

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.S- 1372/2011

Petitioner: M.C.B. through Mr. Amir Malik advocate

Respondent #1 M/s. Karachi Rolling Mills through
Mr. Shabbir Ahmed Sheikh advocate

Date of hearing: 10.02.2015

Date of judgment: 10.02.2015

JUDGMENT

ABDUL MAALIK GADDI, J:-The petitioner is aggrieved by the judgment dated 29.11.2011 passed by the learned VIIth Additional District Judge, Karachi South in First Rent Appeal No.39/2011 whereby the appeal was dismissed and the impugned order dated 24.12.2010 passed by the learned IXth Rent Controller, Karachi South in Rent Case No.1252/2009, allowing the ejectment application was maintained.

2. The facts giving rise to this petition, briefly stated, are that respondent No.1 is the owner/landlord of the building constructed upon Plots bearing No.14, 15 and 16, Sheet No.LR-4, Lawrence Quarters, Karachi. The total covered area of the aforesaid three plots is about 3144

square yards i.e. 28296 square feet and there are about hundred shops constructed on the said plots. The petitioner vide tenancy agreement dated 23.9.1976 acquired an area of 1200 square feet at ground floor together with an area of 340 square feet at mezzanine floor from the respondent No.1 at the monthly rent of Rs.1200/- so also the petitioner had paid a sum of Rs.4,00,000/- as security deposit to the respondent No.1 who had made necessary renovation, addition and alteration to suit their banking business for which the said respondent had undertaken the regularization of such additions (the area in possession of the petitioner hereinafter referred to as the premises in question). In the month of May, 1993 another tenancy agreement was executed between the parties whereby the rate of rent was enhanced to Rs.5,000/- per month, thereafter on 16.9.1998 it was enhanced to Rs.8,450/-, on 23.4.2002 the rent was fixed at Rs.15,000/- per month, in January 2005 the rent was again enhanced to Rs.19,500/- w.e.f. 01.9.2004 and it was effective for the period of three years and was expired on 30.8.2007 but in the meantime the respondent No.1 served a notice dated 12.9.2007 upon petitioner asking the petitioner to vacate the premises in question as the same was required for the personal use of the respondent No.1 and so also the petitioner failed to pay the water and sewerage charges of the demised premises thereby committing default in payment of said

charges. The petitioner replied the notice dated 15.2.2008. Thereafter the respondent No.1 filed rent case.

3. The petitioner filed written statement and denied the averments in the rent case. The petitioner has also contended that the rent application has been filed by respondent No.1 only to enhance the rent upto Rs.60,000/- per month, as such, the personal need as alleged by respondent No.1 is not bonafide and the petitioner has not committed any default in payment of utility charges as the water charges are contributed by all the occupiers of building and the petitioner is continuously paying the same to the person/contractor who makes supply of water. Hence, according to him no default has been committed by him.

4. On the basis of the pleadings of the parties, the learned Rent Controller framed the following issues:-

- (i) Whether the opponent has failed to pay the electricity, gas charges and the dues of water and sewerage to the concerned authority of the disputed period?*
- (ii) Whether the tenement in question is required by the applicants for their personal bonafide need?*
- (iii) What should the order be?*

5. In order to prove his case the respondent No.1 has filed the affidavit in evidence of Muhammad Yousuf

partner of M/s Karachi Rolling Mills while petitioner has filed the affidavit in evidence of Malik Amir Hussain authorized officer of the M.C.B. Bank Ltd. They both were cross-examined by the either side. Both the Courts below after evaluating the evidence and hearing the parties advocates answered both the points in affirmative and allowed the ejectment application.

6. Learned counsel for the petitioner contended that the orders passed by the two Courts below are not in accordance with law. He further submitted that there is no default on the part of petitioner but both the Courts below did not consider the evidence properly, even no documentary evidence was on record to show that the petitioner has failed to pay the water and sewerage charges. He also submitted that Courts below have failed to notice that the respondent No.1 has not disclosed the period/month of the alleged default in payment of water and sewerage charges, nor has filed any outstanding bills in this behalf. Therefore, he was of the view the respondent No.1 failed to discharge the initial burden to prove the alleged default. On the point of personal need of respondent No.1, he submitted that the petitioner is old tenant and as per record the rent was being enhanced from time to time at the request of respondent No.1 and before filing the ejectment application the said respondent had made his demand to enhance the rent upto Rs.60,000/- per month and when the demand was not

