

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-965 of 2019

Dated: Order with signature of Judge(s)

1. For orders on Office Objection
2. For hearing of CMA No. 4304 of 2019
3. For hearing of Main Case.

Date of Hearing : 22 May 2023, 24 May 2023, 25 May 2023 and 1 June 2023

Petitioner : The Statesman through Mr. Muhammad Ali Tek, Advocate

Respondent No. 1 : Ghulam Hussain Hidayatullah through Mr. Abdullah Munshi, Advocate

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

ORDER

MOHAMMAD ABDUR RAHMAN,J: The Petitioner impugns the Judgement dated 27 April 2019 passed by the Xth Additional District & Sessions Judge, Karachi (South) in FRA No.237 of 2018 upholding the order dated 25 August 2018 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017 under section 15 of the Sindh Rented Premises, Ordinance, 1979 evicting the Petitioner from a tenement.

2. It is common ground as between the Petitioner and the Respondent No.1 that the Respondent No. 1 is owner of the shop bearing No.16, situated in Dilgusha Building built on a Commercial Plot bearing Survey No.1/25, Sheet SR-13, admeasuring 527 square yards, Serai Quarters, I.I Chundrigar Road Karachi (hereinafter referred to as the "Said Tenement")

and which had been let out to the Petitioner by one Begum Moeena Hidayatullah to the Petitioner @ Rs.1,065/- per month.

3. Rent Case No. 397 of 2017 was maintained by the respondent No.1 on the ground that:

- (i) That the Petitioner had since January, 2015 to date defaulted on its obligation to pay the rent to the Respondent No.1 and as such was liable to be evicted under Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 from the Said Tenement; and
- (ii) That the Respondent No.1 required the Said Tenement for his personal use in good faith and as such the tenant was liable to be evicted under Clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979

4. The Rent Case No. 397 of 2017 was instituted against the Petitioner identifying the Petitioner's name and address as follows:

The Statesman,
Shop No.16, First Floor,
Dilgusha Building,
Main I.I. Chundrigar Road,
Karachi

5. The Petitioner filed a written statement to the application under Section 15 of the Sindh Rented Premises, Ordinance, 1979 wherein it was stated that:

- (i) No specific name of the tenant was mentioned and as such application under section 15 of the Sindh Rented Premises, Ordinance, 1979 was not maintainable.
- (ii) there was no question of any default having been committed by the Petitioner on the payment of Rent to the Respondent No.1 in terms of clause (ii) of subsection (2) of Section 16 of

the Sindh Rented Premises, Ordinance, 1979 as all rents were being paid to one Mr. Ashraf up to the end of the year 2016 and who was the rent collector of the Respondent No.1; and

- (iii) That the Respondent No. 1 had not specified the exact purpose that they wished to put the Said Tenement to rendering the Application in this regard as not being maintainable.

6. That after adducing evidence and hearing the Petitioner and the Respondent No.1 the VIIth Rent Controller, Karachi (South) held that:

- (i) The Petitioner had failed to fulfill its obligation to pay the rent to the Respondent No.1 and was as such liable to be evicted from the Said Tenement in terms of clause (ii) of subsection (2) of Section 16 of the Sindh Rented Premises, Ordinance, 1979.
- (ii) That the Petitioner had failed to prove that the Said Tenement was not required by the Respondent No.1 for his personal use in good faith and was as such liable to be evicted from the Said Tenement in terms of clause (vii) of subsection (2) of Section 16 of the Sindh Rented Premises, Ordinance, 1979..

7. Being aggrieved and dissatisfied by the order dated 25 August 2018 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017, the Petitioner preferred an Appeal under section 21 of the Sindh Rented Premises, Ordinance, 1979 bearing FRA No.237 of 2018 and which was dismissed by the Xth Additional District & Sessions Judge, Karachi (South) vide Judgement dated 27 April 2019 holding that:

- (i) the Petitioner had defaulted on its obligation to pay rent in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises, Ordinance, 1979; and
- (ii) the Said Tenement was required by the Respondent No.1 for his personal use in good faith and ordered for the eviction of the Petitioner from the Said Tenement.

