IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-15 of 2025

Dr. Hassan Fatima, Sindh Medical Center ……. Petitioner

Versus

Pakistan Red Crescent Society, & others ……. Respondents

Date of Hearing	:	17.03.2025
Date of announcement of judgment	:	24.03.2025
Petitioner through		M/s. Muhammad Aslam & S.M. Jahanbir, Advocates.
Respondents through	:	M/s. Iftikhar Javed Qazi, Asfandyar Jahangir, Samil Malik Khan & Koonj Bhutto, Advocates. Mr. Irshad Ahmed Shaikh, AAG.

O R D E R

Muhammad Jaffer Raza, J: - The instant petition has impugned the concurrent findings of learned lower fora. In seriatim, Judgment dated 11.12.2024 passed in FRA No.173/2024 by learned Additional District Judge-XII, South, Karachi and Judgment dated 25.05.2024 passed in Rent Case No. 1295/2016 by learned Rent Controller-II, South, Karachi ("**Impugned Judgments**")

Facts of the case are summarized as under: -

1. The Respondent No.1 being owner of the tenement in question filed Rent Case No. 1295/2016 on the ground of default and personal bona fide need. The same was disposed of vide Judgment dated 25.05.204 by the learned Rent Controller and the rent application was allowed. The points for determination were settled as follows: -

> *Point No.1: Whether the opponent is liable to pay rent of the demised premises at an agreed enhanced rat of 10% every year by virtue of the Memorandum of Understanding dated 18.08.2011?*
>
> *Point No.2: Whether the opponent has committed willful default in payment of rent of the demised premises as per MOU dated 18.08.2011?*

Point No. 3: Whether the applicant is in bonafide need of the demised premises for its personal use in order to set up the charitable hospital in collaboration with the German and British Red Crescent Society?

Point No.4: Whether the opponent has committed default in payment of water & conservancy charges since 2001 in terms of clause-2 of the lease agreement dated 18.02.1984?

Point No.5: What should the judgment be?

2. The rent application was allowed and all four points stood proved, thereafter, the Petitioner filed FRA No. 173/2024 and the same was dismissed vide Impugned order.

3. Learned counsel for the Petitioner has argued that he is a doctor and running hospital in the name of Sindh Medical Center and providing services in the field of Health Care Management. Learned counsel states that the relationship between the parties is not denied, however, the ejectment application filed by the Respondent No.1 ought to have been dismissed on both grounds for the reason that no default was committed by the Petitioner and the Respondent No.1 has failed to prove his personal bona fide need. Learned counsel in this respect concedes that earlier in the year 2006, the compromise took place between the parties as a result of which an MoU was executed. It is further stated that the judgment passed by the learned Rent Controller is based on another MoU, the execution of which is denied by the Petitioner. It is further stated that requirements of personal bona fide need have been elaborated by the Respondent No.1 in paragraph number 9 of his rent application and it is stated by the learned counsel that the same does not meet the requirements of law set out under Section 15(2)(vii) of the SRPO. For the purpose of convenience, the learned counsel has read out the paragraph number 9 of the rent application which is reproduced as under:-

"9. That it is also to be mentioned that Applicant in connivance with the German Red Cross & British Red Cross is planning to establish a Charitable Hospital for the poor and needy persons. Since the Opponent is a clear default and liable to be ejected from the demise premises. The Application in order to build up its Charitable Hospital need the said demise premises for its personal bonafide need."

4. At this juncture, both learned counsels agreed that for the purposes of the instant petition, it may be convenient to first adjudicate the ground of personal bonafide need and if the need arises, the ground of default can be adjudicated upon. I have specifically asked the learned counsel for the Petitioner, to point out the part of cross-examination in which according to him, the ground of personal bona fide need has been shattered. Learned counsel in response has invited my attention to page 403 which is a cross-examination of the applicant/Respondent No.1 and the same is reproduced hereunder: -

