

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-193 of 2023

Haroon Rasheed Petitioner

Versus

Mst. Mehar un Nisa & others Respondents

Date of Hearing : 18.03.2025

Date of Order : 18.03.2025

Petitioner through Mr. Mirza Fahad Baig, Advocate.

Respondents through : Mr. Yousuf Khan, Advocate

Mr. Irshad Ahmed Shaikh, AAG.

ORDER

Muhammad Jafar Raza, J:- The instant petition has impugned the concurrent findings dated 31.01.2023 in FRA No.180/2022 and order dated 29.08.2022 in Rent Case No.15/2021 (“**Impugned Orders**”).

2. Learned counsel for the petitioner has stated that he is in occupation of the tenement for the last 15 years and he is not liable to be evicted. He further stated that he has paid substantial amount to the landlord/respondent and that the case of personal bona fide need has not been made out as the landlord/respondent has not discharged the burden which is required under Section 15(2)(vii) of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”). Lastly, he stated that the respondent has two other shops which may be used for the purposes stated in the rent application, therefore, concurrent findings may be set aside.

3. Conversely, learned counsel for the respondent stated that the landlord/respondent has in detail provided his personal need in para-4 and 5 of the rent application. He has categorically stated in the rent application that the shop is

required for his personal need and in para-5 has also admitted the fact that he wants the shop for further extension of the business.

4. I have heard learned counsel for the parties and perused the record. I have specifically asked the learned counsel for the Petitioner to identify parts of the cross-examination of Respondent No.1 in which, according to him, the plea of personal bona fide need has been shattered. Learned counsel in response read out the following part of the cross-examination: -

“My qualification is middle. It is fact that I am fully aware with -respect to the pleadings and documents produced by my counsel. It is -fact that all the contents of the pleadings and the documents produced by me are correct. It is fact that I am appearing before the Court by virtue of power of attorney executed by my mother with her - 5 full consent. I also admit that the tenancy agreement produced by me -had been executed by my mother with her full consent. It is fact that -all the terms & conditions of the tenancy agreement are binding upon -both the parties including the applicant. It is fact that opponent is my -tenant since last 15 years. It is fact that the previous tenant of the-demised premises was Arshad Hussain. It is fact that the opponent is regularly making payment of monthly rent. Voluntary says that the-demised premises is required for our personal use, that's why we have -filed present ejectment application. It is fact that as per the tenancy agreement produced by me, the opponent had paid an amount of Rs.6,00,000/- to my mother on 07.11.2006 as goodwill, as per her consent. It is fact that it has been mentioned into the tenancy agreement that the opponent shall not claim ownership rights over the - 19 demised premises and further he shall never file any litigation with respect to the demised premises and it has also been mentioned therein that the applicant shall not have any right to evict the opponent from demised premises. It is fact that it has never been agreed between the parties and mentioned into the tenancy agreement that either of the party may serve, notice upon the other party for -vacating the demised premises. It is fact that even in clause No. 5 of the tenancy agreement, it had been settled that the opponent may sublet the demised premises, however; the opponent in good faith, did -not exercise his such right. It is fact that clause No. 9 bears that in-case if the applicant sells out the demised premises, the purchaser shall have no right to evict the opponent from the demised premises. It is wrong to suggest that in order to usurp the amount of -Rs.6,00,000/- given to us as goodwill amount, we have filed this -ejectment application. It is wrong to suggest that as the value of the -demised premises at the time of execution of tenancy agreement was - " about Rs.6,00,000/- therefore after receiving such amount, we forego our rights of ownership into the demised premises by virtue of clause No. 3, 5 and 9. It is fact that it has never been mentioned into tenancy agreement that the demised premises may be vacated by us on the basis of personal bonafide need. The opponent is presently paying the monthly rent of Rs.4,700/- and something. It is fact that as per the terms & condition of the tenancy agreement, no clause had been added with respect to cancellation of the same. It is wrong to suggest that I deposed falsely.”

