

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 430 of 2023

Petitioner : Mst. Kaneez Fatima through Ms. Saima Ashraf advocate.

Respondent No.1 : In person

Date of hearing : 17.08.2023

Date of judgment : 28.08.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails order dated 07.03.2023 passed by learned IX-Additional District Judge/MCAC Karachi West in FRA No. 116 of 2022 and order dated 18.10.2022 passed by learned I-Rent Controller Karachi West passed in Rent Case No. 241 of 2021, whereby, it was *inter-alia* directed to the petitioner to vacate the demised shops and handover their 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 shops Nos. 1, 2, 3, 4, 5 and 6 constructed on plot No.13, KMC, sheet No.1, Block-M, Makhdoom Shah Colony Sector 11½, Orangi Town, Karachi (hereinafter referred to as demised shops) filed an application before the learned Rent Controller against the petitioner on the ground of default and personal bonafide need, which was allowed vide order dated 18.10.2022, hence the same was assailed in FRA before learned IX-Additional District Judge/MCAC, Karachi West, but same was dismissed vide impugned order dated 07.03.2023, hence this petition.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned orders without taking into consideration the material brought before them; that no default has been committed by the petitioner and on refusal, the petitioner started depositing the rent in MRC, but such fact is ignored by the Courts below; respondent No.1 has also failed to establish bonafide personal need, but the learned Rent Controller erroneously held that respondent No.1 succeeded in proving personal bonafide need; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned orders. It is lastly prayed that impugned orders passed by learned Rent Controller/ Appellate Court may be set aside.

4. On the other hand learned respondent No.1 who is present in person supported the impugned orders and stated that same are 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:

“On point of personal bonafide need of the rented premises. There is no cavil with proposition that if to prove bonafide need of the landlord his statement on oath is enough. In Para 2,6 and 7 of the Affidavit in evidence of respondent/applicant namely Muhammad Muzamil Khan, the respondent/applicant clearly stated that he is old aged of about 80 years and entitled for special relief as enunciated in Sindh Rented Premises Ordinance, his sons are jobless/un-employed and rented premises is required for business and appellant/opponent refused to vacate premises on ground of personal bonafide need. It is settled law that the choice to select the premises with the landlord and the tenant or the Court cannot dictate to him as to which property would be best suited for his needs. The Rent Controller has to see is whether the landlord requires the premises in "good faith" for his own occupation or use or for occupation or use of his spouse or any of his children. Expression "require the premises in good faith" cannot be confined to precise, identical and 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 a case. I am fortified case law reported as, Mst. Shirin Bai Versus Famous Art Printers Pvt. Ltd, 2006 SCMR 117. The learned Rent Controller was justified in holding that the factum of bonafide on the basis of good faith is available in rent case.

On the question of default in payment of rent, the learned Rent Controller rightly hold in para No. 16 of judgment as, “In the present ejectment application, the burden for payment of monthly rent is on the shoulder of opponent and opponent has failed to discharge the same. Therefore, the version of applicant to the extent of willful default for the period of July, 2021 & August, 2021 has been proved by the applicant on the basis of oral as well as documentary evidence available on record. The guideline to deal with the point of default has been given in the case of law reported in case of Niaz Hussain Shah Versus Shamim Akhtar through duly constituted attorney, 2017 CLC Note 67 [Sindh],” In my humble view, it is settled principle of law that initial burden lies upon the landlord who

establish that the tenant has not paid or tender rent due by him but it must be appreciated that non payment of rent is a negative fact, therefore, if landlord appears in court and states on oath that he has not received the rent for certain period, it would be sufficient to discharge the burden that lies under the law upon him and onus will then shift to the tenant to prove affirmatively that he has paid or tender the rent for period in question. Therefore the learned rent controller hold that opponent /appellant committed willful default in payment of monthly rent of demises premises in question on monthly basis.

I have examined the judgment of the learned Rent Controller and found it to be on cogent reasons and it does not suffer from any illegality, misreading or non-reading of the evidence. The findings of the learned Rent Controller are based on cogent reasons. Therefore, I am the considered view that no interference is called from this court in the impugned Judgment. Hence, point No.1 is replied as negative.”

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

“11. From careful perusal of record shows that the applicant has stated on oath the (that) he requires the rented premises for his personal bonafide need and for his sons who are jobless/unemployed. It is matter of record that the learned counsel for the Opponent has cross examined the Applicant at length, but nothing has brought on record to show any malafide intention of the applicant to vacate of the rented premises from the opponent on ground of his personal bonafide need as well as for his sons. However, the learned counsel for the opponent put specific questions from applicant at the time of his cross examination, he replied as **“The demised premises is required to my personal need as well as for my sons. I have required the whole demised premises”**. Since the applicant has stated on oath that the demised premises is required for his personal bonafide need as well as for his sons in good faith, therefore burden was shifted upon the opponent to disprove the contentions of the applicant. It is matter of record that the opponent has failed to disprove the sole statement of the applicant regarding his personal bonafide need as well as his son and it is well established principle of law that the sole testimony of landlord is sufficient to establish his personal bonafide need as well as for his sons, if statement of landlord is consistent with the averments made in ejectment application and in the present ejectment application the statement of landlord is consistent with his evidence on Oath. I have taken the guidance from reported case law of “Muhammad Hayat Versus Muhammad Miskeen (Decd.) through LRs and others” 2018 SCMR 1441 wherein the honorable Supreme Court of Pakistan has held as under:

Sindh Rented Premises Ordinance (XVII of 1979)----- Ss. 13 & 15---Ejectment of tenant---Ground of bona fide personal need of landlord---Tenant impugned order of Appellate Court whereby tenant’s ejectment was ordered on ground that landlord has established bona fide personal need---Validity---Sole testimony of landlord was sufficient to establish personal bona fide need, if such statement of landlord was consistent with averments made in ejectment application---Impugned order being in accordance with such principle of law, leave to appeal was refused by Supreme Court.

12. All that the Rent Controller has to see is whether the landlord requires the premises in "good faith" for his own occupation or use or for occupation or use of his spouse or any of his children. Expression "require the premises in good faith" cannot be confined to precise, identical and 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 a case. Reference may be made to case of **Mst. Shirin Bai Versus Famous Art Printers Pvt. Ltd, reported at [2006 SCMR 117]**. It is matter of record that the nothing has brought on record by the opponent to shows any malice on the part of applicant for seeking the ejection of the opponent from the demised premises on ground of personal bona fide need, however, the opponent has admitted during his cross examination as **“It is correct to suggest the applicant have three sons”**. Such admission on the part of opponent appears to be genuine that the demised premises is required to applicant for his personal bona fide need as well as for his sons as applicant have three sons who are jobless / unemployed.

13. Therefore, in view of above discussion, the applicant has successful established that the demised premises is required to him for his personal bona fide need as well as his for his sons in good faith, hence the point No.1 is answered “In Affirmative”.

15. The applicant has categorically stated in his application as well as in his affidavit in evidence that, opponent has committed the willful default in payment of monthly rent after the notice of eviction dated 01.06.2021, however, opponent has taken plea that applicant refused to receive the rent from the month of August, 2021 for which opponent has sent money order to applicant which was also refused and thereafter opponent is regularly paying the monthly rent in MRC No.156/2021 and opponent has not committed any default in payment of monthly rent. Opponent has produced rent receipt for the monthly rent of June, 2021 at Ex.O/6 during his evidence and produced money order dated 27.08.2021 at Ex.O/13, for an amount of Rs.11,500/-. The opponent has produced the money order at Ex.O/13 which is for the rent of Two months, i.e. July & August, 2021, opponent has failed to produce the monthly rent receipt which shows that opponent is/was paying the monthly rent to the applicant on monthly basis, which are comes in the definition of default. The opponent did not produce any copy of cheque, copy of money order or receipt of monthly rent which he has paid to the applicant which confirms that the opponent has paid the monthly rent to the applicant on monthly basis, as per the agreement of rent. Opponent is duty bound to pay the monthly rent to applicant on monthly basis but opponent has failed to bring any evidence on record that he has ever complied the terms and condition of the agreement with regard to monthly rent. The opponent himself had produced the money order at Ex.O/13 which is sufficient evidence to establish the contention of applicant with regard to the default committed by the opponent as the monthly rent is fixed for an amount of Rs.5,720/-.

17. Therefore, from the record, depositions & case laws, it reveals that the opponent has committed willful default in the payment of monthly rent of the demised premises in question on monthly basis. Hence, the point No.2 is answered “In Affirmative”.

8. With regard to personal bonfide need, the evidence of respondent No.1 has specifically asserted that he required the demised shops for his sons who are unemployed and need demised shops for business, which remained unshaken and could not be shattered during his cross-examination. More so, nothing has been brought on record to establish that the demand of the respondent No.1 is not in good faith. It is well settled principle of law that evidence of the landlord is sufficient to prove his personal bona fide need, if his statement on oath is consistent with his averments made in the ejection application. Reliance in this respect is placed upon the case reported as **Muhammad Hayat vs. Muhammad Miskeen (decd.) through LRs and others**

(2018 SCMR 1441). In the instant case the petitioner could not succeed to shake/shatter the evidence of the respondent No.1 on this point which remained consistent throughout. Thus, for the foregoing reasons, the findings recorded by learned Rent Controller as well as Appellate Court are cogent and well-reasoned. With regard to the default, the order (s) of two courts below, *prima facie*, establish that the *default* on part of the petitioner was rightly observed. The ground of default, once established, shall be sufficient for an order of ejection of the tenant. The concurrent findings of the two courts below, *prima facie*, are in accordance with well-established principle of law. The petitioner could not discharge the burden through evidence, for having paid the rent to the respondent No.1 for the defaulting period. It is well settled that default of even a day is sufficient to entitle the applicant for ejection of tenant from the rented premises.

9. 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. Accordingly, the instant petition is dismissed along with pending applications. However, three months' time is granted to the petitioner to vacate the demised shops, subject to payment of all the arrears, utility bills and both past and future rent.

10. These are the reasons for the short order announced on 17.08.2023.

J U D G E