

*Order Sheet*

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No.S-551 of 2023

Present

Mr. Justice Muhammad Jaffer Raza

Ahmed Ali K. Dhanani. .... Petitioner.

Versus

Habib Metropolitan Bank Ltd. & others..... Respondents

Mr. Abdul Wajid Wyne, advocate for the appellant.

Mian Mushtaq Ahmed, advocate for the Respondent No.1

Date of Hearing: 11.04.2025

Date of Order: 11.04.2025

**ORDER**

**MUHAMMAD JAFFER RAZA-J:** Learned counsel for the Petitioner has impugned the judgment dated 12.04.2023 passed in the FRA No.215/2022 Brief facts of the case are as under: -

2. That the Respondent filed Rent Application under Section 15(2)(VII) of the Sindh Rented Premises Ordinance, 1979 ("**Ordinance**") bearing No.328/2019. The said rent application was allowed vide judgment dated 18.10.2022 and the Petitioner was thereafter directed to vacate the tenement in question. Thereafter, the Petitioner preferred First Rent Appeal bearing No.215/2023 and same was dismissed vide impugned judgment dated 12.04.2023.

3. Learned counsel for the Petitioner has argued that the property was purchased by the Respondent on 04.05.2007 and it was only on 23.05.2019 that the notice of Section 18 of Ordinance was received by him and thereafter

he became aware of the fact that the Respondent No.1 had subsequently become the owner of the property. On specific query, he has responded that during the interim period from 2007 to 2019 the rent was deposited in MRC in the name of previous owner. He has further stated that there is another tenant in the building in question and the points raised in the Affidavit-in-Evidence are over and above the grounds taken in the Rent Application. In this regard he has argued that the Respondent ought not be allowed to go beyond the pleadings. He has thereafter invited my attention to Section 19 of the Ordinance and has stated that the points of determination are to be determined by the Rent Controller in light of pleadings and both the judgments below are beyond the pleadings of the Respondent. He has lastly invited my attention to ground No. "F" & "H" taken in the memo of the instant petition and he has stated that a bare perusal of the cross examination would reveal that the evidence and plea of the Respondent has been shattered and the Respondent is not entitled for ejectment on the ground above.

4. Conversely, learned counsel for the Respondent has invited my attention to the Rent Application, more specifically paragraph number 4 and also invited my attention to paragraph number 10 of the Affidavit-in-Evidence, which according to him, are consistent. He has stated that the pleadings of the Respondent are unswerving and the plea of personal bonafide need has remained un-shattered, therefore, he is entitled for ejectment.

4. I have heard the learned counsel for the parties and perused the record and also examined the cross examination of the applicant conducted before the learned Rent Controller. Relevant parts of the cross examination are reproduced below:-

*"It is correct to suggest that it is written in Esc. A/4 that the premises are required for the personal bonafide need and no explanation of the bank for housing/ to accommodate the staff of its various department. It is correct to suggest that Ex.A/3 only speaks about filing of ejectment*

*application on the ground of personal bonafide need and no explanation of personal bonafide need is mentioned in ExA/3.....*

*It is correct to suggest that applicant bank bus malafidely assigned reasons of ejectment. It is correct to suggest that first and third floor of the building wherein demised premises are excited are also vacant and in possession of applicant bank. I do not know exact measurement of demised premises. It is incorrect to suggest that our requirements could be fulfilled by utilizing first flour and third floor of the building being lying vacant. It is correct to suggest it is not mentioned in my Affidavit in evidence that first floor and third floor of building are not sufficient for applicant requirements. I had personally inspected building, It is incorrect to suggest that first floor and third floor of building are in dilapidated condition. If we are handed over possession we will utilize the premises after renovation. The applicant bank so far does not intend to demolish the said building and raised new construction. It is incorrect in suggest that looking to the condition of building a false plea has been raised by applicant bank. It is correct to suggest that till today we have not renovated first and third floor of the building, It is incorrect to suggest that applicant bank does not actually intend to shift its department at demised premises. It is incorrect to suggest that buyers are visiting said building. It is incorrect to suggest that I am deposing falsely."*

5. It is evident from the bare perusal of the cross examination reproduced above, that the Petitioner is unable to shatter the plea of personal bonafide need made by the Respondent. It is also trite law that once the landlord steps into the witness box and the plea remains un-shattered, the ejectment proceedings must follow. 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<sup>1</sup>**

*"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<sup>2</sup>**

*"3. Lane was granted to consider the contention that the plea of personal requirement was not bona fide as a flat was available in the*

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<sup>1</sup> 1992 SCMR 1296

<sup>2</sup> 1996 SCMR 1055

*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)*

- **Rabia Jamal v. Mst. Nargis Akhtar**<sup>3</sup>

*"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 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 of 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 best 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)*

6. In light of what has been held above, instant petition being devoid of any merits is dismissed with no order as to cost. At this juncture, learned counsel for the Petitioner requests for time to vacate the subject tenement. At the request of the learned counsel for Petitioner three (03) months time is granted from today to vacate the subject tenement and the possession of the

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<sup>3</sup> C.P. NoS-405/2023 Order dated 21.07.2023

tenement shall be handed over to the Respondent in the presence of the Nazir  
of the trial Court

JUDGE

Nadeem/pa