

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 663 of 2023

Petitioner : Shaban Sheikh through Mr. Zakir Hussain
advocate

Respondent No.1 : M/s World Federation of Islamic Mission through
Ms. Pooja Kalpana advocate

Date of hearing : 31.08.2023

Date of judgment : 31.08.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 30.05.2023 passed by learned XII-Additional District Judge/MCAC Karachi South in FRA No. 123 of 2022 and order dated 18.04.2022 passed by learned I-Rent Controller Karachi South passed in Rent Case No. 624 of 2021, whereby, it was inter-alia directed to the petitioner to vacate the demised premises within 45 days.

2. Concisely the relevant facts for disposal of instant petition are that respondent No.1 filed ejectment application through its Director, which according to the respondent No.1 was duly authorized to file such ejectment application. The respondent No.1 is a registered under the Societies Registration Act and is socio-religious and charitable organization. The Memorandum of Association of the respondent lays down its aims and objects, which inter alia, includes the propagation/implementation of the teachings and ideals of Islam, and to establish and maintain humanitarian, health and welfare institutions such as hospitals, laboratories, infirmaries, orphanages, and to train theologians, missionaries, etc. It is further stated that having confidence in the ideology and contribution of the respondent towards humanity, Major (Retd.) S. A. Rahim S/o S. A. Razzaq, vide declaration of Trust deed dated 03.11.1982, dedicated the property bearing No.14-K, Block No.6, P.E.C.H.S., Karachi, admeasuring 1000 Sq. Yds., known as Rahim Court (hereafter: "the Premises") to the respondent. Thereafter, the premises was also transferred to the respondent in the official record of the Society i.e. PECHS. Further contended that earlier, the respondent had rented out the premises to three tenants Mr. Najeed Hussain, Mrs. Kulsum Yusuf and Imran Ahmed (hereafter: "the tenants") vide rent agreement.

Subsequently, the respondent requested the tenants to vacate the premises for its personal bonafide need, as the former had decided to establish and expand its activities as per its trust obligations. The tenants initially procrastinated and later refused to vacate the premises. Left with no other option the respondent filed three Rent Cases No.384/2002, 385/2002 & 386/2002, against all three tenants, which were allowed in favour of the respondent and eviction of the tenants was ordered vide orders dated 31.10.2005. It is further averred that, against the aforesaid orders, the tenants preferred First Rent Appeals Nos. 05 of 2003, 06 of 2003 and 07 of 2003, which were dismissed vide Judgments dated 13.09.2007, respectively. Thereafter, the tenants challenged the aforesaid orders in Constitutional Petitions Nos.S-212/2008, 213/2008 and 214/2008, which were also dismissed by this Court. It is further stated that after dismissal of petitions when the matter was at the verge of disposal before Executing Court, the petitioner appeared and filed an application under Section 12(2) CPC in Rent Case No. 386 of 2002 which was pertaining to the tenancy of tenant Najeeb Hussain, which application was disposed of vide order dated 20.10.2011 on the statement of respondent's counsel that petitioner would not be ejected in execution proceedings. However, it is claimed that petitioner committed willful default in payment of monthly rent as per his own rent agreement, hence he is liable to be ejected from the demised premises. The ejectment application was also pressed on the ground of bonafide use/need. However, it is claimed that petitioner came up with a forged agreement dated 01.04.1988 with the plea that said rent agreement was executed by Major S.A Rahim being owner of the demised premises, whereas, Major S.A Rahim could not have executed any rent agreement being owner of the property in view of the fact that as per Declaration of Trust dated 03.11.1982, Major S.A Rahim created trust in respect of the property which was acknowledged by PECHS in letter dated 29.09.1984, hence the same is worthless. In the ejectment application it was further averred that the demised premises were sublet by the petitioner to Qabza mafia in order to usurp the same. Ejectment application was contested by the parties, ultimately it was decided in favour of the respondent No.1, which order was assailed before Appellate Court, however vide judgment dated 30.05.2023, the First Rent Appeal was also dismissed, hence this petition.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned order/judgment without taking into consideration the material brought

