

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 64 of 2021

Petitioner : Mst. Shah Jehan and others through Mr. Nadeem Akthar, advocate

Respondent No.1 : Mst. Zaib-un-Nisa through Mr. Muhammad Mr. Muhammad Nadeem Khan and Syeda Alina Naqvi advocates

Date of hearing : 18.04.2023

Date of judgment : 18.04.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 06.01.2021 passed by appellate Court in FRA No. 115/2020, whereby while upholding the order dated 07.11.2020 passed by learned Rent Controller in Rent Case No.182/2012, dismissed the F.R.A with no order as to cost.

2. Briefly the relevant facts are that respondent filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller on the grounds of personal bonafide need and default against the petitioner seeking his ejection from demised property i.e. H.No. 671, Block-2, F.B.Area, Azizabad, Karachi. However, ejection application was contested by the petitioner whereby he denied the relationship of tenant and landlord between the parties.

3. Learned counsel for the petitioner contended that learned Appellate Court has passed the impugned judgment without taking into consideration the material brought before it; that learned Rent Controller allowed the ejection application of the respondent No.1 without assigning sound reasons and the learned Appellate Court has also not applied his mind judiciously while passing the impugned judgment; that there exists no relationship of tenant and landlord between the parties as respondent No.1 has failed to establish that she is co-owner of the demised property; that the claim of the respondent No.1 regarding personal need is based on false plea. Lastly, argued that in these circumstances, the impugned judgment is liable to be set aside.

4. On the other hand learned counsel for the respondent No.1 while supporting the impugned judgment as well as the order passed by learned

Rent Controller contended that both the Courts below have taken into consideration the material brought on record after assessment of evidence brought before Rent Controller; that both the order passed Rent Controller and the impugned judgment passed by Appellate Court are based on cogent and well-reasoned 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 Order of the Rent Controller, whereby the ejectment application filed by the respondents was allowed, which is that:-

" 7. I have given due consideration to the arguments of both sides and have carefully gone through the evidence and the material on record. This point is crucial in nature. Though the rent controller has the no jurisdiction to decide the question of title yet the mandate of the rent controller to determine the relationship is not restricted. Applicant in Para No.3 of the ejectment application has stated that the premises were rented to the opponent No.1 through her mother Anwari Begum. The relevant Para is reproduced as under:-"

"That in the year 1974 the property was rented out through applicant's mother namely ANwari Begum and the premises in question was rented out to the opponent No.1 with the interference/help of one neighbor namely Khalil Ullah who is the close relative of the opponents and the premises in question was rented out to the opponents on the basis of monthly rent of Rs.300/- per month along with 3,000/- advance which is refundable at the time of vacate the premises in question."

8. The opponent No.1 & 2 filed written statement and in response to above Para stated that the opponent No.2 started paying rent to the applicant through neighbor namely Khalil Ullah Khan. The said Para of the written statement is relevant to be reproduced as under:-

"The the contents of Para No.3 to 6 of the application are denied being incorrect. It is submitted that opponent No.2 was/is tenant of late Abdul Sattar in respect of the rented premises since 1976 at the monthly rent of Rs.150/- pre month and the opponent No.2 had given him Rs.1500/- as an advance through a verbal tenancy agreement and thereafter said Abdul Sattar offered the opponent No.2 to purchase the said house for Rs.70,000/- and in this regard, the opponent No.2 had paid Rs.10,000/- to him and asked for time but thereafter the said Abdul Sattr was died and

the applicant after 10 days of death of Abdul Sattar and asked to vacate the said house but the opponent No.2 informed her about the sale deal in respect of the rented premises upon which the applicant stated that she would talk later and after some time, the mother of the applicant namely Anwari Begum came to the opponent No.2 and stated that Rs.10,000/- of the opponent No.2 were kept by her as Amanat and finally it was decided that neighbor of the opponent No.2 namely Khalil Ullah Khan will receive the rent on behalf of the applicant and time to time the rent was enhanced up to Rs.600/- per month which the opponent No.2 was regularly paying and in the year 2007, the applicant filed an application before the Nazim of Azizabad against the opponent No.2 in which she showed her as niece of late Abdul Sattar and the opponent No.2 filed his reply before the UC and on inquiry, the applicant could not satisfy that she was legal heir of late Abdul Sattar and it is denied in to that any notice as annexure 'C' was ever given to the opponent No.1 by the deceased mother of the applicant."