> *It is in my knowledge that after filling of my ejectment application, the opponent filed his written statement. It is correct to suggest that some documents were attached with written statement. It is correct to suggest that document attached with written statement dated 10.04.2004 as annexure "A" is a correspondence between applicant and opponent. It is incorrect to suggest that the document attached with written statement as annexure "B" which is memorandum of understanding dated 12.04.2012 was executed between applicant and opponent. It is incorrect to suggest that the document which is annexure "B" bears ay signature. It is not in my knowledge whether opponent had sent the letter to the applicant to bring all the relevant documents in respect of demised premises before this court. It is correct to suggest that the correspondence in respect of demised premises has taken place time to time between opponent and the applicant. Yes, I can produce the record in respect of correspondence held between applicant and the opponent from the year 2011 till to date again says all the relevant documents in respect of correspondence, I have already produced before this court. It is correct to suggest that annexure "C" dated 13.08.2011 attached with written statement has been issued by the applicant. It is correct to suggest that we have received the annexure "D" dated 15.08.2011 attached with written statement is correct to suggest that the applicant has issued letter dated 28.07.2001 which is attached with written statement as annexure "E". It is correct to suggest that the document dated 30.06.2007 which is annexure "F" attached with written statement is available in the record of applicant. It is correct to suggest that apparently this document which is annexure "F" states that the water dues have been adjusted from the account of opponent but it is subject to verification as we have not officially received this letter from KWSB. It is correct to suggest that the applicant had issued letter dated 17.03.2016 which is annexure "G" and same is attached with written statement. It is correct to suggest that the applicant had filed one rent case No. 1366/2006 u/s 15 SRPO against the opponent in the year 2006. It is incorrect to suggest that the applicant had leveled similar allegations in above rent case as have been leveled in this case. It is correct to suggest that apparently annexure H/1 attached with written statement has been issued by the applicant but it is subject to verification from the office as it is an old document pertaining to year 2003 and same is signed by Hussain Bux Hoat but not me. It is not in my knowledge whether opponent had written a letter which is annexure H/2 voluntarily says that this letter is undated. It is incorrect to suggest that I am deliberately not producing the relevant documents before this court voluntarily says that I have already produced. It is correct to suggest that the rent case bearing no. 1366/2006 was disposed of on the basis of compromise. It is correct to suggest that annexure H/5 dated 19.03.2009 attached with written statement has been issued by me. It is correct to suggest that both the parties were bound on the terms and condition mentioned in a document dated 12.02.1984 produce by*

me and same has been marked as x until the signing of MOU dated 18.08.2011, Further cross examination is reserved on the request of learned counsel for the opponent. It is incorrect to suggest that another MOU was also prepared/executed after the execution of MOU produced at Ex. A/2. is correct to suggest that some properties are mentioned in indenture of was executed in the year 1984 which has been marked on Xi correct to suggest that the details of sad properties are not mentioned in ejectment application as well as in my affidavit-in-evidence voluntarily says that details of current properties are mentioned in MOU signed on 18 August 2011 which has been produced at Es. A/2. It is correct to suggest that the applicant had filed one rent case tearing No 1306/2006 against the opponent. I don't remember at present whether applicant had not mentioned the details of properties mentioned in ar deed executed in the year 1984 in memo of ejectment application as well as in affidavit in evidence of above rent case (1366/2006) It is correct to suggest that the applicant obtained possession of some of the properties mentioned in lease deed executed in the year 1984 from the opponent after exerting pressure upon him and thereafter rented out the same to some other tenants. At the moment I am not aware of the letter dated 19 July 2017 allegedly sent by the opponent through courier service to the applicant whether it was received by our office or not but we will give due reply after confirmation. The applicant has not received the letter dated 19.07.2017 voluntarily says that I have filed statement on 11.01.2018 and has also attached photocopies of paid water bills. It is incorrect to suggest that I have deposed falsely that the applicant has not received letter dated 19.07.2017. It is correct to suggest that I have filed the photocopies of paid water bills of entire building where the demised premises is situated but not exclusively of the demised premises. There are 20/22 tenants in the entire building It is correct to suggest that I have not produced the document showing the breakup of amount of the each tenant in respect of water voluntarily says that I have attached documents as annexure D to D/23 which show the water bills and maintenance charges along with Tet of the demised premises. It is correct to suggest that I have not duced original bills of paid water bilis. It is correct to suggest that the document attached with memo of ejectment application as annexure D/1 which shows the amount of Rs.26,064/- as bill of water consumption for the month of October 2016 for the demised premises. It is incorrect to suggest that I have attached fake bills with memo of ejectment application as annexure D to D/23. It is incorrect to suggest that the landlord has to pay all the Government taxes in respect of demised promises voluntarily says that the landlord has only to pay the property tax whereas the water and conservancy tax is to be paid by the tenant. I see annexure D of the meme of ejectment application and say that it allows the outstanding amount of Rs 87,20,839/-in respect of water and conservancy charges up to the month of October 2016 for the demised premises. It is correct to suggest that annexure D does not show the breakup of outstanding amount in months voluntarily says that when the opponent raised objections in this regard the applicant made correspondence and produced the rent account which is annexed with memo of ejectment application as annexure F/1. It is correct to suggest that one bill dated 03.11.2016 is also part of the annexure D which shows the outstanding amount up to the month of October 2016 as Rs.57,04,773/-. It is incorrect to suggest that I have not mentioned the difference in both bills of annexure D voluntarily says that the both bills are different wherein one bills is for rent and second one is a maintenance bill therefore the difference between both bills cannot be compared. I don't remember the exact amount for charging the maintenance bill per square feet for demised premises. It is incorrect to suggest that the plaintiff has not sent the documents which are attached with memo of ejectment application as annexure D to D/23 to the opponent nor received by the opponent. It is correct to suggest that the opponent is paying the rent regularly through cheque to the applicant voluntarily says that he is paying without enhancement of 10% rent and has also defaulted in payment of arrears of water and conservancy charges. It is