8. The Petitioner being aggrieved by the Judgement dated 27 April 2019 passed by the Xth Additional District & Sessions Judge, Karachi (South) in FRA No.237 of 2018 has now maintained this Petition challenging that order. Mr. Muhammad Ali Tek entered appearance on behalf of the Petitioner and averred that the Petitioner has been carrying on business in the name and style of "Statesman" on the Said Tenement and from where the Petitioner publishes two newspapers i.e. "Afshan" and "Qoumi Tijarat" for the last ten years. He further contended that the business of Statesman is being run by a Mr. Mushir and Mr. Khalid Shakil who are the publishers of the said newspapers. He stated that the rent was being paid by the Petitioner to one Mr. Ashraf who was the Rent Controller of the Respondent No.1 and that the Petitioner had paid all rent up to December 2016.

9. Mr. Muhammad Ali Tek added that in or around 17 October 2016 the Respondent No. 1 allege that the Petitioner received a notice under section 18 of the Sindh Rented Premises, Ordinance, 1979 confirming that the Said Tenement had been gifted by one Begum Moeena Hidayatullah to the Respondent No.1. He has further contended that while no notice was received and as no claim was made for rent for the year 2016 by the Respondent No. 1, upon receipt of the notice of Rent Case No. 397 of 2017, the Petitioner in the month of April 2017 approached the alleged rent collector Mr. Ashraf and requested him for previous rent receipts for

the year 2016 but such request of the Petitioner was not acceded to by the said Mr. Ashraf with mala fide intention.

10. Mr. Muhammad Ali Tek denied that the Respondent No.1 required the Said Tenement for his personal use in good faith and stated that the allegations made in the rent application were vague and could not be substantiated. He also contended that the order passed in FRA No.237 of 2018 by the Xth Additional District & Sessions Judge, Karachi (South) whereby the order dated 25 August 2018 passed by the VIth Rent Controller, Karachi (South) in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises, Ordinance, 1979 was up held could not be sustained as compliance of Section 18 of the Sindh Rented Premises, Ordinance, 1979 had not been made by the Petitioner on his being transferred the Said Tenement and hence he was absolved from paying rent to the Respondent No.1.

11. Mr. Muhammad Ali Tek stated that an application under section 16 of the Sindh Rented Premises, Ordinance, 1979 filed by the Respondent No.1 and which was granted and pursuant to which the Petitioner was directed to deposit rent in Court and with which order he has been complied with. He stated that no evidence has been adduced to show any default having been made by the Petitioner as no notice under section 18 of the Sindh Rented Premises, Ordinance, 1979 informing the Petitioner of the change in the ownership of the Said Tenement was given to the Petitioner prior to the filing of Rent Case No. 397 of 2017 and in the circumstances the notice issued on Rent Case No. 397 of 2017 should itself be treated as the notice under section 18 of the Sindh Rented Premises, Ordinance, 1979. On the basis of the notice in Rent Case No. 397 of 2017 being treated as the notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 he avers that as the notice had been received by the Petitioner in the month of April 2017, default on the part of

the Petitioner 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 should be determined from April 2017.

12. Regarding the title of the Respondent No. 1 to the Said Tenement the Petitioner stated that the VIIth Rent Controller, Karachi had directed the Respondent No. 1 to produce his title document to the Said Tenement during his deposition in Rent Case No. 397 of 2017 which was in the nature of a gift deed. He contends that in his deposition on 2 November 2017, the Respondent No.1 appeared before the VIIth Rent Controller, Karachi (South) and instead of producing a gift deed only produced an extract from a property register which showed him as the owner of the Said Property and which could not be considered as proper title so as to demonstrate that a relationship of landlord and tenant existed as between the Petitioner and Respondent No.1.

13. Mr. Muhammad Ali Tek finally submitted that the contentions of the Respondent No. 1 that he required the Said Tenement for his personal use in good faith were vague and as no finding had been made by the VIIth Rent Controller in this regard in Rent Case No. 397 of 2017 which was upheld by the Xth Additional District & Sessions Judge, Karachi (South) in FRA No.237 of 2018 this ground could not be sustained by the Respondent No. 1.

14. Mr. Abdullah Aziz Munshi who appeared on behalf of the Respondent No. 1 and has contended that a notice under section 18 of the Sindh Rented Premises, Ordinance, 1979 was sent to the Petitioner on 16 November 2016 and which stated as under:

“ ... Kindly take notice that the undersigned namely Begum Moeena Hidayatullah, widow of (late) Mumtaz Hussain Hidayatullah, as the owner and landlady of Dilgusha building situated on main I.I. Chundrgiar Raod, Karachi, have relinquished my rights in the above

property and have gifted the above property as Donor in favour of the Donee who is my only son, namely Ghulam Hussain Hidayatullah, son of (late) Mumtaz Hussain Hidayatullah, who has accepted the same. In the circumstances, you as Tenant are hereby informed of the change of ownership and are required under law to attorn to my son, namely Ghulam Hussain Hidayatallah, as new Owner/Landlord."

