

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 694 of 2023

Petitioner : : Aftab Hussain Bapo through M/s. K.A. Wahab and Khilji
Bilal advocates

Respondents : : Nemo

Date of hearing : : 31.07.2023

Date of judgment : : 31.07.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 12.07.2023 passed by learned VII-Additional District Judge/Model Civil Appellate Court South Karachi in FRA No. 237 of 2022 and order dated 01.09.2022 passed by learned VI-Rent Controller Karachi South passed in Rent Application No. 652 of 2021, whereby, it was inter-alia directed to the petitioner to vacate the demised premises and handover its peaceful possession to the respondent No.1.

2. Concisely the relevant facts for disposal of instant petition are that respondent No.1/landlord being owner of Flat No.A-2, 2nd Floor, Hajiani Noor Khatoon Manzil, 4/1 Alfisha street, Gazdarabad, Ranchore Line, Karachi filed an application before the learned Rent Controller against the petitioner on the ground of default, which was allowed vide order dated 01.09.2022, hence the same was assailed in FRA before learned VII-Additional District Judge/Model Civil Appellate Court, Karachi South, but same was dismissed vide impugned dated 12.07.2023, hence this petition.

3. Learned counsel for the petitioner, inter alia, contended that learned Rent Controller and learned Appellate Court passed the impugned orders without taking into consideration the material brought before them; that personal need was not pleaded by the respondent No.1, but the learned Rent Controller erroneously held that respondent No.1 succeeded in proving personal need; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned order/judgment. It is lastly prayed that impugned order/judgment passed by learned Rent Controller/ Appellate Court may be set aside.

4. Heard and perused the record.

5. 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 paragraph of the appellate Court, which reads as under:

“ 23. With regards the personal need, it is the contention that personal need without being specified within pleading, formulation of point thereof by learned trial Court is against the canon of law. Well I am not inclined with such preposition. It is a fact that word personal need only is mentioned within rent application however the same does not specify or provide details but word personal need is self-mentioned. Perusal of the written reply/affidavit in Evidence shows that personal need has been contested therein by the appellant. Now if personal need was not available within the rent application then why need paragraphs for rebutting such need within written reply. The personal need of the respondent been attended by the appellant within paragraph No. 04 of the written reply. Perusal of the in-hand appeal shows within para No. 10 and 11 mentions qua the personal need. Thus element of personal need is available within rent application. Since a plea was raised, which was objected by the appellant hence being a ground of eviction, whether such is available to respondent or not, learned trial Court rightly frame such point for determination. Within evidence, the respondent/applicant categorically specified further that he requires the premises for use of his son who he intends to get married. It is also settled principle of law that where landlord enters the witness box and states on oath that premises is required for personal need in good faith, then the same is suffice to discharge the burden given the plea is consistent throughout pleadings. It is also settled principle of law that it is prerogative of the landlord to choose any premises which deem fit for own use and neither Court nor tenant can dictate such prerogative. Now with reference to 2023 YLR 40, the Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness. From the statement of landlord/owner for the purpose of eviction of a tenant on the ground of personal bona fide need only an honest intention is to be deduced and there is no other formula to adjudge good and bad faith, for the purpose of eviction on the aforesaid count. If the Court on the scrutiny of the evidence comes to the conclusion that it was an honest intention, then it would be immaterial whether he remained successful in achieving the object or not. This requirement would be immaterial in the sense that the intention of the father in evicting the tenant was an honest one. Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as "honesty of intention". The primary requirement and condition precedent for invoking

provision of section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 claiming relief on the ground of personal bona fide need of landlord in good faith is that the landlord should be honest in his approach and sincerity of his purpose should be manifested by irreversible evidence and surrounding circumstances. The requirement of premises in good faith is not capable of being confined to precise, identical or invariable definition nor any hard and fast rule can be propounded as to encompass all possible eventualities which could arise due to particular facts and circumstances of the case. In present case, intention of the personal need was relayed through rent application duly rebutted by the appellant within written reply, mentioned within affidavit in evidence and cross question thereupon by the appellant side thus such requirement apart being consistent has not been shattered. A clear purpose been rendered that premises is required as dwelling of son after his marriage. Thus personal need stands established and nothing on contrary has been produced or shown to diminish bonafide need of the landlord. No illegality or irregularity thereto been shown to have been occasioned by the learned trial Court in observing the existence of bonafide personal requirement. Otherwise provision of section 15-A is to be the benefit of tenant. Therefore, the discussion herein supra, narrow downs to the conclusion that default and personal need is available in the case and no illegality or irregularity been occasioned by learned Trial Court.”