correct to suggest that as per lease agreement, the rent of the demised premises was to be increased 10% after every three years voluntarily says that in August 2011, opponent agreed to pay 10% annual enhancement of rent. It is correct to suggest that the lease agreement dated 18th February 1984 which is marked as X is a registered document voluntarily says that the applicant had not got it registered but as per claim of the opponent it has been registered by the opponent. The original of the document marked as X is not in our custody. It is incorrect to suggest that I have not produced original of the annexure X with malafide intention. I don't know at present whether the opponent has been paying the rent with 10% enhancement after every three years voluntarily says that I have to check it from my office. It is correct to suggest that the opponent is paying the monthly rent of the premises regularly, Voluntarily says that however, he is not paying the water charges. It is incorrect to suggest that any other MOU was made between the applicant and opponent subsequently MOU referred at para No. 2 of the letter dated 20.01.2016 vide Ex. A/5. It is correct to suggest that the sub lease between the parties is registered in respect of the premises in question. I don't know that the MOUs have got any precedence over the registered sub lease legally. Voluntarily says that however the said MOUs were made with mutual consent of the parties and same are part and parcel of sub lease. The MOUs made between the parties are not registered. It is incorrect to suggest that the opponent uses to pay the water charges to the water board directly. I don't reme bar as to how the MOUs were sent to the opponent. It is correct to suggest that any document on refusal to be received in person is sent through courier service. It is correct to suggest that I have not produced any postal/courier service receipt in respect of such MOUSJ It is correct to suggest that the said MOUs don't bearing any receiving. It is correct to suggest that a letter dated 17.03.2016 vide Ex. A/7 was sent to the opponent through courier service and that its reply was also sent by the opponent dated 05.05.2016 at Ex. A/10. It is incorrect to suggest that the letters dated 07.04.2016 and 27.04.2016 vide Ex. A/8 and A/9 have never been sent to the opponent and that same have been prepared /fabricated only for the purpose of record. It is correct to suggest that the letter dated 10.04.2016 attached as Annexure A with written statement was sent by the accountant of the applicant to the opponent. It is incorrect to suggest that MOU dated 12.04.2012 was made between me being the representative of the applicant and tenants. Voluntarily says that it is false and fabricated document. It is incorrect to suggest that it bears my signature. Voluntarily says that the original is not being shown in order to properly verify the same. It is correct to suggest that the letter dated 13.08.2011 was sent by me to the opponent. It is correct to suggest that the said letter was responded by the opponent through its letter dated 15.08.2011 being annexure D attached with the written statement. It is correct to suggest that the letter dated 28.07.2001 was sent by the applicant to the MD of KWSB in respect of water charges. It is incorrect to suggest that the KWSB sent any letter in response to the said letter to us/applicant. It is correct to suggest that the rent case No: 1366/2006 was filed by the applicant against the opponent. It is correct to suggest that the said case was withdrawn since compromise was effected. It is incorrect to suggest that the said rent case was filed on the same ground of non-payment of water charges and default in payment of the rent. Voluntarily says that it was in respect of enhancement of the rent. It is incorrect to suggest that the applicant is adopting different methods in order to make the applicant to enhance the rent. It is incorrect to suggest that the applicant has ever stopped the water supply of to the opponent. It is correct to suggest that the applicant has asked the opponent to get installed separate electricity connection/meter. It is incorrect to suggest that neither the opponent has committed in default in payment of the rent nor in payment of water charges. It is correct to suggest that almost all of the offices are rented out and the clinics are situated therein. The 10 percent of the property of the applicant is in its own use. It is incorrect to suggest that the premises-in-question are not in personal need of the applicant.