15. He contended that this notice was sent through courier and a receipt confirming the delivery of which is available showing that it was delivered on 17 October 2016 was adduced in evidence. He alleges that once notice under section 18 of the Sindh Rented Premises, Ordinance, 1979 has been issued to the Respondent No.1, it was incumbent upon the Petitioner to immediately pay the rent to the Respondent No.1 and any delay in payment must be considered as a default within the meaning given to that expression under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. He stated that the denial of the receipt of such a notice by the Petitioner is being alleged solely to cover the default committed by the Petitioner on the payment of rent up to April 2017 and even if the Petitioner's contention is accepted i.e. that the rent was being paid to a rent collector, even then the rent for the period from January 2017 to May 2017 remained unpaid and which would amount to default rendering the Petitioner liable to being evicted under Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. He stated that the Respondent No. 1 had clearly averred that he required the Said Tenement for his personal use in good faith and once having made such an averment it was incumbent on the Petitioner to show that the Said Tenement was not required by the Respondent No. 1 or that the Said Tenement could not be put to the use specified by the Respondent No. 1 in Rent Case No. 397 of 2017.

16. Mr. Abdullah Aziz Munshi relied on the decisions reported as **Iqbal Book Depot & others vs. Khatib Ahemd & others**,¹ **M/S. F.K. Irani &**

¹ 2001 SCMR 1197

Co. vs. Begum Feroze & another,² Abdullah Haroon vs. Vth Additional District Judge, Karachi (South) & others,³ Moinuddin Ghorji vs. Administrator of M/s Saint Francis Church (Trust),⁴ Muhammad Ishaque Qureshi vs. Zahir Hussain Jafri,⁵ and Raees Ahmed Pasha vs. Kamaluddin⁶ to state that if the landlord adduced evidence that he required the premises for his personal use that would be sufficient to discharge his burden to claim possession of the tenement and whereafter the burden would be on the tenant to show that the tenement was not required by the landlord for his personal use in good faith. He stated that in the decisions reported as Muhammad Amin Lasania vs. M/s Ilyas Marine and Associates & others,⁷ Pakistan Institute of International Affairs vs. Naveed Merchant & others,⁸ Shakeel Ahmed & another vs. Muhammad Tariq Farogh & others,⁹ and Muhammad Shafique vs. 1st Additional District Judge & another¹⁰ it had been held that simply because the Respondent No. 1 had other premises available to him would not be a basis to allege that he did not want the Said Tenement in good faith as it was the choice of the landlord to determine which of his tenements he would require for his personal use. He also relied on the decision reported as Abdul Rehman through Legal Heirs & others vs. Pakistan State Oil Company Ltd & another¹¹ to state that the law did not require him to state that nature his business while claiming a property for his personal use in good faith. He next relied on the judgements reported as Naeem Begum vs. Mrs. Raeesa Khatoon & others,¹² Jalees Ahmed vs. Mrs. Abida Ismail¹³ and Kala Khan vs.

² 1996 SCMR 1178

³ PLD 2015 Sindh 464

⁴ PLD 2014 Sindh 194

⁵ PLD 2013 Sindh 245

⁶ 2004 MLD 587

⁷ PLD 2015 SC 33

⁸ 2012 SCMR 1498

⁹ 2019 SCMR 1925

¹⁰ 2017 MLD 1555

¹¹ PLD 2004 SC 921

¹² 1997 MLD 1030

¹³ 1987 MLD 114

Anjumane Musalmanane Mashriqi Punjab, Karachi¹⁴ to state that onus was on the landlord to adduce evidence that they had not received the rent and as soon as that was done, the onus would shift onto the tenant to show that the rent had in fact been paid. In **Haji Rauf vs. Abdullah Qaiser & others**,¹⁵ **Muhammad Anis vs. Muhammad Yahya Sultan & others**,¹⁶ **M/S. Habib Bank Limited vs. Sultan Ahmed & another**¹⁷ **Javid Iqbal vs. Vth Additional District Judge, Karachi (East) & another**,¹⁸ **Usman vs. Muhammad Younus Gunda**¹⁹ and **Mushtaq Ali & others vs. Syed Latifuddin Fakhri**²⁰ he contented that the proposition had been settled that once a notice had been sent to the tenant under Section 18 of the Sindh Rented Premises Ordinance, 1979 it was the duty of the tenant to ensure that rent was paid to the landlord, failing which any lapse on the payment of rent would amount to default rendering the tenant liable to being evicted. In the context of his obligation prove his title he relied on the decision reported as **Saifuddin & another vs. VIIIth Senior Civil Judge/Rent Controller, Karachi (South) & others**²¹, to state that a tenant could not challenge the title of a person who had introduced him into the tenement even if the same is found to be deficient.

