

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 197 of 2013

[Mrs. Tehmina Amir Khambati and others *versus* VIIth Additional District Judge Karachi
South and others]

along with

C. P. No. S – 802 of 2013

[Akbar Ali and others *versus* Mrs. Tehmina Amir Khambati and another] and

C. P. No. S – 902 of 2022

[Mrs. Tahmina Amir Khambati and another *versus* Akbar Ali and others]

Date of hearings : 07.02.2024, 12.03.2024, 18.03.2024 &
20.03.2024.

Petitioners : Mrs. Tehmina Amir Khambati and others
[in C. P. No. S – 197 of 2013
& C. P. No. S – 902 of 2022 and for
Respondents in C. P. No. S – 802 of 2013] through Mr. R. F. Virjee, Advocate.

Respondents : Akbar Ali and others, through Mr. Atif
[in C. P. No. S – 197 of 2013
& C. P. No. S – 902 of 2022 and for
Petitioners in C. P. No. S – 802 of 2013] M. Shujaat Beg, Advocate

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due to commonality, all three titled Petitions are decided by this common Judgment.

2. It is necessary to clarify and give the background of these three Petitions. Constitution Petition Number S – 197 of 2013 is filed by Mrs. Tehmina Amir Khambati and other Family Members [being Legal Heirs of the original Tenant Dr. Amir F. Khambati - the “**Tenants**”] against the eviction Judgment on personal *bona fide* need, passed in the Rent Case No.1198 of 1998, filed by Akbar Ali [since Deceased, now represented through Legal Heirs] and other Co-owners, for the sake of reference is referred as **Landlords**, concerning a Shop on the ground floor in a Building known as ‘FAKHRI MANZIL’, at Plot No.5B-133, Syedna Burhanuddin Road [Mansfield Street] Saddar, Karachi.

3. The Constitution Petition Number S – 802 of 2013 is filed by the above Landlords against the Tenants, challenging the negative finding on

default in the above Rent Case, decided in favour of the Respondents Tenants. *Whereas*, the Constitution Petition No. S – 902 of 2022 is filed by the Tenants against the concurrent findings in both the Judgments dated 20.09.2022 and 10.05.2022 of the Appellate Court and Rent Controller in a subsequent Rent Case No.682 of 2018, filed by the Landlords on the ground of default committed in not paying the enhanced rentals fixed in an earlier Proceeding in respect of Fair Rent.

4. Mr. R. F. Virjee, the Senior Counsel, representing the Tenants, has narrated the chequered history of the litigation between the parties. Contended that the first Rent Case was filed in the year 1981 [R.C. No.3820 of 1981] under Section 14 of the Sindh Rented Premises Ordinance [1979] - the **Rent Law**, and as a result of Compromise, 1/3rd of the demised Premises was handed over to the Landlords; that the above named Tenant, Dr. Amir Khambati [Late], used to run his Clinic in the Demised Premises; the second Rent Case [R.C. No. 275 of 1985] was filed by the Landlords, on the same grounds of personal need and default, which was dismissed by the Courts. The third case is the above Rent Case [R.C. No.1198 of 1998], Decision whereof is the subject matter of the above two Constitution Petitions of 2013. Contended that the repetitive filing of Rent Cases shows the *mala fide* on the part of Landlords, so also held by the Courts; the main motive for filing rent proceedings against the Tenants is to enhance the rent amount exorbitantly, which otherwise could not have been achieved through a Fair Rent proceeding under Section 8 of the Rent Law. Has referred to the earlier Decision given in First Rent Appeal Number 193 of 1988, preferred by the predecessor-in-interest of present Tenants, in which this Court has set aside the eviction Order and dismissed the earlier Rent Case, which proves that ground of personal need was false, which was maintained up to the Hon'ble Supreme Court [the Decisions are at Pages-57

and 83 of C. P. No. S – 197 of 2013]. In support of his arguments, learned Counsel for the Tenants has relied upon the case law_

