

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.S-102/2012

Petitioner: Mst. Saira w/o Saddruddin through
Ms. Uzma Khan advocate

Respondent #1. Muhammad Ayeen Khan s/o Gulyar
Khan through Ms. Khadija Kulsoom
advocate

Date of hearing. 03.02.2015

Date of judgment: 03.02.2015

JUDGMENT

ABDUL MAALIK GADDI, J:- The petitioner is aggrieved by the judgment dated 30.11.2011 passed by the learned IVth Additional District Judge, Karachi West in First Rent Appeal No.34/2011 whereby First Rent Appeal filed by respondent No.1 for ejectment of the petitioner from the premises in her possession was allowed and the order dated 18.4.2011 passed by learned 1st Rent Controller, Karachi West in Rent Case No.64/2010 dismissing the rent application filed by respondent No.1 was set aside.

2. The brief facts of the case, as narrated by respondent No.1 before the Rent Controller are that he is

the owner/landlord of Plot No.194, Haider Chali, S.I.T.E. Town, Karachi. The petitioner is the tenant of the respondent No.1 in respect of said premises since 2002, at the monthly rent of Rs.2500/- per month. It is also stated that time and again he orally requested to the petitioner to vacate the premises as the same was required to him for his personal bonafide need but petitioner failed to do so. However, respondent No.1 also served legal notice upon petitioner for vacation of the premises in her possession within one month as the respondent No.1 was in need of the premises for his personal bonafide use but despite of service of notice the petitioner failed to vacate the premises in her possession. Hence ejectment application was filed by respondent No.1.

3. The petitioner has filed her written statement in which she has denied all the facts stated by respondent No.1. she submitted that she is regularly paying the rent and the respondent No.1 has no need of the premises in question for his personal bonafide need. In her written statement she has also stated that the respondent No.1 is living in his own house having 10 other premises in the same vicinity let out to different tenants on rent, therefore, according to her need of premises in question as claimed by respondent No.1 is not bonafide.

4. On the basis of the pleadings of the parties, the following Issues were framed by the trial Court.

(i) Whether the respondent No.1 requires the premises in question in good faith for his personal bonafide use?

(ii) What should the order be?

5. In order to prove the case, the respondent No.1 Muhammad Ayeen Khan filed his affidavit in evidence, while petitioner Mst. Saira (tenant) also filed her affidavit in evidence. Both the parties were cross-examined by their respective counsel.

6. It is contended by the learned counsel for the petitioner that it is a case of conflicting findings of the two courts below with regard to personal bonafide need of the premises in question for respondent No.1. She further contended that the provision of Section 15 of Sindh Rented Premises Ordinance, 1979, requires the landlord to make out the case for his requirements of the premises in good faith. For this purpose he must place before the court all the necessary details which are required for granting relief. A mere ipse dixit of the landlord that he requires the premises for his personal bonafide use is not enough. She also contended that landlord in this case has failed to furnish required details to the effect that how the premises in possession of petitioner is suitable to him. She further contended that in fact the respondent No.1 intends to enhance rent although, according to her, the respondent No.1 has also 10 other premises in the same

vicinity but the case filed by the said respondent before trial court was just to harass the petitioner. However, in the last she has prayed for allowing the petition as the said respondent has miserably failed to prove/establish his requirement.

7. Conversely leaned counsel for the respondent No.1 has supported the order dated 30.11.2011 passed by 1st Appellate Court by submitting that the said order has been passed after proper appreciation of evidence on record. She further contended that the respondent No.1 in his ejectment application as well as in his affidavit in evidence has stated in clear terms that the premises in possession of the petitioner is required to him for his personal bonafide need and in support of his need the respondent No.1 appeared in the witness box and was subjected to cross-examination but he remained unshaken on the point of personal bonafide requirement. According to her, even if the landlord owns other properties, it is the prerogative of the landlord to choose premises for his need and this right cannot be exercised by the tenant.

8. Heard the parties' advocates and perused the record.

9. It is an admitted fact that petitioner is the tenant of respondent No.1 in the premises in question at the monthly rent of Rs.2500/- per month. The petitioner is the

tenant of respondent No.1 since 2002. In the year 2010 the respondent No.1 filed ejectment application for the eviction of the petitioner from the premises in question for his personal bonafide need. In Para 3 of ejectment application as well as in prayer clause and in his affidavit in evidence the respondent No.1 has categorically submitted that the premises in possession of the petitioner requires to him for his personal bonafide need. Petitioner's counsel though thoroughly cross-examined the respondent No.1 but all in vain.

10. I have perused the documents and evidence whatever available on record. No circumstances available on record to show that the desire of landlord to use his own property for himself or his family members was tainted with malice or any evil design. It appears that the statement of respondent No.1 on oath being consistent with the case pleaded by him must have been accepted on its face value and given due weight. In this case, the conclusion drawn by 1st appellate court to the effect that landlord's need was bonafide could not be dislodged in the absence of any strong evidence to rebut the presumption of truth in the statement of landlord. In my view the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of his valuable rights to acquire, deal and possess his property, which right was guaranteed by Article 23 of the Constitution of

Islamic Republic of Pakistan, 1973. In this regard I am supported with cases of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui (2000 SCMR 1613), Iqbal Book Depot & others v. Khatib Ahmed & others (2001 SCMR 1197) and Pakistan Institute of International Affairs v. Naveed Merchant & others (2012 SCMR 1498).

11. Besides this, learned counsel for petitioner has also not been able to point out any illegality, infirmity, misreading or non-appraisal of the evidence in the order of the First Appellate Court. Learned First Appellate Court being final authority under Sindh Rented Premises Ordinance, 1979 has appreciated all the points involved in the case, therefore, the findings of 1st appellate court on the point of personal need while setting aside the order dated 18.4.2011 of learned Rent Controller appears to be justified and in accordance with law.

12. For the foregoing reasons, I am of the considered opinion that it is not a fit case for interference in exercise of constitutional jurisdiction, with the result this petition stands dismissed alongwith listed application. However, the petitioner is allowed 6 (six) months` time from today to vacate the premises and hand over its vacant possession to the respondent No.1, subject to payment of rent, failing which writ of possession shall be issued against the petitioner without notice with police aid, if necessary.

13. This petition was dismissed in Court by short order dated 03.02.2015 and these are the detailed reasons for the same.

JUDGE