

*Judgment sheet*

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**Constitution Petition No. S – 391 of 2023**

Mrs. Rehana Khatoon ..... Petitioner.

Versus

M/s Deisol The School & others ..... Respondents.

Mr. Mr. Moiz Ahmed, Advocate for the Petitioner a/w  
Ms. Sidra Tabassum Advocate.

Mr. Mayhar Kazi, Advocate for Respondent No.1 a/w  
Mr. Zahid Ali Sahito Advocate.

**Constitution Petition No. S – 976 of 2024**

M/s Deisol The School ..... Petitioner.

Versus

Mrs. Rehana Khatoon & others ..... Respondents.

Mr. Mayhar Kazi, Advocate for the Petitioner a/w  
Mr. Zahid Ali Sahito Advocate.

Mr. Mr. Moiz Ahmed, Advocate for Respondent No.1 a/w  
Ms. Sidra Tabassum Advocate.

Dates of Hearing: 17.03.2025 & 11.04.2025.

Date of announcement: 23.04.2025

**J U D G M E N T**

**MUHAMMAD JAFFER RAZA – J:** By this single judgment I will dispose of the above-mentioned Constitutional Petitions. The instant petitions have been filed impugning the judgments dated 30.01.2023 and 23.07.2024, respectively. Brief facts of the petitions are as follows:

**C.P. No. S – 391 of 2023**

2. The Petitioner in the instant petition has preferred Rent Application bearing Rent Case No.119/2020, under Section 15 of the Sindh Rented Premises Ordinance, 1979 (“SRPO, 1979”) on the grounds of default, nuisance and personal bonafide need. The said rent application was allowed vide judgment dated 11.05.2022. Thereafter, the said judgment was set-aside vide impugned judgment dated 30.01.2023 in First Rent Appeal No.115/2022 and the rent application filed by the Petitioner was dismissed.

**C.P. No. S – 976 of 2024**

3. The Respondent No.1 in the instant petition preferred Rent Application bearing Rent Case No.378/2023, under Section 14 SRPO, 1979. It was asserted that she does not own any other property and after being widowed she required the property for her personal need. The said rent application was allowed vide judgment dated 03.04.2024. Thereafter the Petitioner in the instant petition has preferred First Rent Appeal No.106/2024 which was dismissed vide impugned order dated 23.07.2024.

4. For the purpose of present judgment, both the learned counsels agree that assistance would be rendered in CP No.S-391/2023 and subject to the decision in the said petition, the fate of CP No.S-976/2024 may be adjudicated upon, if the need arises.

5. Learned counsel for the Petitioner has stated that the learned Rent Controller vide judgment dated 11.05.2022 has allowed the rent application of the Petitioner bearing Rent Case No.119/2020. Learned counsel in this regard invited my attention to the rent application preferred by the Petitioner, specifically paragraphs 9 and 10. The same are reproduced as under: -

“9. That the applicant requires the said property for her personal bonafide use as now a days she is living in the house of her son. Now the applicant wants to live in her own house along with her husband. It is also submitted that due to her personal requirement, the applicant has refused to extend the

period of tenancy and demanded for vacating the premises, but the opponents have refused to vacate the premises.

10. That the opponents due to their conducts and deeds are liable to be ejected on ground of default, subletting, nuisance and also on ground of personal bonafide use.”

6. Learned counsel has further stated that the averments of the Petitioner stood un-rebutted and her claim of personal bonafide need was established.