- i. **P L D 1990 Supreme Court 681**
[*Pervaiz Akhtar and another versus The Additional District Judge, Rawalpindi and 4 others*];
- ii. **P L D 1968 Supreme Court 230**
[*Ashfaq-ur-Rahman versus Chaudhri Muhammad Afzal*];
- iii. **1990 C L C 849 [Karachi]**
[*Muhammad Aslam versus Pakistan Steel and another*];
- iv. **1992 C L C 1762 [Karachi]**
[*Shamsher Ali versus Shaikh Ahmed Din and 5 others*];
- v. **1968 S C M R 1158(2)**
[*Sh. Khushi Muhammad versus Kh. Muhammad Rashid Wain*] – **Khushi Case**; and
- vi. **2020 Y L R 192**
[*Zahid Khan versus Mst. Razia Khatoon and another*].
- vii. **Un-reported Order dated 12.01.2010 passed by this Court in C. P. No. S – 88 of 2009**
[*Mrs. Tehmina Amir Khambati and others versus The District Judge Karachi South and others*].

5. The above line of arguments is rebutted by Mr. Atif Shujaat Baig, Advocate, representing the Landlords in all the titled Petitions. Contended that there is no *mala fide* in filing multiple rent cases, because those are filed on the basis of new cause of action. Stated that earlier the demised premises was required by the two Applicants themselves, who are also one of the Petitioners [in C. P. No. S – 802 of 2013]. Argued that the emphasis laid on the evidence by the Tenants' counsel, that one of the Petitioners / Landlords was working in Dubai and hence there is no requirement of personal *bana fide* need, is erroneous, because when the evidence was recorded in the year 2005, Mr. Mustansar was in Dubai, but now he has come back to Karachi. Has referred to paragraph-5 of the Rent Case No.1198 of 1998, in which this fact is mentioned that the Landlords started the business in the portion surrendered by the Tenants, which the Tenants

have not denied specifically in their Written Statement [paragraph-5 whereof], except that the Landlords are doing business on a much larger portion than what they have stated. Argued that findings of both the Fora, on the point of default, against the Landlords, is erroneous, because the learned Appellate Court and the Rent Controller did not evaluate the evidence of the Parties, rather misread the evidence, which can be corrected in this writ jurisdiction. In support of his arguments, learned counsel for the Landlords has relied upon the case law_

- i. **2010 S C M R 1925**
[*Shakeel Ahmed and another versus Muhammad Tariq Farogh and others*];
- ii. **2000 S C M R 1924**
[*Reckitt & Colman of Pakistan Ltd. versus Saifuddin G. Lotia and 3 others*] – **Lotia Case**; and

6. Arguments heard. Record perused.
7. Summary of the Case Law cited by the learned Counsel for the Tenants, is, that the Ordinance [the Honourable Supreme Court in Pervaiz Case, *supra*, has interpreted the provisions of the erstwhile West Pakistan (Urban Rent Restrictions) Ordinance, 1959] is not Statute for the recovery of rent and a landlord, who wants to recover the rent without seeking eviction of his tenant, has to file a Suit for Recovery in the Civil Court. An action to recover rent in a Court of law may not be available, but eviction of tenant on the ground of default will still be available to the landlord, even if the application is filed on the ground of default for time barred rent. Same rule applies while passing the tentative rent order.

The Tentative Order passed under Section 16(1) of the Rent Law cannot be passed in respect of time barred rents [exceeding three years]; therefore, non-compliance thereof cannot result in striking of defence of the tenant by invoking Sub-Section (2) of Section 16 of the Rent Law.