before them; that no evidence has been brought on record to show that Mustafa S. Ansari is an elected president and the person through whom ejectment application was filed is a Director; that ejectment application was not filed by a competent person, which fact was not considered either by the Rent Controller or by the Appellate Court; that there exists no relationship of landlord and tenant between the parties; that no default has been committed by the petitioner; that respondent No.1 has also failed to establish bonafide personal need/use of the demised premises, but the both learned Rent Controller and Appellate Court erroneously held that respondent No.1 succeeded in proving bonafide 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. In support of his contentions, reliance has been placed upon cases of *Habib Bank Ltd. vs. Zelins Limited and another* (2000 SCMR 472), *Abdul Fayyaz Khan vs. III-Additional District Judge, Karachi South and 4 others* (2012 CLC 793) and *Messrs A.M. Industries Corporation Limited vs. Aijaz Mehmood and others* (2006 SCMR 437).

4. On the other hand learned counsel for respondent No.1 contended that ground of filing ejectment application by unauthorized persons is untenable and such fact was thoroughly discussed by the learned Rent Controller as well as Appellate Court; that petitioner has committed default in payment of rent and that the demised premises are required for bonafide need/use of the respondent No.1. Lastly, it is contended that the order/judgment passed by learned Rent Controller as well as by learned Appellate Court are based on cogent findings and do not require any interference by this Court. In support of her contentions, reliance has been placed upon cases reported as *Rahat and company through Syed Naveed Hussain Shah vs. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Centre through Secretary or Chief Executive Officer* (PLD 2020 S.C 366) and *SDO/AM Hasht Naggri Sub Division PESCO Peshawar and others vs. Khawazan Zad* (PLD 2023 S.C 174).

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 paragraph of the appellate Court, which reads as under:

“19. In the wake of the above, I am of the view that contentions of the Appellant and his learned counsel, are attempts to interfere the internal affairs of the management of the Trustee and a Tenant cannot dispute the internal affairs of the Trust/Association under the doctrine of indoor management. It is trite of law that matter of indoor management cannot be raised by the third party as held by Lahore High Court in case of Pan Islamic Industries (Pvt.) Limited versus Additional District Judge [2022 CLC 247 Lahore] and by High Court of Sindh in case of Muhammad Akram versus Messrs Jamia Imamia Trust through representative/Rent Controller [2023 MLD 522].

Existence of relationship of landlord & tenant

20. Insofar as, existence of landlord & tenant between the Respondent and Appellant, is concerned, perusal reveals that Appellant himself claimed to be tenant of rented premises on the basis of Rent Agreement dated 01-04-1989, which was executed by Major (Retd) S.A. Rahim, been one of the Trustees at the material time. The rented premises was dedicated by Major (Retd.) S.A.Rahim to the Respondent through registered Declaration of Trust No. 89 dated 29-01-1983, by appointing him as well as President of the World Federation of Islamic Mission, as Trustees during his life time and after his death the trusteeship vested in the then President and its successors, thus, by efflux of time & in terms of Declaration of Trust, the Respondent become landlord of the demised premises and Appellant as tenant. Moreover, Appellant himself is deposited rent in M.R.C.No. 1077/2011 in the name of Respondent and Appellant also annexed Rent Receipts issued by Respondent, thus, relationship of landlord & tenant stood established. Learned Advocate for the Appellant has invited attention of the Court to the averments & evidence of the Respondent wherein they have termed the Rent Agreement dated 01-04-1988 as forged and also termed the Appellant namely Shahban Shaikh as trespasser. Obviously, the Respondent has stated that Shahban Shaikh is a trespasser, but, when Appellant himself admitted payment of rent to the Respondent, then, Appellant cannot take refuge on the plea that by terming him as trespasser, there is no relationship of landlord & tenant between Respondent and him. Perusal reveals that Rent Controller has appreciated the material on evidence in regard to relationship of landlord & tenant between the Respondent and Appellant and no illegality is found and/or pointed out by the Appellant in the impugned Order in regard to relationship of landlord & tenant.

