

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI  
C. P. No.S-422 of 2022

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Dated: Order with signature of Judge(s)

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- 1.For orders on CMA No.2841/2022.
- 2.For hearing of Main Case.

Date of Hearing : 25 May 2023.

Petitioner : Pakistan Business International through Mr. Dur Muhammad Shah, Advocate.

Respondent No.1 : Saleheen Qureshi through Mr. Irfan Aziz, Advocate.

Respondents No.2&3 : The Learned District Judge Karachi (East) & learned XIIIITH Rent Controller Karachi (East).

**J U D G E M E N T**

**Mohammad Abdur Rahman, J.** The Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against the Judgement dated 1 April 2022 passed by the District & Sessions Judge Karachi (East) in FRA No. 27 of 2022 upholding the order dated 19 January 2022 passed by the XIIIITH Rent Controller Karachi (East) in Rent Case No. 512 of 2018 allowing an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 directing the Petitioner to be evicted from a tenement held by him.

2. It is a common ground that the Respondent No. 1 is the owner of a tenement bearing Plot No. B-535 & B-540, Sector 32-A, Korangi, Karachi (hereinafter referred to as the 'Said Tenement') and which has been let to by the Respondent No. 1 to the Petitioner for a rent of Rs. 75,000 per month payable on quarterly basis originally under a Tenancy Agreement dated 10 July 2006. The last Tenancy Agreement between the Petitioner and the

Respondent No. 1 was executed on 29 March 2016 for a period of eleven months at a revised rate of rent of Rs.130,000 per month.

3. The Petitioner maintained an application bearing Rent Case No. 512 of 2018 purportedly under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 alleging that the Petitioner had defaulted on his obligation to pay rent to the Respondent No. 1 and also under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 stating that the Respondent No. 1 required the Said Tenement for his personal use in good faith. in Paragraph (4) of his application under Section 15 of the Sindh Rented Premises Ordinance, 1979 states as under:

“ ... 4. That upon the completion of the tenure of the Tenancy Agreement II, the Opponent again remained in permissive occupation of the Subject Property and the tenancy under the Tenancy Agreement II continued as a hold over tenancy in terms of Section 116 of the Transfer of Property Act, 1882 until August 2018, when the Applicant decided to occupy the Subject Property in good faith for his own occupation i.e. for the purposes of operating his company duly incorporated under the laws of Pakistan, namely, shams Flour Mills (Pvt.) Limited (hereinafter referred to as the “Company”). (Copy of the payment receipt/payments made under the hold over tenancy & copy of the documentation pertaining to the Applicant’s Company are annexed herewith as Annexure D-I to D\_\_\_\_\_ respectively).”

4. In the Written Statement that was filed by the Petitioner to the application under Section 15 of the Sindh Rented Premises Ordinance, 1979 it was, inter alia, contended that in the year 2015-2016 the rent was increased for the period up to 2025 with enhancements as indicated hereinafter:

“ ... Thereinafter the tenancy agreement was revised in the year 2016/16 for next ten years upto 2025 after enhancement of monthly rent from 75,000/- to 1,30,000/- and quarterly from Rs.2,25,000 to Rs.3,90,000/-.

In response to the issue stated in Paragraphs (4), (5) & (6), the Petitioner has averred that:-

(i) he had received a legal notice on October 2018 alleging that he has defaulted in the payment of rent which he has denied *ipso facto* by adducing evidence that the Respondent No. 1 had paid the rent of Rs. 3,90,000/- through Cheque No.78157182 for the month of September to December 2018 and that various other issues for default was subject to adjustment of outstanding as between the Petitioner and the Respondent No.1;

ii) the matter was heard by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018 who framed the following Issues:

(i) Whether the opponent has committed default in regular payment of rent on time and also violated the terms and conditions of the tenancy agreement?

(ii) Whether the applicant require the tenement in question for personal need in good faith?