In Khushi case [*ibid*], the Honourable Supreme Court has reiterated the principle that the question of good faith in a rent proceeding, is a

question of fact, which must be decided by looking at the relevant facts and the surrounding circumstances; the bona fide requirement is different from mere 'desire' of the landlord; the first Appellate Court reversed the Decision of Rent Controller and evicted the Tenant, which was not interfered with by the High Court; the Appellate Court should have discussed the evidence in support of its reasons for reversing the decision of learned Rent Controller, which was not done and the same was set aside by the Honourable Supreme Court, while remanding the Case to the learned High Court for a decision in accordance with law. .

8. Précis of the case law relied upon by the Counsel for Respondents is, the landlord was doing business of clearing and forwarding in his office and thus this Court in exercise of its writ jurisdiction, agreed with the findings of the Rent Controller and set aside the findings of the Appellate Court by holding that personal need as alleged is not bona fide; however, the said finding was overruled by the Supreme Court by stating that when the ejectment proceeding had commenced in the year 2000, the business license of the landlord was under suspension, which was restored during proceeding, and even otherwise, he can change his line of business in the intervening period. It is further ruled, that it is not the requirement of eviction, that landlord should keep himself away from all sorts of income generating ventures, just to prove his personal bona fide need; consequently, judgment of this Court was set aside and the eviction was ordered.

In Lotia case [*ibid*], the Honourable Supreme Court has held that once the default in payment of rent is committed, it cannot be wiped out by subsequent payment of rent, unless, the default in payment of rent by a few days is due to reason beyond tenant's control.

9. Since C. P. Nos. S – 197 and 802 of 2013, pertain to same Impugned Order dated 02.03.2010 passed by the learned Rent Controller in Rent Case No.1198 of 1998, therefore, these petitions are considered first. With regard to the ground of personal bona fide need, earlier, the Landlords were unsuccessful in their litigation up to the Honourable Supreme Court and since the learned Counsel for the Tenants has stated that the Impugned Decisions are result of misreading of evidence, therefore, besides the entire record, the relevant portion of the evidence has to be considered, in these exceptional circumstance, although in a writ jurisdiction the evidence is not considered.

10. The Landlords examined two witnesses, namely, Saifuddin son of Applicant No.1 and Hashim son of Applicant No.2 [Najamuddin]. Saifuddin, in Paragraph-8 onwards has mentioned the details that demised premises is required for the personal need of the Applicants and their sons. It is also acknowledged in Paragraph-8 of the Affidavit-in-Evidence, that in the portion surrendered by the Tenants in view of the compromise between the Parties, the Landlords started the business, but now they required a larger area to do other businesses. It is stated that Applicant No.1 is doing business of Electric Equipment with Saifuddin [the witness] in half of the surrendered portion, whereas, the Applicant No.2 [Najamuddin along with his son Khozima] started the business of hardware in the remaining portion; deposed that both the Applicants have other married sons, who also want to start the businesses. Mustansar, is married with two children and at the relevant time was not doing any work; similarly, another Son of Applicant No.2, namely, Hashim [who also deposed separately] was also jobless at the relevant time. The Witness has deposed that the Landlords cannot either obtain any other premises on ownership or on good-will.

11. The relevant portion of the cross-examination relating to the personal bona fide need is perused, in which Saifuddin has stated that Hashim was doing training with one Firm which is in chemical business since four years, whereas, Mustansar was working in Dubai. Replied that the Landlords were earning income of rupees thirty to forty thousand per month [at the relevant time when the Evidence was recorded on 04.02.2005]. The witness has categorically denied the suggestion that the Landlords want to evict tenants so that the premises can be given on a higher rent; admitted that other Flats situated in the building are in possession of Landlords except one Flat.

12. Affidavit-in-Evidence of Hashim [available at page-131, of the *Lis* record] has corroborated the testimony of Saifuddin with regard to their respective personal *bona fide* need of the demised Premises.

13. In his cross-examination, the witness Hashim [son of Applicant No.2] has testified that he is working as an associate since ten years and drawing a salary; he is a graduate and doing work of Accountant; to a question has reiterated that he has mentioned in his Affidavit-in-Evidence that he wants to start business of general merchandise and wants to divide the demised Premises with son of Applicant No.1 for business purpose.