> *Voluntarily says -that-the same are needed for setting up medical centre, OPD etc for the welfare of public. It is incorrect to suggest that I am deposing falsely. It is incorrect to suggest that I have filed false application against the opponent in order to harass him.* (Emphasis Added)

5. Learned counsel further argued that in paragraph number 9 (reproduced above) it is evident that the tenement is not required for the personal use and the intention of the Respondent is malafide. It was also argued that it is apparent from bear reading of paragraph Number 9 (reproduced above) that the Respondent No.1 wishes to rent out the property to another tenant.

6. Conversely, learned counsel for the Respondent No.1 has argued that witness of the Respondent No.1 has reiterated his stance taken in the rent application as well as in the affidavit in evidence. He has further stated that the Respondent No.1 has fully discharged its burden and the Petitioner failed to shatter the evidence of the witness of the Respondent No.1. He has further argued that it is unconscionable that a landlord has being deprived of the tenement even though the rent application was filed in the year 2016. On the averment of the Petitioner regarding renting out the property to another tenant, learned counsel stated that adequate protection is provided under Section 15A of the SRPO.

7. Heard learned counsel and perused the record. It is evident that the Petitioner conducted a very detailed cross-examination of the Respondent No.1, on several dates, only a portion of which has been reproduced above. It is evident from perusal of the cross-examination reproduced above, that the plea of the landlord has not been shattered and no further cross-examination was conducted in reference to this ground by the Petitioner. It is noticeable from a bare perusal of the cross examination that only a suggestion regarding personal bona fide need was put to the witness and no other question is relation to the same was asked.

8. The argument of the Petitioner in reference to tenement being rented out to another tenant, I agree with the contention of the learned counsel for the

Respondent No.1, that Section 15A of the SRPO provides adequate relief/protection to the tenant in such circumstances. It is a settled principle of law that once the landlord steps into the witness box and the plea of personal need is unrebutted, 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 Pakistan***[1]

  "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 Riaz***[2]

  "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 bugalow 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)

- ***Rabia Jamal v. Mst. Nargis Akhtar***[3]

  "22. On the basis of the above decisions of the Supreme Court of Pakistan, it is apparent that once the landlord has adduced evidence by stating that they require the Said Tenement for their personal use in good faith, thereafter the burden shifts on the tenant to show either that the landlord

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[1] 1992 SCMR 1296
[2] 1996 SCMR 1055
[3] C.P. No.S-495/2023 Order dated 21.07.2023

did not require the Said Tenement for her personal use in good faith or that the Said Tenement could not be used by the landlord for the purpose as indicated in the Application under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. However, while raising such a contention it is not open to the tenant to allege mala fide on the part of the landlord by adducing evidence to state that the landlord had alternative premises or for that matter that the landlord had alternative premises that were more suitable for the needs of the landlord. This right to choose from amongst a host of properties that are available to a landlord as to which of those properties the landlord requires for their personal use vests solely with the landlord to the exclusion of all others." (Emphasis added)

- ***Shakeel Ahmed & another v. Muhammad Tariq Farogh***[4]

"6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains unshattered in cross-examination and un-rebutted in the evidence adduced by the opposite party."

9. 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."]

10. 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

[4] 2010 SCMR 1925

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.[5]

> "*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 rise 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."*

b) Mst. Dilshad Bibi versus Ramzan Ali.[6]

> *"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.

Karachi

Dated

JUDGE

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[5] 1999 MLD 3011
[6] 2006 CLC 1853