7. Conversely learned counsel for the Respondent has stated that there are conflicting findings of both the learned Courts below, and this being the case the instant petition is ought to be dismissed. He has further argued that the ground of personal bonafide need has not been made out by the learned counsel for the Petitioner as the Petitioner is an old and infirm lady and after being widowed cannot live in the tenement without the help and support of her offspring. He has further argued that the Petitioner resides with her son and her age and health do not permit her to reside in the tenement independently. He has further argued that the tenement in question is being operated as school and is not habitable. He in this respect has supported the judgment of the learned Appellate Court and stated that the rent application has rightly been dismissed. Learned counsel for the Respondent has relied upon the following judgments: -

- ***Iqbal Book Depot and others v Khatib Ahmed and 6 others*<sup>1</sup>**
- ***Allies Book Corporation through L.Rs. v Sultan Ahmad and others*<sup>2</sup>**
- ***Tariq Ali v Mst. Rubina Bano and another*<sup>3</sup>**
- ***Mehboqb Alam v Miss Tehseen Shafqat Khan and others*<sup>4</sup>**
- ***Faizan Shabbir v Shaikh Abdul Wahab through Attorney and 2 others*<sup>5</sup>**

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<sup>1</sup> 2001 S C M R 1197

<sup>2</sup> 2006 S C M R 152

<sup>3</sup> 2014 M L D 693

<sup>4</sup> P L D 2001 Karachi 238

• **ABDUR REHMAN Versus WAQAR AHMED and 2 others<sup>6</sup>**

8. I have heard the learned counsel for the parties and perused the record with their able assistance. Considering that there is a concurrent finding on the issue of default, with the consent of the learned counsels, I will in the instant judgment, only examine the ground of personal bonafide need. At this juncture it will be relevant to reproduce the cross examination of the Petitioner's attorney. The same is reproduced below: -

*“The opponent was obliged to vacate the demised premises after 57 months of the agreement and on the ground of personal bonafide need as my mother has become widow. The applicant is residing with my young brother namely Uzair Feroze since 2011. It is correct to suggest that I have not disclosed in my affidavit-in-evidence whether the applicant was residing is my younger brother. It is incorrect to suggest that I have not disclosed the details to personal need in affidavit-in-evidence. The applicant is about 67 or 70 years old. It is her wish that she would live in her demised property. It is correct to suggest that the applicant is still receiving rent from the opponents. It is correct to suggest that we had informed the opponents that the demised premises was required to the applicant for her personal bonafide need. We had informed the opponents in writing about the personal bonafide need. It is correct to suggest that the applicant is not in a position to walk properly. It is incorrect to suggest that the applicant is ill and she has not come to the Court with her own will. It is correct to suggest that there is a school operating in the demised premises. I do not know how many rooms are there in the demised premises. I do not know whether the demised premises is a commercial property. We have been accepting the rent and extending the tenancy.”*

9. It is a settled principle of law that once the landlord/owner steps into the witness box and makes a statement that the tenement is required for his/her personal bonafide need, ejectment proceedings must follow. It has already been held by me in the case of **M/s. Gizri Corporation Pvt. Ltd. v. Pakistan Industrial Development Corporation Pvt. Ltd. & another<sup>7</sup>** that it is not up to the tenant to dictate as to how and in what manner, the landlord/owner will use the tenement in question.

10. The arguments advanced by the learned counsel for the Respondent in reference to the inability of the Respondent to reside on her own is therefore without any substance. It is the decision and choice of the landlord/landlady

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<sup>5</sup> P L D 2019 Sindh 559

<sup>6</sup> 2013 YLR 2764

<sup>7</sup> C.P. No. S – 320 and 321 of 2024

as to how she wants to reside even if the same is to her detriment. Therefore, the argument that the tenement in question is inhabitable, is to my mind, immaterial. Further, the finding rendered by the learned Appellate Court regarding the physical inability of the Petitioner to reside in the tenement is unfounded and presumptuous. Reliance in this regard can be placed in the following cases: -

- **Jehangir Rustom Kakalia vs. State Bank of Pakistan**<sup>8</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>9</sup>

*“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 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>10</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 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*

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<sup>8</sup> 1992 SCMR 1296

<sup>9</sup> 1996 SCMR 1055

<sup>10</sup> C.P. No.S-495/2023 Order dated 21.07.2023

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)

11. The requirement of personal need is further buttressed by the fact that even after the demise of her husband, the Petitioner opted to file an application under Section 14 of the SRPO and the same was allowed by the learned Rent Controller. However, the same is the subject matter of C.P. No. S – 976 of 2024 and requires no further deliberation.

