in order to support their false contention regarding “landlord and tendant”

Therefore, it is prayed that kindly be pleased to “dismiss the Rent Case” filed by the applicant in the interest of justice, as neither I am the tenant of the applicant nor the applicant as produced even a single document which shows that the applicant obtained the premises on Rent from me.”

On the other hand, during his cross examination the opponent has admitted that”

“It is correct to suggest that I was gave the rent to the applicant voluntarily says I usually pay the rent to the applicant as well as son and brother”.

The above quoted admission of the opponent regarding payment of rent to the applicant or to son and brother, itself creates the relationship of landlord and tenant between the parties. Hence, the relationship of landlord and tenant between the parties is proved and the admission of opponent in the above quoted part of his cross examination is sufficient to believe that there is relationship of landlord and tenant between the parties.

So far the version of the opponent regarding other properties of the applicant is concerned, in this respect, the learned counsel for the opponent has also put many questions upon the applicant during his cross examination but could not achieve any fruitful result as the applicant has vehemently denied the said version of the opponent coupled with fact that if the version of the opponent is proved then even it is well settled principle of law that the landlord is the best judge to choose his properties that which property is best for his personal bonafide need. In the present scenario, it transpires that the version of applicant is proved and the opponent has failed to disprove his version. The witness appeared in favour of the opponent stated same facts as were in their affidavit in evidence and failed to disprove the version of the applicant.”

8. Initially, the petitioner denied relationship of tenant/landlord between the parties on the basis of *Pagri*, which is allegedly paid by his father to the respondent No.1, but he failed to substantiate such claim through any documentary evidence. If for the sake of arguments it is presumed that *pagri* amount was paid by the father of the petitioner in respect of the premises in

question, even then it would not debar the respondent/landlord to seek eviction of the petitioner on the ground of his personal bona fide need. Reliance is placed upon the case of **Sheikh Muhammad Yousuf vs. District Judge, Rawalpindi and 2 others (1987 SCMR 307)**. In the case **Mohammad Sharif v. Iftikhar Hussain Khan (1996 MLD 1505)** it was held that:

"...Nothing was in law which would bar ejectment under Sindh Rented Premises Ordinance 1979, for personal bona fide need of landlord in case which payment of pagri, he could file suit for recovery of same in civil court in accordance with law ... Mere fact that pagri had been alleged to have been paid to landlord would not debar landlord from seeking ejectment of tenant ground of personal bona fide need of his son."

9. Perusal of the record, it reflects that during cross-examination, the petitioner admitted that he used to pay rent to the respondent No.1, his son and brother, therefore mere bald denial of relationship by the petitioner without any documentary evidence could not be given any weight.

10. With regard to ground of personal bonfide need, the evidence of respondent No.1 remained unshaken and could not be shattered during his cross-examination. More so, no any documentary evidence has been brought on record to establish that the demand of the respondent No.1 is not in good faith. It is a general principle that if the statement of landlord comes on oath if consistent with application for ejectment and not shaken in cross-examination, it is sufficient to prove that requirement of landlord is bonafide.

11. For what has been discussed above, I find no illegality in the judgment/order *impugned*, which are accordingly maintained. Resultantly, present petition is dismissed.

J U D G E