accepted the ejectment application was filed by respondent No.1 by creating a ground of personal need in a malafide manner although according to him almost hundred (100) shops are on rent and belonging to the respondent No.1 but such fact has been suppressed by the said respondent so also the respondent No.1 has not mentioned the necessary details with regard to bonafide need in the ejectment application, therefore, according to him on these grounds the respondent No.1 was not entitled for any relief. During the course of argument learned counsel for petitioner has also reiterated the same facts and grounds which he raised in the memo of petition, however, in support of his arguments he has relied upon the cases of **(1) Allies Book Corporation through L.Rs. v. Sultan Ahmed and others reported in 2006 SCMR 152**, **(2) Muhammad Jaffer V. Syed Zia-ul-Islam Shah reported in 1996 MLD 976**, **(3) Zubair Ahmed v. Syed Hasan Mehdi reported in 1995 MLD 840**, **(4) Mst. Begum Jan v. Abdul Rasool reported in 1984 CLC 755**, **(5) M.S. Khan v. S.M. Sirajuddin reported in 1985 CLC 562**, **(6) Mst. Hajiani Ghulam Fatima v. Mst. Hajiani Allah Bachai reported in 1985 CLC 1943**, **(7) Abdul Majeed Karim v. Messrs Orient Pakistan Ltd. and others reported in 1994 MLD 1026**, **(8) A & B Oil Industries Ltd. v. Abbas reported in 1993 CLC 1815**, **(9) Mst. Safia Hassan v. Ishrat Hussain reported in 1986 CLC 1751** and **(10) Muhammad Ayub**

& Brothers through Partner v. Province of Sindh through Secretary, Irrigation and another reported in 2009 YLR 348.

7. Conversely, learned counsel for respondent No.1 has supported the impugned orders of two Courts below by arguing that both the Courts below have rightly passed the orders after proper appreciation of evidence and documents on record which are not required for any interference. He further submitted that the respondent No.1 in his ejectment application as well as in his affidavit in evidence has categorically stated that neither the petitioner has paid the water and sewerage charges which was the part of the rent to the concerned department or to respondent nor has placed on record any receipt or documents which show that same was paid by him. He further submitted that the premises in possession of the petitioner is required to the respondent No.1 for doing the business of bearings, bolts and iron sheets. The tenement is situated on main Nishter Road, formerly known as Lawrence Road and is most suitable for respondent No.1 for the said business; that the need of the respondent is in good faith and bonafide; that the tenement is situated in the market where the business of sale of bearings, bolts and iron sheets is being done. According to him, it is the prerogative of the landlord to decide which property is suitable for his requirement and in this regard tenant has no right to question the need of the landlord. However,

according to him need as alleged by respondent No.1 has also been established in the evidence. In support of his arguments he has relied upon case of **Qamruddin through his Legal Heirs v. Hakim Mahmood Khan reported in 1988 SCMR 819 and Haji Mohibullah & Co. v. Khawaja Bahauddin reported in 1990 SCMR 1070.**

8. I have heard learned counsel for the parties at the considerable length and perused the record.

9. It is an admitted fact that the petitioner is tenant of Respondent No.1 at the monthly rent of Rs.19,500/-. The Respondent No.1 filed ejectment application against the petitioner on the ground that the petitioner has not paid/deposited the water and sewerage charges either to respondent or to the concerned department, thereby he committed default in payment of said charges and also on the ground that the premises in possession of the petitioner is required to respondent No.1 for his personal need for doing the business of bearings, bolts and iron sheets. The respondent No.1 in Para Nos. 5 and 6 of his ejectment application as well as in his affidavit in evidence has categorically substantiated these points. On behalf of respondent No.1 Muhammad Yousuf was examined. The petitioner in his written statement as well as in evidence has denied the case and claim of the respondent No.1. In order to resolve the controversy as far as default as alleged is concerned, I myself have benefitted to go through the

Section 2(i) of the Sindh Rented Premises Ordinance, 1979. For the sake of convenience it would be appropriate to reproduce the said Section which reads as under:-

“Rent’ includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid.”

10. From the perusal of above Section it appears that utility charges are to be paid by the tenant in addition to actual rent, but here in this case it is the case and claim of the respondent No.1 that the petitioner has not paid the water and sewerage charges either to concerned department or to respondent No.1. Petitioner in Paragraph No.5 of his written statement has submitted that he has been regularly paying the said charges without any delay and never committed any default in payment of said charges but the petitioner in order to prove his claim has not submitted any documents before the Rent Controller. It is pleaded in the ejectment application that the petitioner has not paid water and sewerage charges, therefore, the plea of the petitioner that period/month of alleged default has not been disclosed has no force as burden to prove payment of water and sewerage charges was upon the petitioner. In this regard I am also benefited with case of **Allah Din v. Habib reported in PLD 1982 SC 465** in this authority it has been held as under:-

(c) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)

*“---S.13(2)(i)—Burden of proof – Non-payment of rent—
A negative fact---Landlord appearing in Court and
stating on oath to have not received rent for a certain
period---Burden lying upon him, held, sufficiently
discharged and shifts on tenant to prove affirmatively
that he paid or tendered such rent.”*

.....

The Respondent No.1 in the ejectment application and in Affidavit-in-Evidence has stated that he has not received the water and sewerage charges, therefore, burden shifted to tenant to prove that he had paid the said charges.

11. Since the petitioner has submitted that he had paid the water and sewerage charges, therefore, in view of the above case law the burden to prove the payment of said charges lies upon the shoulder of petitioner but in this respect the petitioner has not produced any documentary or convincing evidence that he had paid the said charges either to the concerned department or to respondent No.1. Water and sewerage charges being included in definition of “Rent” and tenant being liable to pay the same, default on his part would make him liable for ejectment for non-payment of such charges and when default was clearly established by evidence before Rent Controller. In this regard, I am supported with case of **Abdul Ghafoor v. Mst. Amtul Saeeda reported in 1999 SCMR 28**.

