

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 276 of 2024

Mirza Mehboob (since deceased) through
his legal heir Ahmed Ali Rauf Mirza Petitioner.

Versus

Mst. Najma Begum & others..... Respondents.

Mr. Muhammad Kamran Mirza, Advocate for the Petitioner.

Mr. Zameer Ahmed Bhutto, Advocate for Respondent No.1
a/w M/s. Darakhshan Jahan, Ghulam Mustafa and
Abdul Razzaque Abbasi Advocates.

Dates of hearing : 15.05.2025 and 23.05.2025.

Date of announcement : 07.07.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has been filed by the Petitioners impugning the judgment dated 25.01.2024 passed by the learned VIth Additional District Judge, Karachi Central in First Rent Appeal No.169/2023 (**“Appeal”**). The said appeal emanated from the order dated 18.09.2023 passed by the learned VIth Rent Controller Karachi Central in Rent Case No.364/2021 (**“Rent Case”**) filed by Respondent No.1 under Section 14 of the Sindh Rented Premises Ordinance, 1979 (**“the Ordinance”**).

2. Succinctly stated, facts of the case are that the above noted Rent Case was filed by Respondent No.1 on the ground of default and personal bonafide need.

The prayer clause is reproduced as under:-

- “a) Order to vacate the shop No.5 constructed on Plot No.BS-15, Block-14, F.B. Area, Karachi, handover the peaceful and vacant physical possession to the applicant, and further be pleased to put the applicant in the possession.
- b) Direct the opponent to deposit the arrears of rent amount from the month of January 2017 till date.

- c) Direct to deposit the monthly rent regularly on or before 10th of every coming month till the disposal of case.
- d) Grant the cost of proceedings.
- e) Any other relief or reliefs which this honourable court may deem fit and proper under the circumstances of the case.”

3. Subsequently, after recording of evidence of the respective parties, the learned Rent Controller allowed the said Rent Application and directed the Petitioner to be ejected from the tenement in question. Thereafter, the above noted Appeal was filed by the Petitioner which was dismissed vide impugned judgment. Learned counsel for the Petitioner has impugned the concurrent findings of the Courts below.

4. Learned counsel for the Petitioner has argued that the difference between Sections 14 and 15 of the Ordinance has not been appreciated by both the Courts below. He has specifically argued that no ground of default can be ascertained under Section 14 of the Ordinance. Moreover, on the contention of Respondent No.1 regarding personal need, he has very categorically argued that the said criteria under the above noted section was not met. Learned counsel concedes to the proposition of the Respondent No.1 being a widow, however, has argued that she has other tenements in her possession, which under the scheme of section 14, does not entitle her to eject the present tenant i.e the Petitioner.

5. Conversely, learned counsel for Respondent No.1 has argued that prior to filing of the Rent Case, notice was sent to the Petitioner informing them that Respondent No.1 has become a widow and requires the tenement primarily for herself and her daughter who is also a widow. He has also argued that the Petitioner is a willful defaulter and the default has been admitted by the Petitioner. Lastly, he has argued that concurrent findings of the Courts below require no interference by this Court and the Respondent No.1 is a widow who is old and feeble, therefore it would be unjust and inhumane to deprive her of the tenement.

6. I have heard both the learned counsels and perused the record. Prior to delineating into the facts of the present case, it would be appropriate to reproduce Section 14 of the Ordinance as follows:-

“14. (1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, the landlord of a building who is a widow, or a minor whose both parents are dead or a salaried employee due to retire within the next six months or has retired or a person who is due to attain the age of sixty years within the next six months or has attained the age of sixty years, may, by notice in writing, inform the tenant that he or she needs the building for personal use and require him to deliver vacant possession of the building within such time as may be specified in the notice, not being earlier than two months from the receipt thereof:

1[“Provided that nothing in this sub-section shall apply where the landlord has rented out the building after he has retired or attained the age of sixty years or, as the case may be, has become widow or orphan.”.]

(2) The landlord shall not be entitled to avail the benefit of sub-section (1) if he is in occupation of a building owned by him in any locality.

(3) Where the tenant has failed to deliver the possession of the building under sub-section (1), the Controller shall, on application by the landlord in this behalf, order eviction of the tenant from the building in a summary manner, by using such force as may be necessary.”
(Emphasis added)

7. The judgments by both the courts below have been rendered primarily on the grounds of default and personal need. Each of those grounds will be adjudicated separately.

DEFAULT.

8. It is apparent from the bare reading of the above noted Section that the same caters to special category of persons identified therein. Without the need for reproduction, it is further apparent from bare perusal of the above noted Section, that the same is distinct from the scheme of Section 15 of the Ordinance.

9. The framing of the point of determination on the point of default by the learned Rent Controller and the concurrent findings of the learned Appellate Court is beyond the scheme of the above noted Section and the same was impermissible. A finding of default could only have been rendered in an application under Section 15 as no scope for the same has been identified in the above-noted provision. The learned Courts below failed to appreciate the distinction between Sections 14 and 15 of the Ordinance and applied the

ingredients of the latter to the case in hand, which as noted above, was filed under Section 14 of the Ordinance.

10. In the same vein it is also held that reliance on the admission of the Petitioner regarding default was erroneous and deliberation thereon was unwarranted and erroneous. In that respect, it is held that both the Courts below have erred in the findings rendered, and the Petitioner is not liable to be ejected on this ground.

PERSONAL NEED.