(iii) What should the order be?"

and who thereafter held that despite the fact that the issue of default has not been specifically pleaded in the Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 as the time period for payment of rent and the obligation thereto was identified in Paragraph 2 of Rent Case No. 512 of 2018 cognisance could be taken on such issue by the Rent Controller and granted the application in terms of clause (ii) of

Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979;

- (iii) that the Respondent No. 1 had proved that he required the Said Tenement for his personal use in good faith and hence the Petitioner was liable to be evicted from the Said Tenement under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

5. The Petitioner preferred an appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 bearing FRA No. 27 of 2022 before the District & Sessions Judge Karachi (East) who held that:

- (i) as the issue of default under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 had not been pleaded by the Respondent No. 1 the same issue could not have been decided by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018 and to that extent set aside the Order dated 19 January 2022; and
- (ii) that the Respondent No. 1 had succeeded in proving his case in respect of requiring the Said Tenement for his personal use in good faith and had upheld the order dated 19 January 2022 passed by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018.

6. Counsel for the Petitioner appeared before this Court and addressed arguments stating that no specific ground either of the Petitioner having committed default on his obligation to pay rent to the Respondent No. 1 in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 having been raised or for that matter any

allegation of requiring the Said Tenement for the personal use of the Respondent No. 1 in good faith in terms of Clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 had been raised in Rent Case No. 512 of 2018 each of the issues were beyond the pleadings of the Respondent No. 1 and could therefore not have been raised as an issue in Rent Case No. 512 of 2018. He further averred that both the District & Sessions Judge Karachi (East) in FRA No. 27 of 2022 and the XIII<sup>TH</sup> Rent Controller Karachi (East) in Rent Case No. 512 of 2018 could not have taken cognisance of such a matter when it was not specifically been pleaded in Rent Case No. 512 of 2018. He relied on a decision of the Supreme Court of Pakistan reported as **Saddaruddin vs. Sultan Khan**<sup>1</sup> to advance the proposition that no evidence could be adduced beyond pleadings.

7. Counsel for the Respondent No. 1 conversely argued that the allegation for needing the property for personal use by the Respondent No. 1 in good faith has specifically been taken in Paragraph (4) of the Rent Case No. 512 of 2018 and as such the pleadings had specifically met the requirements of law and that there was no illegality or infirmity in either in the Judgement dated 1 April 2022 passed by District & Sessions Judge Karachi (East) in FRA No. 27 of 2022 or upholding the order dated 19 January 2022 passed by the XIII<sup>th</sup> Rent Controller Karachi (East) in Rent Case No. 512 of 2018 to the extent of the requirement of the Respondent No. 1 needing the property for his personal use in good faith. He did not rely on any case law in support of his contentions.

8. I have heard both the counsel for the Petitioner and the counsel for the Respondent No. 1 and have perused the record.

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<sup>1</sup> 2021 SCMR 642

9. It is to be noted that as the issue of the Petitioner having defaulted on his obligation to pay rent to the Respondent No. 1 in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 had been decided in favour of the Respondent No. 1 by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018 has been set aside by the District & Sessions Judge Karachi (East) in FRA No. 27 of 2022 and against which no Petition has been preferred by the Respondent No. 1 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 before this court to set aside that portion of the Judgement, the sole issue that remains to be decided in this Petition is as to whether the Respondent No. 1 requires the Said Tenement for his personal use in good faith under clause (vii) Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

10. The provision of Clause (vii) Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 is as under:

“ ... (vii) 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.”

11. The burden of proving the requirement of using the Said Tenement for the personal use of the landlord or the persons identified in clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been considered by the Supreme Court of Pakistan in the decision reported as **Jehanqir Rustom Kakalia vs. State Bank of Pakistan**<sup>2</sup> wherein it was held that:<sup>3</sup>

“ ... In the impugned judgement (page 14 of paper book). While discussing evidence on the question of bona fide requirement reliance is placed on the case of Hassan Khan v. Mrs. Munawar Begum reported in PLD 1976 Karachi 832, which view was subsequently confirmed in case of Mst. Toheed Khanam v. Muhammad Shamsah reported in 1980. SCMR 593. Rule laid down in the cases mentioned above is that on the issue of personal

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<sup>2</sup> 1992 SCMR 1296

<sup>3</sup> *Ibid* at pg. 1297

need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”

Regarding the burden of proving the requirement of using a tenement for personal use in good faith, the Supreme Court of Pakistan in **S.M. Nooruddin vs. Saga Printer**<sup>4</sup> has held that:<sup>5</sup>

“ ... once the landlord had duly acquitted himself by stating on oath that his requirement is in good faith as understood in law, he should normally be deemed to have discharged his burden, which thereupon shifts to the tenant to who it remains initially to cross examine the landlord and, that being done lead his own evidence in rebuttal.”