12. The respondent No.1 has also sought ejectment of the petitioner on the ground that the premises in possession of the petitioner is required to him for his

personal need for doing the business of bearings, bolts and iron sheets. According to the respondent No.1 the premises in question is situated on main Nishtar Road formerly known as Lawrence Road and is most suitable for the said business. The respondent No.1 has also substantiated his requirement in his affidavit in evidence. This fact has been denied by the petitioner by stating that the respondent No.1 is in possession of many other properties in the same locality excluding the property in possession of the petitioner and according to the petitioner the respondent No.1 is threatening and harassing the petitioner to vacate the said rented premises in order to get the increase in the monthly rent of his own choice. As observed above 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 question is required to him for his personal bonafide need. Petitioner's counsel though thoroughly cross-examined the respondent No.1 but all in vain.

13. It is contended by the learned counsel for the Petitioner that the Respondent No.1 has enhanced the rent in recent past and according to him, again the said respondent wants to enhance the rent as such the object in seeking the ejectment of the Petitioner is for the purpose of enhancement of rent and the requirement of the Respondent is, therefore, not bonafide. In my view the

demand of higher rent by the Landlord by itself would not cast any doubt on the bonafide personal requirement of the landlord and in this respect I am supported with case of **Peerzada Rafiq Ahmed v. Chaudhry Abdul Rehman** reported in **1980 SCMR 772** and **Sher Afgan v. Sheikh Anjum Iqbal** reported in **PLD 2004 Supreme Court 671**.

14. It is also argued by the learned counsel for the Petitioner that the Respondent No.1 has not mentioned the detail of the properties in his possession in the ejectment application, therefore, according to him personal need as alleged by Respondent No.1 is malafide.

15. Regarding the non-mentioning the detail of the properties in ejectment application, it may be observed that an applicant has to state in his application, the material facts i.e. facts which constitute cause of action. In a case of present nature the applicant has to state those facts which prima facie show that the requirement is according to law, and is made in good faith. This has been so stated in the application. In this regard, I am supported with the case of **Haji Mohibullah & Co. v. Khawaja Bahauddin** reported in **1990 SCMR 1070**. I have also gone through the case of **M/s. F.K. Irani & Co. V/s Begum Feroze** reported in **1996 SCMR 1178**, wherein it is held as under:-

(e) Sindh Rented Premises Ordinance (XVII of 1979)—

“---S. 15---Bona fide personal need of landlord---Merely because the husband of landlady had 62 shops in one area and 21 shops in another, would not disentitle her to apply for ejectment on the ground of personal requirement of her son as it is for a landlord/landlady to select as to which of the buildings he/she wishes to use personally or to provide the same to his/her children.”

.....

I have perused the contents of ejectment application filed by the Respondent No.1 in which requisites details have been mentioned, therefore, the plea as raised by the Petitioner has no force.

16. 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 for doing business is tainted with malice or any evil design. It appears that 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 both the Courts below to the effect that the 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 right 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 the case of **(1). Mehdi Nasir Rizvi v/s Muhammad Usman Siddiqui reported in 2000 SCMR 1613, (2). Iqbal Book Depot and others v/s Khatib Ahmed and 6 others reported in 2001 SCMR 1197 and (3). Pakistan Institute of International Affairs v/s Naveed Merchant and others reported in 2012 SCMR 1498.**

17. Besides this the learned counsel for petitioner has also not been able to point out any illegality, infirmity, misreading or non-appraisal of the evidence of both the Courts below. Case law cited by learned counsel for petitioner has been perused and considered by me but did not find applicable to the facts of present case. Hence same are not helpful for him.

18. In view of the above discussion, the learned Rent Controller held that it is established that the petitioner has committed default in payment of water and sewerage charges and also held that the premises in question is required to applicant for his personal bonafide use. These findings of fact of Rent Controller were upheld by the learned Appellate Court and, hence, there are concurrent findings of two Courts below on facts against petitioner which cannot be disturbed unless it is shown that the findings are against the evidence on record. However, I have gone through the judgment of the appellate Court which shows that the appeal of the appellant was also

dismissed on the ground that appeal filed by the Petitioner was time barred but on perusal of record it appears that the same was within time. This fact has also been admitted by the counsel for the Respondent No.1, therefore, the findings of first appellate Court in this regard was not proper to this extent, therefore, the same is set aside.

19. The learned counsel for petitioner failed to point out any illegality, infirmity in the impugned orders.

20. In view of the above facts and circumstances of the case, I find no merit in this petition which is dismissed alongwith listed application with no order as to cost. Since the petitioner is old tenant therefore, the petitioner is granted six months` time to vacate the premises-in-question and hand over its vacant possession to the respondents No.1 subject to payment of rent.

21. This petition was dismissed in Court by short order dated 10.02.2015 and these are the detailed reasons for the same.

JUDGE