5. It is evident that no question regarding personal need was asked by the learned counsel. The statement of the Respondent No.1/landlord has gone un rebutted; therefore, his personal need stands established. It is settled principle of law that once the landlord steps into the witness box and the plea of personal need is un rebutted, the ejectment application must be allowed under Section 15 of the SRPO. The following judgements advance the said proposition. The respective judgments and their relevant parts are reproduced below: -

- **Jehangir Rustom Kakalia vs. State Bank of Pakistan¹**

“Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”

- **Wasim Ahmad Adenwalla vs. Shaikh Karim Riaz²**

“3. Leave was granted to consider the contention that the plea of personal requirement was not bona fide as a flat was available in the same premises which A the respondent did not occupy. The learned counsel for the appellant contended that the respondent is residing in a bungalow in Defence Housing Authority and that it is not imaginable that he would shift in a small house in a dingy and congested locality. He further contended that during the pendency of the case a portion of the house, which was an independent apartment, fell vacant, but the respondent did not occupy it and rented it out to the tenant. On the basis of these facts it is contended that the respondent's need is neither genuine nor bona fide. So far the first contention is concerned the learned counsel for the respondent stated that the respondent is residing in a rented house with his son in the Defence Housing Authority. The contention of the learned counsel for the appellant therefore does not hold water because firstly, the respondent is not residing in his own house, but is residing with his son who has rented out a house in that area, and secondly, in these circumstances if a landlord chooses to reside in his own house which may be in a locality which is much inferior and congested than the place where he is residing on rent, it cannot be termed as mala fide. It is the choice of the landlord to choose the house or the place where he wants to reside.” (Emphasis added)

6. The argument of learned counsel for the Petitioner that the Respondent No.1 has several other properties, does not find favour with me. It is the discretion of the landlord/owner to choose the property he wishes to use and in

¹ 1992 SCMR 1296

² 1996 SCMR 1055

that respect the tenant cannot dictate how and in what manner the owner should utilize his property.

7. Any adjudication on Section 15 (2) (vii) would be deficient without referring to the accountability mechanism provided for under Section 15-A of the SRPO. The same is reproduced below: -

3["15-A"] 4[Where the land-lord, who has obtained the possession of a building under section 14 or premises under clause (vii) of section 15, relets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within one year of such possession— (i) he shall be punishable with fine which shall not exceed one year's rent of the building of the premises, as the case may be, payable immediately before the possession was so obtained. (ii) The tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building or the premises, as the case may be, and the Controller shall make an order accordingly."]

8. The provision reproduced above was introduced by the legislature through the Sind Ordinance No. II of 1980 on January 21, 1980, to ensure that ejectment proceedings are not abused and due protection is given to the tenant in cases where the landlord/owner has misused the provisions of the Ordinance. An embargo of one year has been placed on the landlord in case the landlord wishes to rent out the property to another tenant. The protection given, which is also available to the present Petitioner, has been expounded in the following judgments, relevant parts of the same are reproduced: -

a) Mst. Zubeda through her son and General Attorney versus Muhammad Nadir.³

“Sufficient protection has been postulated in section 15-A of the Sindh Rented Premises Ordinance, 1979 which in the event of use of premises other than personal use not only postulates punishment for the landlord but also provide an effective mechanism for restoration of the possession to the evicted tenant before the Controller who would be entitled to exercise such authority on due consideration of the facts. Since the law provides an alternate and effective remedy to defuse the impression of the respondent, I think the apprehension is not well founded in the present state of circumstances.”

³ 1999 MLD 3011

b) Mst. Dilshad Bibi versus Ramzan Ali.⁴

“Keeping in view the only restriction imposed on the personal need by way of section 15-A of the SRPO as well as authorities quoted by the petitioner and the evidence brought on record the petitioner has proved that the shop is required for personal need to be used by her son and no doubt has been created in this respect. The apprehension of the respondent that the petitioner may let out the premises after obtaining the same to other tenant is covered by section 15-A of the SRPO which remove the above apprehension.”

For the foregoing reasons the instant petition is dismissed with no order as to costs.

JUDGE

⁴ 2006 CLC 1853