Default in payment of rent

21. Regarding default in payment of rent, perusal reveals that Respondent averred & deposed that Appellant is alleged to be occupant of rented premises since 1988, but no proof of payment of rent, made by Appellant prior to January-2008 is filed in the application under Section 12(2) C.P.C., whereas, Appellant started depositing rent in M.R.C. No. 1077/2011. It is settled law that once landlord comes in the witness box and states on oath that the tenant has committed default in payment of rent, the burden shifts on the shoulder of the tenant to rebut such assertion. In the wake of the principle, perusal reveals that Appellant in cross examination, conceded that he has not produced any proof of rent from the year 1988 till 2011 and also conceded that rent has to be increased by 10% after every two years and

admitted that Appellant has not paid rent at enhanced rate as per agreement after two years. It is evident that Appellant has not paid the rent even as per the rent agreement relied upon by him, therefore, rent Controller was justified in holding that Appellant has not paid the enhanced rent in terms of Rent agreement dated 01-04-1988, rather, he has been depositing rent @ Rs. 2460/- in M.R.C. No. 1077/2011, which is much below the agreed enhanced rent. It is asserted by the Appellant that he has been depositing rent in M.R.C. No.1077 of 2011, but, there is not proof that Appellant has tendered rent to the Respondent and Respondent has/had refused to accept the rent in the year 2011, constraining the Appellant to tender the rent through postal money order and/or deposit the rent with Rent Controller. Although, Appellant has deposited the rent in M.R.C. No. 1077/2011, but, said deposit is not a valid tender as there is no proof that Respondent has refused to receive the rent. More-over, the Rent Controller rightly concluded that as per report of MRC, Appellant has deposited rent after delays, which amounts to default in payment of rent, therefore, I do not see any illegality or irregularity in the reasons & findings which are based on fair appreciation of evidence.

Personal bonafide need of rented premises

22. In regard to findings & reasons of personal bonafide need of the Respondent, perusal reveals that Respondent in his pleading and affidavit-in-evidence, stated that premises is required for the personal bonafide needs for fulfilling its objectives of propagating and spreading teaching of Islam and so also working for the welfare of the human and Respondent has already got the 60% area vacated from the other tenants. Perhaps, personal bonafide need of the Respondent was challenged by the Appellant in cross examination, but, Respondent remained firm & his testimony was un-shattered during cross examination, thus, I am of the considered view that learned Rent Controller, has properly appreciated the evidence & law and rightly concluded that Respondent No.1 has proved her bonafide need of the demised premises. Under the law, in the wake of the un-shattered testimony qua bonafide need of the demised premises for personal use, it become the prerogative of the landlord to choose any of the premises which was suitable for her personal use and tenant has no right to raise any objection. In regard to weight of the statement on oath of the Landlord, the Hon'ble Supreme Court of Pakistan in case of Pakistan Institute of International Affairs versus Naveen Merchant and others reported as 2012 SCMR 1498, has laid down that **"S. 2(g)--- Personal bona fide need of the landlord--- Proof--- Statement on oath of the landlord regarding claim of his personal need, un-shattered in cross-examination and un-rebutted in defense evidence was to be accepted by the court as bona fide"** and **"S. 2(g)---Selection of tenement for personal need of landlord---Landlord had the choice to select any of the tenements for his personal need and for such purpose the tenant or the court had no locus stand to give their advice for alternate accommodation."** I am of the considered view that findings qua Point No. 4 of learned 1st Rent Controller, Karachi-South, in regard to personal bonafide need of the Respondent, are based on sound reasoning and passed after appreciation of evidence and no exception can be taken to the findings & reasons of the learned Rent Controller."