14. Deposition of Tenants' witness, namely, Dr. Pervaiz Aamir Khambati, is considered. In his cross-examination, the Tenants' Witness has stated that he has no objection on the business of Mustansar and Hashim, the sons of Applicants No.1 and 2; to a question, he showed his ignorance about the measurement of premises in his occupation and that which is in possession of the Applicants. Did not deny the fact that the earlier litigation of eviction on the ground of *bona fide* requirement, was filed by Mst. Batul Bai, the mother of the Applicants, for her son Akbar

Ali, that is, the Applicant No.1, *whereas*, the current Rent Case is filed by Applicants No.1 and 2 for their sons.

15. Although, the argument of Tenants' Advocate is correct to the extent that the impugned Orders are incorrect and misreading of the evidence when it is determined by the learned Rent Controller and the Appellate Court that the Applicants were not confronted on their personal *bona fide* need; but at the same time this incorrect finding of fact, has not adversely affected the overall stance of the Landlords with regard to their personal *bona fide* need, because the assertion of the Witnesses of the Landlords with regard to their present business and requirement of more space to do other business, coupled with the fact, that both the Families of the Landlords have grown with the passage of time, has not been contradicted in their testimonies. The specific assertion in the evidence on behalf of the Landlords, about requirement of the Demised Premises for the businesses of the Sons of both the Applicants / Landlords, has not been disproved; thus, their current ground for personal *bona fide* requirement is *bona fide* and genuine.

Secondly, the fact that sons of the Landlords are in Dubai and gainfully employed in Karachi, respectively, does not mean that *bona fide* requirement of premises has ended, because it is held by the Honourable Supreme Court (*Supra*) that to prove *bona fide* requirement, it is not necessary that a landlord should remain idle or keep himself away from all sorts of income generating ventures, as fate of his ejection case, may consume year and years together.

Thirdly, undisputedly, the landlords are doing business in the surrendered portion of the demise premises since decades, and the same has not been rented out to third party, which again shows that personal requirement of the demised premises is *bona fide* and not *mala fide*.

Fourthly, the earlier unsuccessful litigation of the Landlords in respect of *bona fide* requirement of premises in question which was finally decided by the Honourable Supreme Court [as stated in the foregoing paragraph] ended in 1991, cannot be an estoppel for filing of subsequent Rent Case in the year 1998, *inter alia*, as rightly pointed out by the Landlords' Counsel, that the earlier litigation was initiated by Mst. Batul Bai, grandmother of the above Witnesses and mother of the Applicants [Landlords] stating that the demised premises was required for Applicant No.1; *whereas*, at present the demised premises is required for the Children of both the Applicants.

16. The testimonies of the witnesses and in view of the above discussion, both the Impugned Order and Judgment of learned Rent Controller and Appellant Court, to the extent of personal *bona fide* need, do not require any interference, because evidence is properly evaluated and the Decisions are given after the proper application of judicial mind. Consequently, C. P. No. S – 197 of 2013, preferred by the Tenants, is dismissed.

17. C. P. No. S – 802 of 2013, preferred by the Landlords against the concurrent findings of default, is considered. Learned Rent Controller has framed Point No.1 and after evaluating the evidence of both sides has given the findings. Relevant portion of the testimony of Landlords' witnesses that the Tenants have deposited the rent in Court and Landlords withdrew the same, is significant, and hence, the findings of the learned Rent Controller is correct. The Order of learned Rent Controller has also discussed in detail the compliance of tentative rent order. Stance of the Landlords, that earlier rent of January, 2007, was deposited on 29.05.2007 and thus default was committed, was discarded [by learned Rent Controller], on the ground that when the accumulative rents were deposited, the Landlords had withdrawn

their Application under Section 16(2) of the Rent Law for striking of defence of the Tenants on default; it means that the Landlords acquiesce to the facts that the entire rent of the alleged default period has been deposited.