17. I have heard the Counsel for the Petitioner and the Respondent No. 1 at length and perused the record. After the decision of VIIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017, I am left to examine the two issues that remain to be decided:

- (i) As to whether the Petitioner has defaulted on its obligation to pay rent to the respondent No.1 rendering him liable to being evicted from the Said Tenement under the provisions

¹⁴ 1993 CLC 250

¹⁵ 2014 SCMR 979

¹⁶ 2011 SCMR 589

¹⁷ 2001 SCMR 678

¹⁸ 2016 YLR 2347

¹⁹ 2016 CLC 155

²⁰ 1993 CLC 1696

²¹ 2007 SCMR 128

of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979, and

- (ii) Whether the Respondent No.1 requires the Said Tenement for his personal need in good faith rendering the tenant liable to being evicted from the Said Tenement under the provisions of clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

18. The question as to on whom the burden of proving that the tenant had defaulted on paying the rent, entitling the landlord to evict the tenant under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been decided by the Supreme Court of Pakistan in the decision reported as *Allah Din vs. Habib*²² wherein it was held that:²³

“ ... *It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 12 (2) I) of the Sind Urban rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question.*”

In this context it has come on record that the Respondent No. 1 has alleged that after the issuance of the notice on 16 November 2016, the tenant had not tendered the rent and had alleged that he had never received the notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 that had purportedly been issued to the Petitioner. It has come on record that the Respondent No.1's predecessor in interest Begum Moeena Hidayatullah had gifted the said tenement to the Respondent No.1 and which fact was confirmed in an Extract from the

²² PLD 1982 SC 465

²³ *Ibid* at pg. 468

Property Register dated 6 October 2016 that had been issued in favour of the Respondent No. 1. It has also come on record that the predecessor in interest of the Respondent No. 1 had informed the Petitioner of this change in ownership on 17 October 2016 which was a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979. Once the notice under section 18 of the Sindh Rented Premises, Ordinance, 1979 has been issued to the Petitioner, it was incumbent upon the Petitioner to tender the rent to the new owner i.e. the Respondent No.1. In his defence the Petitioner took two grounds firstly, that it has paid rent for the year 2016 to one Mr. Ashraf who was rent collector of Begum Moeena Hidayatullah in the month of April, 2016 and has further added that the said Mr. Ashraf failed to issue rent receipts to him as such he was unable to produce the same. This statement by itself is sufficient to show that the Respondent No.1 had issued a notice under Section 18 of the Sindh Rented Premises, Ordinance, 1979 to the Petitioner and which having been received by the Petitioner compelled him to approach the said Mr. Ashraf. The notice having been received it was thereafter incumbent upon him to pay the rent to the Respondent No.1 and which having not been paid to the Respondent No. 1 would render him liable to being evicted from the Said Tenement. This fact is reinforced by the fact that the Petitioner did not even summon the so-called rent controller i.e. Mr. Ashraf as a witness to substantiate that such rent was paid. The onus being on the Petitioner to discharge such a burden and which burden has not been discharged I am of the view that the findings in the order dated 25 August 2015 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017 and the Judgment dated 27 April 2019 passed by the Xth Additional District & Sessions Judge, Karachi (South) in FRA No.237 of 2018 do not suffer from any infirmity, illegality or irregularity and therefore the same are upheld.