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

Point No.1.

31). The burden to prove this point was solely upon the opponent who has challenged the board resolution of applicant by contending that the same is not in accordance with the articles of the association of applicant. A perusal of the board resolution produced by the applicant shows that the same is annexures meeting of the board of directors whereby the board of directors authorized Syed Zafarullah Maqdi son of Syed Sanaullah Maqdi, Director of the Organization to institute the rent case and the said extract has been signed by Mustafa F. Ansari as President of the World Federation of Islamic Missions. The applicant has also produced memorandum of articles of the applicant organization. For the purpose of this issue the relevant article 32 which has

been quoted by the learned counsel for the opponent is reproduced herein below:-

(32) ACTION :

“All the suits for or against the Association shall be instituted or defended either by the General Secretary or by the Joint Secretary or by the Secretary for Constitutional and Legal Affairs in concurrence with the General Secretary or the Joint Secretary; and all other documents for purchase, sale, lease, etc., shall be signed by the General Secretary or by any other Director duly authorized by the Board of Directors.”

32). Although, as per the above article all the proceedings are to be instituted or defended by the General Secretary or Joint Secretary or Secretary for Constitutional and legal affairs with concurrence of General Secretary or Joint Secretary but this article is silent about the filing of rent case. In this regard, as per Article 10(a), the management and control of the affairs, the funds and the assets of the Association shall be vested in a Board of Directors. Thus, as per Article 10(a) of the association, the board of directors are competent to take the decision regarding management of the assets of the association which in broader sense includes filing of rent case for management of the property of applicant organization. Furthermore, the property was given to the applicant by virtue of Declaration of trust wherein the management of the property has been provided under para-4 which is reproduced hereunder:-

“That the Trustees of the said Trust shall be myself during my life time and the President of the World Federation of Islamic Mission, North Nazimabad, Karachi, Mr. M. H. HABIB BUTT with absolute powers of management thereof.”

33). As per the above, the President of the applicant organization is also authorized to look after the affairs of the management of property which includes taking of the possession from the tenants. As above noted, the rent case has been filed upon the authority given by the board of directors and the same is also signed by the President of the Applicant Organization, hence in my view the rent case has been competently filed. Issue No.1 is answered in negative. Point No.2. 34). This point was raised by the opponent in his written statement wherein he contended that the applicant has mentioned the opponent as encroacher and trespasser but not as tenant in the memo of rent application and hence, learned counsel for the opponent has argued that there is no any relationship of landlord and tenant between the parties. In this regard, perusal of the memo of ejectment application shows that although the applicant has described the opponent as trespasser and illegal occupant and so also has mentioned that the agreement dated 01.04.1988 is forged, however, at Para No.8 the applicant has clearly mentioned that the opponent is defaulter in payment of rent as he has never paid the rent on time as was legally require under Section 10 of the Sindh Rented Premises Ordinance, 1979. It is further mentioned at Para No.8(iii) that the applicant has never refused to accept the payment of rent to the opponent. These assertions of the applicant clearly show that they have accepted the opponent as their tenant. Furthermore, although the applicant has labeled the rent agreement dated 01.04.1988 has forged document, however, during cross examination the applicant witness has made following admissions:-

“It is correct that three other tenancy agreements produced by me are signed by S.A.Rahim himself. Vol. says that he signed the same as trustee. It is correct that such two agreements are signed in the year 1988 and one agreement is signed in the year 1994. It is correct that rent agreement dated 05.03.1988 produced by me as Ex-A/14 is signed by the S.A.Rahim as trustee. It is correct that as per said agreement the premises to be used for residential and for Nazra and Hifz-e-Quran education. It is correct that as per clause of the said agreement, the payment of utility bills was not the responsibility of tenant.”