Similarly, the Appellate Court has also taken into account the rival contention and the record and has given reasons for maintaining the Order of learned Rent Controller on default, by dismissing the Appeal of Landlords.

18. In view of the above, both Courts have reached the correct conclusion, based on the appraisal of the evidence, and thus no illegality exists in both the Impugned Decisions. Consequently, C. P. No. S – 802 of 2013, preferred by the Landlords, is dismissed.

19. Subsequent to the above litigation, another proceeding was filed by the Landlords under Section 8 of the Rent Law for fixation of fair rent, which was done and challenged by the Tenants before this Court and Honourable Supreme Court, but unsuccessfully. Judgment handed down in C. P. Nos. S – 1679 and 1680 of 2017 of this Court [*at page-91*], *inter alia*, while explaining the limited scope of writ jurisdiction in rent matters, dismissed the Petitions of the Tenants. Decision of the Honourable Supreme Court is at page-101 [*of the Court File of C. P. No. S – 902 of 2022*]. The Apex Court declining the request of Tenants has made a very pertinent observation, which is reproduced herein under_

“ When the Attorney of the petitioner namely Dr. Pervaiz Amir Khambati who is also in attendance in person admitted that since the very inception of tenancy over 50 years not a single penny was revised. Accordingly, no case for interference by this Court is made out both these petitions are dismissed and leave to appeal is refused.”

20. The Constitution Petition No.S-902 of 2022, arises from the latest Rent Case No.682 of 2018, filed on the ground of default for nonpayment of enhanced rentals, earlier determined by the Courts in the Fair Rent proceedings (as stated in the foregoing paragraph).

21. In his cross-examination, the Witness of the Tenants has admitted that he did not pay rents during pendency of the above Constitutional Petitions in this Court, which was decided against the Tenants. The learned Appellate Court in the earlier round of Fair Rent proceeding has modified the Order of the Rent Controller, by reducing the rent to Rs.6000/- per month including taxes, payable from the date of institution of the Rent Application, that is, 21.05.2012. The said Decision is of 29.05.2017, which was upheld up to Honourable Supreme Court [as already stated in the above Paragraphs] with an observation that the Appellate Court has shown considerable grace in revising the rent from Rs.25/- per square feet to Rs.6000/- per month in the lump sum. As per the testimony of Tenants' witness, he paid the Rent on 21.06.2009 of Rs.476,000/- and according to his Claim, an amount of Rs.46,500/- was paid in excess. In his evidence, he has admitted that the said amount was deposited in pursuance of the Order passed on Application under Section 16(1) of the Rent Law, while further acknowledging that both the above two Constitution Petitions were decided by this Court on 19.05.2018. It means that there is a gap of one year between the Decision of the learned Appellate Court and this Court, and admittedly in that period, the enhanced rent was not deposited, which is a default committed by the Tenants, because admittedly there was not restraining Order during this intervening period.

22. The learned Rent Controller after giving adequate opportunity to all the Parties to lead the evidence and after appraisal of the same has given the finding; that Tenants have committed default.

23. The Appellate Court while deciding the First Rent Appeal of the Tenants has also considered the evidence and correctly concluded that no illegality is committed by the Rent Controller while deciding the Rent Case of Landlords.

24. The upshot of the above is that no illegality or material irregularity exists in both the Impugned Decisions, justifying any interference in this Constitutional Jurisdiction. Consequently, the C. P. No. S – 902 of 2022, is dismissed.

25. In view of the above discussion, all the three constitutional petitions are dismissed. Tenants – Petitioners of C. P. No. S – 197 of 2013 and 902 of 2022 are directed to hand over, physical, vacant and peaceful possession of the demised premises to the Landlords within Sixty [60] days from today.

26. There will be no order as to costs.

Judge

Karachi.
Dated: 20.01.2025.

Riaz / P.S.