(Emphasis has been supplied)

9. Though the opponents have claimed that the applicant has no relationship with the actual owner yet in the above Para they have admitted the applicant's mother as one of the legal heir of Abdul Sattar and the applicant as daughter of Mst. Anwari Begum. Apart from above position, there is no dispute to the fact that the opponent No.2 is depositing the rent in MRC No.71/2012 in favor of applicant (Mst. Zaib un Nisa) wherein he himself has offered the rent to the applicant admitting her as one of the legal heir of Abdul Sattar. Besides, there is categoric admission on the part of opponents. The opponent No.2 during his cross examination stated as under:-

"It is correct that now I have been depositing rent before this court in MRC in favor of applicant Zaib un Nisa. It is incorrect to suggest that my wife used to pay monthly rent to applicant. Vol. Said that she used to pay the monthly rent to one Khalil Ullah. It is correct that applicant used to visit my house. It is correct that applicant used to collect the rent from Khalil Ullah when she visited my house. It is incorrect to suggest that there was private settlement in between me, my wife, applicant and Khalil Ullah to the effect that when applicant visit after 3/4 months she collect the monthly rent from Khalil Ullah."

10. Opponent No.1 examined her and during cross examination admitted as under:-

"I admit the contents of Para No.2 of my A/E. It is correct that applicant used to visit our house. It is correct that on the directive of applicant, opponent No.2 used to pay rent Khalil Ullah. Khalil Ullah is my neighbor as well as relative."

The above admissions are sufficient and give no room to the opponent to deny the status of the applicant being landlady.

16. As regard to point in question for personal bonafide need is concerned, the applicant has specifically mentioned in Para No.11 of her ejection application that the applicant is residing in her married daughter's house as such applicant requires demised premises for her own use. The applicant recorded her evidence and reiterated Para No.11 and Para No.12 of her affidavit in evidence. Moreover, the evidence of opponent No.2, itself reflects that the demand of the applicant is bonafide. The opponent No.2 during his cross examination admitted as under:-

"It is correct that whenever applicant visited my house she asked me to vacate the demise premises as she need the same for her personal bonafide need. It is correct that applicant does not possess any other property/house except demise premises at Karachi."

17. This being the position, it appears that the applicant is in bonafide need of the premises and she has no other accommodation in Karachi for her residence. As regard to case law cited in this point, I am of the humble opinion that the same is distinguishable as in the cited case PLD 1993 Karachi 300, the premises were required for the brother but in the instant case applicant requires the same for herself.

18. Applicant needs the premises for her personal residence. In my view the statement of applicant on oath is consistent with averment made in the ejection application. The evidence of applicant side in respect of personal need remained un-rebutted/un-shattered. Therefore, I am of the humble view that applicant has also succeeded to establish the ground of personal bonafide need. In my view I am supported by the case law reported as 2001 S.C.M.R. 1197 Honorable Supreme Court held as under:-

“Sole testimony of landlord is sufficient to establish his personal bonafide need of premises. Where statement of landlord on oath was quite consistent with his averments made in the ejectment application and neither his statement was shaking nor anything was brought on record in evidence to contradict the same.”

19. Applicant in his ejectment application and evidence has claimed that she needs the premises in question as she is residing in the house of her married daughter.

20. In view of the above discussion I am of the humble view that the applicant has established the case of ejectment on the ground of personal bonafide need of premises.”

7. The learned Appellate Court upheld the findings arrived at by the learned Rent Controller and dismissed the Rent Appeal filed by the petitioner through the impugned judgment which reads as under:

“In the rent case, the Respondent / applicant claimed herself to be the co-owner of the subject rented premises as being the legal heir of the Abdus Sattar (maternal uncle) and also claimed that the property was rented out to the opponent / appellant through her mother Mst. Anwari Begum with the help of Khalil Ullah. On the other hand, the opponents have denied relationship of landlord and tenant, but in the contents of written statement admitted that the mother of the applicant namely Mst. Anwari Begum, as one of the legal heir of Abdus Sattar, the owner of subject property. In the present case, there is also an admitted fact that the Opponent No.2 had filed MRC bearing No.71/2012 against applicant / respondent and depositing the rent in said MRC in favour of the applicant / respondent. Further more, during the trial of rent case, the applicant / respondent also examined one Khalil Ullah Khan as her witness, who was acted as rent collector on her behalf in respect of premises in question, the said witness also fully supports the version of applicant / respondent and the evidence of said witness suggest that in the year 1974 the applicant’s mother through him rented out the demised premises to the opponent. Further more, there is no denial on the part of opponent to be the tenant in respect of subject property which belongs to deceased Abdus Sattar and deposit of rent in MRC No.71/2012 in favour of present applicant being co-sharer of the subject property. S. 15 SRPO 1979, also entitled a co-sharer to initiate ejectment proceedings, without impleading other co-sharers as applicant.