35). The above admissions of the applicant upon suggestion of the opponent clearly established that rent agreement was executed between the former owner / trustee of the premises namely S.A.Rahim. Since, the applicant became the owner through trust deed therefore, although there is no any direct agreement between the applicant and opponent but by virtue of transfer of property, the opponent became statutory tenant of the applicant. It is also pertinent to mention here that the applicant counsel during the cross examination of opponent witness, has not challenged the tenancy agreement dated 01.04.1988

executed by former trustee in favour of the opponent. It is also case of opponent that he is the statutory tenant of the applicant. In the circumstances, the genuineness of the agreement and statutory relationship of landlord and tenant between the applicant and opponent stands fully established. In the circumstances, the point No.2 is answered in negative.

38). In view of the above the opponent was not only required to prove the refusal but he was also required to produce the proof of payment of rent for the previous period as well but he has failed to prove either of the facts. Furthermore, although, the opponent has produced rent deposit challan in MRC No.1077/2011 and produced the ledger report from 19-12-2011 upto 24.09.202 and has also produced rent payment challan dated 11.02.2022 but he has not mentioned rate of rent per month. Whereas, as per the rent agreement dated 01.04.1988, the rent was to be increased by 10% after every two years upon renewal of the agreement. Since, the agreement was not renewed, yet the opponent continued to occupy the premises, hence, he became the statutory tenant and all the terms and condition of agreement dated 01.04.1988 became applicable. The reliance in this regard is placed upon 2013 YLR 344. Therefore, the opponent was liable to pay the enhanced rent as follows:-

Serial No.	Period of Rent	Last Rate of Rent	10% Increased	Enhancement rate of rent
01	1.4.1988	950.00	-----	-----
02	1.4.1988	950.00	95	1045.00
03	1.4.1988	1045.00	104.5	1149.5
04	1.4.1988	1149.5	114.95	1264.45
05	1.4.1988	1265.45	126.44	1390.89
06	1.4.1988	1390.89	139.08	1529.97
07	1.4.1988	1529.97	159.99	1689.96
08	1.4.1988	1689.96	168.99	1858.95
09	1.4.1988	1856.95	185.89	2044.84
10	1.4.1988	2044.84	204.48	2249.32
11	1.4.1988	2249.32	224.93	2474.25
12	1.4.1988	2474.25	247.42	2721.67
13	1.4.1988	2721.67	272.16	2993.83
14	1.4.1988	2993.83	299.38	3293.21
15	1.4.1988	3293.21	329.32	3622.53
16	1.4.1988	3622.53	362.25	3984.78
17	1.4.1988	3984.78	398.47	4383.25
18	1.4.1988	4383.25	438.32	4821.57

39). Thus as per above calculation of the rent with 10% enhancement after every two year as per the agreement dated:01.4.1988, the opponent was required to pay the present rent @ Rs.4821.57/- per month but as per last payment challan of three moths dated:11.2.2022 the opponent has deposited the rent @ of Rs.2460/- per month. This rate of rent is clearly in default of the terms of the tenancy agreement dated:01.4.1988. At the time of deposit of rent in the year 2011, the rate of rent was to be Rs.2721.67/-but the opponent deposited the rent @ of Rs.2460/- which was less than the required rate of rent as per the agreement. Thereafter up till now the opponent has been depositing the rent at the same rent i.e 2460/- per month which as above noted is clearly in default of the terms of the agreement. Furthermore the MRC report also shows that the rent for the period August, September and October2013 was deposited on 4.10.2013 instead of depositing the same in the month of August-2013. Similarly the opponent deposited the rent on 26.1.2015 and then on 10.7.2015 i.e after six months. It shows that that the opponent has not only deposited the less than the required rate of rent but has also committed default in deposit of the same in the MRC.

40). In view of the above the opponent has clearly committed default towards the payment of rent as per the agreement dated: 01.4.1988. The point No.3 is answered is affirmative.