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

“9. Burden to prove this point lies upon applicant. Applicant has filed instant rent application against opponent, stating therein that from October 2019 opponent has failed to pay rent of rented premises to him, hence opponent is liable to be evicted from the rented premises. On the other hand opponent has submitted in his written statement that applicant received rent up to the month of October 2019 but avoided to receive rent for the month of November 2019 and asked opponent that he will receive same in the month of December 2019 but subsequently applicant demanded rent at the rate of Rs.5000/- per month which opponent refused to accept. Opponent has further stated in his written statement that after refusal he sent rent through money order but applicant refused to receive the same and thereafter opponent started depositing monthly rent in MRC No.190/2020 hence question of default does not arise. Applicant in order to prove his contention got recorded his evident at Exh:”A”. He produced his affidavit in evidence at Exh:A/1 wherein he repeated the contents as stated in rent application that opponent committed default in payment of rent since October 2019. On the other hand opponent got recorded his evidence at Exh:”O” and opponent was cross examined by learned counsel for applicant, wherein he deposed that; “It is correct to suggest that I have not produced any proof regarding payment of rent from the month of October 2019 to January 2020”. I heard learned counsel for applicant who contended that opponent has committed default and on the other hand learned counsel for opponent contended that no any default opponent has committed. From perusal of record and evidence of applicant and opponent it is revealed that applicant claims that opponent from the month of October 2019 failed to pay rent of rented premises to the applicant. From the evidence of opponent it is revealed that opponent as per Exh:O/10 has deposited rent with the Nazir of this Court for the period of November 2020 to April 2021 . However it is evident from the MRC No.190/2020 produced at Exh:O/19 by the opponent that opponent deposited rent through MRC in the name of Mst. Hashmat Bibi and it is evident from the written statement of opponent that Mst. Hashmat Bibi has died. It is matter of record that after filing of this rent case opponent did not tendered or offered rent through any mode to applicant or other legal heirs of deceased Hashmat Bibi, therefore, act of opponent continuously depositing rent in

MRC even after filing this rent application in the name of deceased Mst. Hashmat Bibi is contemptuous and harassment to applicant and same is default on his part. On this point reliance is placed on case laws of Hon'ble Apex Courts of Pakistan reported in 2001 SCMR 1140, 1995 SCMR 204 and PLD 2005 Kar 416, wherein Hon'ble Apex Courts have been pleased to hold that knowingly depositing of rent in the name of dead person or previous landlord instead of subsequent owner is a clear cut default in payment of rent and cannot be termed as a technical default. Therefore this point is answered in affirmative.

10. Burden to prove this issue lies upon shoulders of applicant. Applicant has claimed that rented premises is required for his personal bonafide use. Applicant recorded his evidence at Exh:"A", wherein he has taken ground that rented premises is required for his personal use. Applicant being landlord stated that he requires rented premises for her personal bonafide use. It is well settled law that if the landlord possesses more than one house in the same area the choice as to which he would like to possess is surely matter with his prerogative and discretion. In this regard reliance can be placed on case laws of Hon'ble Superior courts of Pakistan SBLR 2005 Sindh 1306, 2006 CLC 99 and 2000 SCMR 1292. Therefore as per my opinion applicant cannot be deprived from taking benefit of her property for personal bonafide use as it is well settled law that statement on oath of landlady is sufficient to prove personal bonafide need. Accordingly this point is answered in affirmative."

7. Initially, the petitioner claimed that Mst. Hashmat Bibi (mother of the respondent No.1) and her sister Arsh Bibi decided to reconstruct the portion of the plot and for this purpose they executed an agreement with petitioner, however, during construction Mst. Hashmat Bibi contacted him and made offer that she wanted portion on 5th floor in addition to half portion of top roof of the building as well as one additional shop on ground floor for business of her son Ejaz Ali, however, construction cost would be borne by the petitioner and in lieu thereof, petitioner was allowed to retain second floor himself as owner subject to payment of nominal monthly rent till transfer of ownership in his favour, which was never done, however, he used to pay rent to the respondent No.1 with the consent of other legal heirs. The relevant portion of Affidavit-in-Evidence of the petitioner is reproduced as under:

"2. I say that initially the building where the said flat is situated was 1136 sq.yds., and after the death of owner of the said plot one of the legal heir namely Noor Khatoon received her share in respect of said plot. The said Noor Khatoon had three children namely Hashmat Bibi, Arsh Bibi and Sardar Ali and Mst. Hashmat Bibi and Arsh Bibi received 129 sq.yds, from their share in respect of said plot. The deceased Hashmat Bibi had four sons namely Sardar, Imtiaz, Ejaz and Moazzam, whereas, the other owner of the said piece of plot namely Arsh Bibi had three sons and one daughter and in the year 1985, the landladies of the said portion of the plot had decided to re-construct the said portion of the plot and for this purpose an agreement was executed between Hashmat Bibi, Arsh Bibi and me as contractor/builder and Ejaz Ali the son of Hashmat Bibi.. According to the said agreement I constructed the said building form (from) my own money from ground plus five floors and during the construction Mst. Hashmat Bibi contacted me and

informed me and made offer that she wants a portion on Fifth floor in addition to half portion of top roof of the building as well as one additional shop on the Ground Floor for business of her son Ejaz Ali and the construction cost will be borne by me and in case I agreed to accept the offer of Mst. Hashmat Bibi and Mst. Arsh Bibi, the said Mst. Hashmat Bibi and Mst. Arash Bibi will allow me to retain the second floor himself as a owner subject to payment of nominal monthly rent till the ownership of the said second floor transfer in my name. I only to maintain good relation with Mst. Hashmat Bibi and Mst. Arash Bibi and her sons accepted the offer of both the ladies and my acceptance as oral agreement dated 1-12-1987 and constructed half portion of 5th floor as well as the said shop from own funds and Mst. Hashmat Bibi as well as Mst. Arash Bibi according to her promise withdrawn from the ownership of the second floor i.e. building in my favour and thereafter I according to my requirement constructed flat on second floor from my own funds being owner of the said flat and let out the remaining 3rd floor, 4th floor, half 5th floor according to the clause-7 of the said agreement and Mst. Hashmat Bibi issued rent receipt to the said prospective tenants.”

8. With regard to the claim of the petitioner that Mst. Hashmat Bibi and Arsh Bibi had made commitment of transfer of ownership rights in his favour in respect of demised flat, the claim of the petitioner is based on a promise allegedly made by Mst. Hashmat Bibi and Mst. Arsh Bibi. However, it would suffice to say that even in case of a *sale* agreement it has been held by the Apex Court that it is not a title document but at the most grants a right to sue for such title as well rights arising out of such agreement. Such *right* never comes to an end even if order of *ejectment* is recorded in Rent jurisdiction nor such order could *legally* cause any prejudice to legal entitlement of the *purchaser*, if he succeeds in such *lis*. Reference may well be made to the case of Syed Imran Ahmed v. Bilal & Ors (PLD 2009 SC 546) wherein it is held as:

“5. *It is principle too well established by now that a sale agreement did not itself create any interest even a charge on the property in dispute that unlike the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates, that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a license to un-scrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice.”*

9. Perusal of record reflects that petitioner has filed a suit for specific performance against the respondent No.1 but the same was rejected under Order VII Rule 11 CPC against such order Revision has been preferred by the petitioner which is pending adjudication before this Court. Record further reveals that petitioner acknowledged himself as a tenant in the demised premises and has thoroughly claimed that he had never committed default in payment of rent. However, petitioner has failed to produce any proof of payment of rent from October 2019 to January 2020. Admittedly, the petitioner was depositing rent in the name of deceased owner / Mst. Hashmat Bibi instead of paying it directly to the legal heirs of the demised premises, which amounts to willful default. Besides, it is settled law that when tenants comes with the plea that he is owner of the property by way of sale agreement is required to vacate the premises immediately. However, he may pursue his suit for specific performance. Reliance can be made on the judgment of the apex Court passed in the case of Abdul Rasheed vs. Maqbool Ahmed & others reported in 2011 SCMR 320.

10. So far as ground of personal bonfide need is concerned, the evidence of respondent No.1 has specifically asserted that he required the demised premises for his son which 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. Thus, for the foregoing reasons, the findings recorded by learned Rent Controller as well as Appellate Court are cogent and well-reasoned.

11. For what has been discussed above, petitioner has failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant petition is dismissed in *limine*.

13. These are the reasons for the short order announced on 31.07.2023.

J U D G E