19. 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 **Jehangir Rustom Kakalia vs. State Bank of Pakistan**²⁴ wherein it was held that:²⁵

“ ... *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 Shamshad reported in 1980. SCMR 593. Rule laid down in the cases mentioned above is that on the issue of personal 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. Saqa Printer**²⁶ has held that:²⁷

“ ... *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.*”

20. The Respondent No.1 in his deposition in support of his application under section 15 of the Sindh Rented Premises, Ordinance, 1979 has deposed that:

“ ... *It is also correct to suggest that I have not produced any proof in writing about nature and detail of my business along with my rent application and as well as in my affidavit in evidence. Vol: says that I am running my business of Agro Technology and I intend to expend my said business. I have been running my said business for last about 10 years. I am running my said building on my agriculture land*

²⁴ 1992 SCMR 1296

²⁵ *Ibid* at pg. 1297

²⁶ 1998 SCMR 2119

²⁷ *Ibid* at pg. 2123

situated at my land. It is correct to suggest that I have not mentioned the detail of my agriculture such land where the same are located. Vol: says that my such land located at Mirpurkhas and District Thatta. It is correct to suggest that I have not produced any detail of business transaction of my said business before this court. Vol. says I have not needed to file the same. It is correct to suggest that I have not produce any proof which shows the name and style of my business which is being by me. It is correct to suggest that I have no NTN number in respect of my business. It is correct to suggest that I have not produce any documents shown tax return related to my said business. At present 5/6 offices which are lying vacant and are in my possession where the subject tenement is situated. Vol: says that my occupant related to business are lying in said office. It is correct to suggest that office which are lying vacant are situated on ground and on first floor. It is correct to suggest that I have shown my address as office No: 15 in the same building. It is fact that opponent is running their business in office No: 16 in the same building just adjacent to my office. It is correct to suggest that I used to come office off & on. I need offices for my personal need situated on ground as well as on first floor. It is fact that till date I have not initiated any-step for extending my business in 5/6 offices which. are lying vacant, Vol: says that I need more space for expending my said business including the subject tenement. It is incorrect to suggest that subject tenement is small Office. Vol: says that all the offices on the each floor approximately on same sizes, It is incorrect to suggest that I have got changed the locks of bath room, situated 'adjacent to subject tenement in order pressurized the Opponent to vacate the subject tenement: I have no objection if the said bath room may be inspected. It is correct to suggest that I have mentioned in my rent application and as well as in my affidavit: in evidence that subject tenement is required for myself and as well as for my family. My wife is doing her own personal business "of coal mines. It is s correct to suggest that. I have not produced any proof in respect of business run by my wife before this court. I have two children in my family besides my office: It is correct to suggest that my both children are student. It is incorrect to suggest that I have filed this rent case on the ground of personal need with malafide intention just in order to. get increase the monthly rent. I am 56 years old. It is correct to suggest that have not produce any proof of any of my business before this court. It is incorrect to suggest that I was not doing any other business prior starting my present business Agro Technology."

21. It has come on record that the Respondent No.1 stated that he requires the said tenement for his business. The Petitioner has averred the Respondent No. 1 had not stated the exact purpose for which the said tenement is needed. This is, however incorrect, the Respondent No.1 has in his deposition categorically stated that he requires the tenement for expansion of his business of Agro Technology. The second objection that was raised that the Petitioner has more than one tenement in the same premises and which shows his mala fide is also not sustainable as correctly pointed out by Mr. Abdullah Munshi and as held by both Supreme Court and by this Court in the decisions reported as **Muhammad Amin Lasania vs. M/s Ilyas Marine and Associates &**

others,²⁸ Pakistan Institute of International Affairs vs. Naveed Merchant & others,²⁹ Shakeel Ahmed & another vs. Muhammad Tariq Farogh & others,³⁰ and Muhammad Shafique vs. 1st Additional District Judge & another³¹ the fact that the landlord would have a number of tenements to choose between, his choice of choosing the tenants tenement was his choice and would not be sufficient to establish that the Respondent No. 1 use of the Said Tenement would not be in good faith. I am therefore satisfied that the Respondent No. 1 has proved that he had required the Said Tenement for his personal use in good faith and no illegality or infirmity exists in either the Judgment of the Xth Additional District & Sessions Judge, Karachi (South) dated 27 April 2019 passed in FRA No.237 of 2018 or in the order dated 25 August 2018 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017 on this issue.

22. For the foregoing reasons, I am of the opinion that the Judgment dated 27 April 2019 passed by the Xth Additional District & Sessions Judge, Karachi (South) in FRA No.237 of 2018 and the Order dated 25 August 2018 passed by the VIIth Rent Controller, Karachi (South) in Rent Case No. 397 of 2017 did not suffer from any infirmity or irregularity rendering this petition as being misconceived. This Petition is therefore dismissed along with all listed applications with no order as to costs.

JUDGE

Karachi
Date 31 August 2023.

²⁸ PLD 2015 SC 33

²⁹ 2012 SCMR 1498

³⁰ 2019 SCMR 1925

³¹ 2017 MLD 1555