42). In this regard the applicant witness has reiterated such contention in his affidavit in evidence in para No.11 to 14. During the cross examination the applicant witness remained affirmed with such stance. It is well settled law that the statement of applicant regarding personal bonafide needs, stands proved the moment the applicant reiterates the same on oath which remains un-shattered during the evidence. The reliance in this regard is placed upon 2013 YLR 705 and PLD 2015 Sindh-464. In the circumstances the applicant has fully proved the personal bonafide needs of the premises, hence, the point No.4 is answered in affirmative.”

8. With regard to authority of filing of ejectment application by Syed Zafarullah, it appears that he is Director of M/s World Federation of Islamic Mission and according to the respondent No.1, he was authorized to initiate such proceedings through extract of Minutes of meeting of the Board of Directors dated 17.08.2020 which was duly signed by Mustafa F. Ansari, President of the Organization. Though it is claimed by the petitioner that under clause 12(vii) of Article of Association of the said Organization, legal and constitutional affairs of the Organization shall be look after by Constitution and Legal affairs Secretary. However, nothing has been brought on record that Constitution and Legal affairs Secretary is the only person who could institute proceedings etc. Nevertheless, counsel for the respondent No.1 drawn attention of this Court towards Article 32 of the Articles of Association of said Organization, which stipulates that suit by or against could be filed and/or defended either by General Secretary or by the Joint Secretary or by the Secretary for Constitutional and Legal affairs in concurrence with the General Secretary or by any other Director duly authorized by the Board of Directors, as such, the plea raised by the counsel for the petitioner is untenable, thus the findings recorded by learned Rent Controller and the Appellate Court in this regard do not require any interference.

9. Counsel for the petitioner though claimed that there exists no relationship of landlord and tenant between the parties. However, record further reflects that the petitioner admitted himself tenant of the demised premises on the basis of Rent Agreement dated 01.04.1989. The demised premises were dedicated by Major (R) S.A Rahim to the respondent Organization through registered Declaration of Trust No. 89 dated 29.01.1983 by appointing himself as President and the Trustee of the Organization during his lifetime and after his death, the trusteeship vested in the then President and its successors, as such, by afflux of time and in terms of Declaration of Trust, the respondent became landlord of the demised premises. Record further reflects that petitioner himself filed MRC No.1077/2011 in the name of respondent No.1 and started to deposit rent therein. He also annexed rent receipts issued by the respondent. Both the Courts below rightly discussed this point and held that relationship of landlord and tenant duly established, hence such findings do not require any interference by this Court.

10. With regard to default in payment of rent, respondent No.1 claimed

that petitioner is allegedly in occupation of the demised premises since 1988 but no proof of rent has been produced by the petitioner prior to January 2008 in the application filed by the petitioner under Section 12(2) CPC. Record reflects that petitioner started depositing rent in MRC No.1077/2011. In cross examination, it is admitted by the petitioner that he has not produced any proof of rent from the year 1988 till 2011 and it is conceded by him that rent has to be increased by 10% after every two years but he has not paid rent at enhanced rate. It appears that nothing has been brought on record by the petitioner that the respondent refused to accept the rent in the year 2011, when he filed M.R.C. Therefore, default in payment of monthly rent is duly established.

11. With regard to bonafide need/use of the respondent No.1, it appears that respondent No.1 in the pleadings as well as in affidavit-in-evidence claimed that the premises are required for bonafide use/need for fulfilling of its objectives of spreading teachings of Islam and working for the welfare of humans and it is argued by the counsel for the respondent No.1 that 60% area has been got vacated from the other tenants, which claim of the respondent No.1 remained unshaken and could not be shattered during 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 that it is the prerogative of the landlord to select the premises of his choice and neither the tenant nor the Court can dictate him. Thus, the findings of the both the Courts below to this effect are cogent and well-reasoned.

12. The case law relied upon by the counsel for the petitioner is distinguishable from the facts of the instant case, hence, the same is not applicable.

13. 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 along with pending application(s).

14. These are the reasons for the short order announced on 31.08.2023.

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