

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-489 of 2023

[Muhammad Rizwan Khan .....v..... Haider Ali Khan & others]

Date of Hearing : 29.01.2024  
Petitioners through : Mr. Khawaja Muhammad Azeem,  
Advocate.  
Respondents through : Mr. Muhammad Sabir Shar, Advocate  
for the respondent No.1.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the Judgment dated 04.05.2023 passed by learned Respondent No.2 in FRA No.72 of 2022.

2. Precise facts of the case are that the petitioner is owner of shop No.D-1-M-2526, Abuzar Ghaffari Colony, Sector 11 1/2 Orangi Town, Karachi (subject shop) and let out the said shop to respondent No.1 on monthly rent. Petitioner initiated ejectment proceedings bearing Rent Case No.57 of 2019 before the learned respondent No.3 on the ground of personal bonafide need which was allowed vide order dated 16.04.2022 and respondent No.1 was directed to hand over possession of the subject shop to the petitioner. The respondent No.1 impugned the order of the respondent No.3 by filing FRA No.72 of 2022 which was allowed vide impugned judgment and order of the learned Rent Controller was set aside, hence this petition.

3. Learned counsel for the petitioners contended that learned Rent Controller allowed the ejectment proceedings on the ground of personal bona fide need, however the learned Appellate Court reversed the said findings of the learned Rent Controller in flimsy grounds. He further contended that petitioner has eight children and

brothers and that the subject shop is needed by the petitioners on personal bona fide need for his son.

4. In contrariwise, respondent's stance is that petitioners will relet the subject shop to others and this is what the learned Appellate Court had observed in the impugned Judgment. He further submits that the petition in rent matter is not maintainable and no writ under Article 199 can be issued.

5. Heard the arguments and perused the available record. There is no denial to existence of relationship of landlord and tenant between the parties and in such like matter the claim is to be accepted once landlord states on Oath and same goes un-shattered in cross-examination. Reference is made to case of Pakistan Institute of International Affairs v. Naveed Merchant and others (2012 SCMR 1498) wherein it is held as:-

“10. The claim of appellant as regard their personal need, when examined on the basis of their word to word pleadings in paragraphs Nos.4 and 5 of the rent application and the affidavit in evidence of their witness leaves no room for doubt open for discussion on the subject of their choice and preference which has already come on record and remained un-shattered and un-rebutted from the side of respondents Nos.1 and 2 in these circumstances, subsequent developments which might have been relevant in some other cases are of no help to improve the case of respondents Nos.1 and 2 before the High Court in exercise of its jurisdiction under Article 199 of the Constitution. It will be nothing, but reiteration of settled legation position that the statement on oath of the landlord as regards claim of their / his personal need un-shattered in cross-examination and un-rebutted in defence evidence is to be accepted by the Court as bona fide. Moreover, the choice lies with the landlord to select any of the tenement for his personal need and for this purpose the tenant or the Court have no locus standi to give their advice for alternate accommodation.”

6. Section 15(2)(vii) of SRPO 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 that is whether his son or daughter would join him in the business after completing their education. This requirement would be immaterial in the sense that the intention of the father in evicting the tenant was an honest one<sup>1</sup>. Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as “honesty of intention”.

7. The primary requirement and condition precedent for invoking provision of Section 15(2)(vii) of SRPO 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<sup>2</sup>.

8. 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<sup>3</sup>. My reverend brother Mr. Justice Muhammad Shafi Siddiqui in the case of United Business Machines v.