In such circumstances of the case, I am of the humble opinion that while deciding the point of relationship as landlord and tenant between the parties, the learned trial court has rightly observed that there is exists relationship of landlord and tenant between the applicant and the opponent.

So far as point of personal need as taken by the respondent / applicant in ejectment application is concerned, I have also scrutinize the findings of learned rent controller on the point of personal bonafide need of applicant / respondent. Perusal of record shows that the applicant / respondents in ejectment application also taken the ground of personal bonafide need.

It is held in 2004 CLC 1326 that:- “Statement of landlord on oath of on consistent with the averment made in the application in respect of personal bona fide requirement which neither is shaken nor satisfactory contradicted, proves the bona fide of the landlord.” It is also held in 2001 SCMR 1197 that :- “where the statement of landlord on oath was quite consistent with the averments made in the ejectment application and same had neither been shaken nor any thing had been brought in evidence to contradict the statement, such statement on oath would be considered sufficient for the acceptance of the ejectment application.”

It is also held in 2002 SCMR 241 that:- “respondents being owner and landlord of the demised premises could not be deprived of their right and interest to use their property in a manner more suited to their requirements. No unreasonable restrictions can be placed on the exercise of right by landlord which would offend the fundamental rights guaranteed under Article 23 of the Constitution.”

In view of above, what has been discussed, and in view of principle laid down by the Hon’ble Supreme Court of Pakistan in the above dictum, very respectfully

following the same, I am of the view, that order dated 07-11-2020 does not require any interference & the same has been passed after appraisal of facts, circumstances & evidence, consequently, appeal of the appellant is dismissed, alongwith all pending applications, if any, with no order as to costs.”

8. Record reflects that initially respondent No.1 filed Rent Case No.182/2012 against petitioners on the ground of default and personal bonafide need. The matter was contested by the petitioners. During pendency of that case, the petitioner No.2 died. However, vide order dated 16.09.2015 the Rent case was allowed, which was assailed by the petitioners by preferring F.R.A No. 89/2015, which was heard by learned Appellate Court and the same was allowed, vide judgment dated 11.11.2016 and the rent case was remanded to the learned Rent Controller with direction to afford opportunity to the parties to lead their fresh evidence and after hearing the parties, decide the matter afresh on merits. On remand the respective parties adopted the evidence recorded in the earlier round. However, learned Rent Controller after hearing the arguments of both the parties, allowed the Rent case on the grounds that there existed relationship of tenant and landlord between the parties and the respondent No.1 successfully established personal bonafide need.

9. In the present case, the petitioner has denied relationship of tenant/landlady between the parties on the plea that demised property was rented out to him by Abdul Sattar and after his death, the respondent No.1 is claiming herself to be one of the co-owner of the demised property, however, she has failed to produce any document which confirms that she is one of the co-owner of the demised property. Whereas, respondent No.1 claimed that the demised property was rented out to the petitioner through her mother Mst. Anwari Begum with the help of Khalilullah who was collecting rent on her behalf. It is surprising to note that on one hand petitioner is denying that the respondent No.1 is co-owner of the demised property and on the other hand, she is depositing rent in Court in her favour, which fact is admitted by the petitioner in cross examination by stating that *“It is correct that now I have been depositing rent before this Court in MRC in favour of applicant Zaib un Nisa.”* Thus, it appears that the petitioner admitted the respondent No.1 as one of the co-owner and landlady of the demised property left by deceased Abdul Sattar. Besides, in written statement at para-8, petitioner has admitted tenancy, hence at this juncture she can't challenge the same under the doctrine of estoppel. A tenant cannot challenge the entitlement of the landlord to receive rent after acknowledging him as the landlord and after paying to him the rent, therefore, in such circumstances, the findings with regard to existence of relationship of

landlady and tenant between the parties do not require any interference by this Court.

10. With regard to the ground of personal bonfide need, the same is also proved as the respondent No.1 specifically stated in rent case as well as in her affidavit-in-evidence that she is residing in a house of her married daughter and she requires the demised property for her own use. Even the petitioner admitted during cross-examination that when respondent No.1 visited his house she asked him to vacate the demised property as she needed the same for her personal bonafide need and it is admitted by the petitioner that respondent No.1 has no property/house except the demised property. Therefore, the findings of both the Courts below with regard to personal bonafide need also do not require any interference by this Court.

11. For what has been discussed above, I find no illegality in the judgment *impugned*, which is accordingly maintained. Resultantly, the petition is hereby dismissed. However, the petitioner is directed to vacate the premises within one month. These are the reasons for the short order announced on 18.04.2023.

J U D G E

Sajid