12. I have perused the record of Rent Case No. 512 of 2018 and note that in Paragraph (4) of the Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 it has been stated as under:

“ ... 4. That upon the completion of the tenure of the Tenancy Agreement II, the Opponent again remained in permissive occupation of the Subject Property and the tenancy under the Tenancy Agreement II continued as a hold over tenancy in terms of Section 116 of the Transfer of Property Act, 1882 until August 2018, when the Applicant decided to occupy the Subject Property in good faith for his own occupation i.e. for the purposes of operating his company duly incorporated under the laws of Pakistan, namely, Shams Flour Mills (Pvt.) Limited (hereinafter referred to as the “Company”). (Copy of the payment receipt/payments made under the hold over tenancy & copy of the documentation pertaining to the Applicant’s Company are annexed herewith as Annexure D-I to D\_\_\_\_\_ respectively).”

(Emphasis is added)

13. I am therefore of the opinion that the issue of the Respondent No. 1 requiring the Said Tenement for his personal use was specifically pleaded and an issue to that extent has been correctly framed by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018. The same facts

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<sup>4</sup> 1998 SCMR 2119

<sup>5</sup> *Ibid* at pg. 2123

have been reiterated by the Respondent No. 1 in his evidence wherein it is stated that:

“ ... *It is incorrect to suggest that I did not mentioning the ground of the premises required for personal need.* It is incorrect to suggest that I did not annexed the copy of legal notice to the opponent for my personal need. Vol says the legal notice at Ex A/56 produced during evidence is the said legal notice showing my personal need. In legal notice at Ex A/56 no any para regarding personal need is mentioned. It is correct to suggest that the Shams Flour Mill mentioned in para no 6 of the affidavit in evidence, is the flour mill of which I am the owner. I am running the Shams Flour Mill since 2014 as an owner. Vol says at present it is not in operation but is stopped since 2015. It is correct to suggest that I have not produced any owner ship document of Shams Flour Mill in the Court. I bear the expenses of my daily life from the rents paid by the tenants. I have not produced any document of board of directors during my evidence regarding Shams Flour Mill. It is incorrect to suggest the Ex A/53 shows that Muhammad Wali-Ul-Momineen as 100% shareholder of Shams Flour Mill. It is correct to suggest that Ex A/49 shows that Shams Flour Mill is situated in industrial area Shah Faisal Town, Korangi, Karachi. It is correct to suggest that the rented premises is situated in Korangi, Karachi. It is correct to suggest that in Ex A/49 the capacity is shown as owner with 100% share. It is correct to suggest that in Ex A/49 my name is written in the capacity of principle officer with 00.00% share. It is correct to suggest at Ex A/49 the name of Muhammad Wali-ul-Momeneen is written in the capacity of director with 01.00% share. It is correct to suggest at Ex A/51 it is written that Wajhi Ul Momineen having the capacity of owner of 100% share.”

(Emphasis is added)

14. In contrast I have perused the evidence that had been recorded by the Petitioner and note that no evidence has been adduced to show why the Said Tenement could not be used by the Respondent No. 1 as suggested by him. I am therefore of the opinion that the evidence of the Respondent No. 1 that he required the Said Tenement for his own personal use in good faith having gone unrebutted by the Petitioner, there is no illegality or infirmity either in the order dated 19 January 2022 passed by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018 or in the Judgement dated 1 April 2022 passed by the District & Sessions Judge Karachi (East) in FRA No. 27 of 2022 on the issue that the Respondent No. 1 requires the Said Tenement for his personal use in good faith and uphold the order to that extent.



15. For the foregoing reasons, there being no illegality or infirmity in either the order dated 19 January 2022 passed by the XIIIth Rent Controller Karachi (East) in Rent Case No. 512 of 2018 or in the Judgement dated 1 April 2022 passed by the District & Sessions Judge Karachi (East) in FRA No. 27 of 2022, this Petition is misconceived and is dismissed along with all listed application(s) with no order as to costs.

Karachi;  
Dated; 1 August 2023.

JUDGE

Nasir PS.