11. As already noted above, Section 14 of the Ordinance classifies special categories of Landlords/Owners. It is admitted that Respondent No.1 falls in the said category, being a widow. Further the requirement of Section 14 pertaining to notice being issued, was also admittedly complied with by the said Respondent. Additionally, the attorney of the Respondent No.1 entered into the witness box who is also her son. The arguments of the learned counsel for the Petitioner that the shop is required for the Respondent No.1's daughter is misplaced for the reason that the said Respondent claimed the tenement for herself **and** her daughter, who is also a widow. It is necessary that relevant paragraphs of affidavit-in-evidence of the Respondent No.1 are reproduced below:

- “6. I say that the applicant's husband expired on 22nd May 2020, and the applicant become dependent on his son and daughters, hence now she requires the above said premises for her personal bonafide need, for herself and for her daughter.
8. I say that the applicant being a widow and old age lady had tendered a notice under section 14 of Sindh Rented Premises Ordinance 1979 dated 17.08.2020, through her lawyer and intimated/called upon the tenant to vacate the premises and clear all the payable rent amounts due towards the opponent for which he made willful default within 2 two months following the receipt of the notice.
9. I say that the notice for eviction was sent to the opponent where opponent refused to receive such notice dispatched through Leopard Courier Services, resultantly the notice was forwarded to the opponent through the what's app number +92 314 800 7929 from +92 331 2794 482 the what's app number of the grandson of the applicant which was duly received by the opponent on 03.09.2020, with blue double-check sign.
10. I say that despite the several verbal reminders for eviction opponent is least bothered to reply with regards to eviction and remainder of rent amounts.” (Emphasis added)

12. The next contention of the learned counsel for the Petitioner pertains to the cross-examination of the Respondent No.1's attorney. Relevant part of the same is reproduced as under:

“It is fact to suggest that the demised premises and its adjacent shop are under my possession. Voluntarily say we are owner of the same.”

13. Learned counsel in this regard has most vehemently argued that since the Respondent No.1 has other premises and the same has been admitted therefore under sub-clause (2) of Section 14 of the Ordinance, she is not entitled for ejection. However, having examined the testimony of the respective parties in detail, I agree with the contention of the learned counsel for the Respondent No.1, that by making the above noted statement in cross-examination, the witness was referring to himself and not the Respondent No.1. The excerpt of the cross examination reproduced above, cannot be read in isolation and the interpretation advanced by the learned counsel for the Respondent is plausible. The same can easily be inferred from a more contextual reading of the examination. Further, no evidence has been led by the Petitioner to show that Respondent No.1 is in possession of other tenements. In this regard it is held that findings of both the Courts below require no interference.

14. It would not be out of place to hold that even the requirement of the personal need is distinct in Section 14 and in essence the threshold of establishing personal need is lower in juxtaposition to Section 15 of the Ordinance. Whilst Section 15 of the Ordinance requires the personal need to be in “good faith”, there is no such requirement under Section 14 of the Ordinance. In this regard, it is held that the test applied by the learned Rent Controller was unnecessary and unwarranted. All the Rent Controller had to ascertain was whether the Landlord/Owner falls in the category of Section 14 of the Ordinance and whether any of the exceptions of the said provision applied in her case. However, the Courts below went into a time consuming and needless exercise, which ought to have been avoided for an expeditious disposal, which is essentially the scheme and the apparent intent of the above-noted provision.

15. The distinction between the noted sections was expounded in the judgment of **Abdul Shakoor through L. Rs. and others Versus Mst. Zahida Haroon and 3 others**¹ in the following words:-

“2. Section 14 never demands for a bona fide entitlement; all that is required under Section 14 of Sindh Rented Premises Ordinance, 1979, is that certain events have occurred within frame of Section 14 of Sindh Rented Premises Ordinance, 1979, as stated above. A statement on oath by the applicant within parameter of said provision for personal use and possession is enough. It is this provision of law which does not contain the word "personal bona fide need" as contained in Section 15 of Sindh Rented Premises Ordinance; therefore, both the provisions are different and distinguishable.”

16. The scope of Section 14 was expounded by this court in the case of **Muhammad Aslam Versus Mst. Hafizan Begum and 2 others**² wherein it was held as under:-

“6. As to the restriction of Section 14 of S.R.P.O. the same is restricted to tenancies where the same are distinguishable and are separated and not in a case where the requirement of the landlord or the landlady (as the case may be) is dependant on the satisfaction otherwise as such an interpretation defeats the very purpose of the special enactment. In the present matter from the record and proceedings it is clear that no disturbance to the element of personal need in this respect is present, as such, the said restriction cannot be imposed. The purpose of Section 14 of S.R.P.O, is provided to cater for the special category of landlord by a convenient mechanism to acquire possession. In the present circumstances, this petition is found not tenable and stands dismissed. The petitioner may however, approach the concerned Rent Controller in case he is aggrieved of any right of repossession under Section 15(a) provided under S.R.P.O in respect of which though arguments had been advanced but cannot be entertained in this petition.”

17. The limited scope of writ petitions against concurrent findings was elaborated in the case of **Shajar Islam Versus Muhammad Siddique and 2 others**³ wherein it was held as under: -

“The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not

¹ 2024 Y L R 254

² 2020 Y L R 2237

³ PLD 2007 SC 45

supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.”

18. In light of above discussion, the instant petition is dismissed with no order as to cost.

J U D G E

Nadeem Qureshi “PA”