12. 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." (Emphasis added)*

13. The provision reproduced above was introduced 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. A restriction of one year has been placed on the owner/landlord in case the owner/landlord wishes to rent out the property to another tenant. This accountability mechanism perfectly balances the low evidentiary threshold placed on the owner/landlord regarding personal need.

14. The protection given, which is also available to the present Respondent, 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.**<sup>11</sup>

*“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 use 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.**<sup>12</sup>

*“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.”*

15. The judgements relied upon by the learned counsel for the Respondent do not advance his cause for the reasons which shall be elucidated herein below.

- The dicta in the case of **Iqbal Book Depot** (supra) provides no assistance to the learned counsel for the Respondent and advances the case of the Petitioner. It was held by the Honourable Supreme Court as under: -

*“10. We have also dilated upon the question as to whether the entire building would be needed or a part of and, we are of the view it may be left to the discretion of landlord who alone has the authority to decide this aspect of the matter and no advice or suggestion can be made binding upon him as the tenants cannot act as gratuitous advisers.”*

- The reliance of the learned counsel on the cases of **Allies Book Corporation** (supra) and **Tariq Ali** (supra) are misplaced. It was held in the aforementioned cases that active concealment of material fact/s may disentitle the landlord to eject the tenant. No such concealment has been highlighted by the learned counsel.

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<sup>11</sup> 1999 MLD 3011

<sup>12</sup> 2006 CLC 1853

- The case of **Faizan Shabbir** (supra) is not relevant for the purposes of present adjudication. In the said case the ground for personal bona fide need was not taken in the rent application. The said ground was only taken during the evidence of the landlord. It has already been noted above that the ground under adjudication has been specifically pleaded by the Petitioner in the rent application, and for this reason the relevant paragraphs of the said application have been reproduced above.
- I respectfully disagree with the contention of the learned counsel for the Respondent and his reliance on the cases of **Mehboob Alam** (supra) and **Abdur Rehman** (supra) that the rent application ought to have been filed by the Petitioner herself. In this regard I rely on the judgments rendered in the cases of **Mst. Jehan Ara through Attorney Versus Raja Zafarullah Janjua**<sup>13</sup> and **Ferozuddin and another Versus Additional District Judge, Karachi East and another**<sup>14</sup> wherein in the former case the Honourable Supreme Court held as under: -

*“9. We are afraid the appellant cannot be non-suited only on the ground of non-examining herself in support of her personal bona fide need and that her representation through attorney was fatal to her case. The record reveals that the appellant has been able to establish her case by producing sufficient evidence of her attorney, namely, Altaf Hussain and one. Dr. Tehsin-ur-Rehman in support of her contention. Not even a single question was put to the attorney of the appellant to rebut the claim of her personal bona fide need as such the judgment of the learned High Court is not sustainable and it has traveled beyond the scope of the pleadings of the parties. Above mentioned witnesses, namely, Altaf Hussain and Dr. Tehsin-ur-Rehman had categorically stated in their evidence that the appellant needed the premises for her bona fide personal need and she demanded the premises many a time for vacating the premises in question- but the respondent refused to vacate the same. This version was never controverted by the respondent in his evidence as such the finding recorded by the High Court is not sustainable in law and is thus set aside whereas the judgment of the Rent Controller being based on sufficient reasoning is maintained.”*

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<sup>13</sup> P L D 2003 Supreme Court 277

<sup>14</sup> 2012 SCMR 1679



16. In the light of what has been held above, the instant petition is allowed. The Impugned order is set-aside. I have observed that the tenement in question is being used for the purposes of a school and therefore consider it appropriate to grant six (06) months' time to the Respondent to vacate the tenement in question. The possession of the tenement shall be handed over to the Petitioner no later and six months from today through the Nazir of the Executing Court.

17. In light of what has been held above, C.P. No. S – 976 of 2024 has become infructuous and is hereby dismissed, with no order as to costs.

J U D G E

Nadeem Qureshi “PA”