---

<sup>1</sup> S.M. Nooruddin v. SAG Printers (1998 SMCR 2119)

<sup>2</sup> Nawdat Khan v. Mst. Surrayya (PLD 1993 Karachi 491)

<sup>3</sup> Muhammad Amn v. Mst. Nafeesa Khatoon (PLD 1996 Karachi 340)

Ghulam Hussain Hidayatullah (2023 YLR 40) discussed the requisites of Section 15(2)(vii) of SRPO and paras 20 to 23 relevant in this respect which are reproduced hereunder:-

*“20. 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 that is whether his son or daughter would join him in the business after completing their education. 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.*

*Sufficiency of accommodation either for a commercial/industrial activity or for residential purpose is to be adjudged best by the landlord himself and it may vary not only on case to case basis but also on the basis of nature of business that one intends to establish an honest idea about future growth of the business and its prospects. Someone may have an idea of establishing humongous business set up and he may or may not be successful in achieving his object and plan but what is important, as a test, is the honesty of intention and there is nothing on record in the shape of cross-examination of the landlord/owner to demonstrate that it was not an honest and genuine intention for extending and enhancing business for himself and for his family members.”*

9. Sufficiency of accommodation either for a commercial/ industrial activity or for residential purpose is to be adjudged best by the landlord himself and it may vary not only on case to case basis but also on the basis of nature of business that one intends to

establish an honest idea about future growth of the business and its prospects. Someone may have an idea of establishing humongous business set up and he may or may not be successful in achieving his object and plan but what is important, as a test, is the honesty of intention and there is nothing on record in the shape of cross-examination of the landlord/owner to demonstrate that it was not an honest and genuine intention for extending and enhancing business for himself and for his family members.

10. It is gleaned from appraisal of the findings of the learned trial Court i.e. learned Rent Controller that the petitioner being landlord of the said shop was entitled for its possession on personal need. It is settled by now that the landlady whenever desires to start his own business in the shop/tenement or for his son would be entitled for the tenement on account of personal need and the tenant having only a tenancy rights over the tenement is entitled to vacate the tenement and hand it over peacefully to the landlord and would not challenge the bona fide or ask for the details of business from the landlord as well as in this epoch the tenant after acquiring the tenement upon tenancy rights is considering himself/themselves as a landlord instead of tenant and illegally dragging the landlord into false litigation just to linger on the matter as well as frustrate the proceedings. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before him reached to the right conclusion mere statement of the landlord on oath is sufficient to prove the personal bona fide need<sup>4</sup>.

---

<sup>4</sup> Mst. Zahida Haroon v. Muhammad Ashique (2021 CLC 120).

11. Under Article 199 of the Constitution this Court has the power to issue such directions, orders or decrees, as may be necessary for doing justice and in doing so, the Court is also empowered to look at the just circumstances of the case as it has appeared before it and also to mould relief which is just and proper for meeting the ends of justice<sup>5</sup>. I may further note here that in exercising the jurisdiction to do full justice and to issue directions, orders or decrees, as may be necessary, this Court is not bound by procedural technicality when a glaring fact is very much established on the record and even stand admitted<sup>6</sup>.

12. In view of the rationale and deliberation delineated above, the petition at hand is allowed impugned Judgment dated 04.05.2023 passed in FRA No.72/2022 is set aside maintaining the order of the learned Rent Controller. The Respondent No.1 is directed to vacate the subject shop within 02 months from today.

Karachi  
Dated: 29.01.2024.

JUDGE

Aadil Arab.

---

<sup>5</sup> Per Gulzar Ahmed C.J. in *Martin Dow Marker Ltd, Quetta, v. Asadullah Khan & others* (2020 SCMR 2147) and *Muhammad Zahid v. Dr. Muhammad Ali* (PLD 2014 SC 488), *Dossani Travels (Pvt.) Ltd. and others v. Messrs Travels Shop (Pvt.) Ltd. and others* [PLD 2014 SC 1]; *Mst. Amatul Begum v. Muhammad Ibrahim. Shaikh* [2004 SCMR 1934] and *Imam Bakhsh and 2 others v. Allah Wasaya and 2 others* [2002 SCMR 1985].

<sup>6</sup> Reference in this regard is made to the case of *Muhammad Shafi v. Muhammad Hussain* [2001 SCMR 827]; *Gul Usman and 2 others v. Mst. Ahmero and 11 others* [2000 SCMR 866] and *S.A.M. Wahidi v. Federation of Pakistan through Secretary Finance and others* [1999 SCMR 1904]

