

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1159 of 2024

M/s Wah Brands (Pvt) Ltd V. Add: District Judge Karachi & Others

Date	Order with signature of Judge
<b>Petitioner:</b>	M/s Wah Brands (pvt) limited, through its authorized officer Waseem Ahmed  <b>Through</b> M/s Farhan ul Hassan & Sadia S. Bajwa Advocates
<b>Respondents:</b>	1. Additional District Judge Karachi East. 2. Rent Controller Karachi East. 3. Jawed Siddique <b>Through</b> Mr. Junaid Alam Khan, Advocate
<b>Date of hearing.</b>	<b>27-02-2025.</b>
<b>Date of decision.</b>	<b>17-04-2025.</b>

O R D E R

Ali Haider 'Ada',J:- Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the Petitioner assails the order passed by the learned Senior Civil Judge/Rent Controller-III, Karachi East, (**Trial Court**), whereby the application filed by Respondent No.03 under section 15 of Sindh Rented Premises Ordinance, 1979 for ejectment of Petitioner was allowed. The said order was subsequently upheld by the learned XIIIth Additional District Judge Karachi East (**Appellate Court**) in First Rent Appeal No. 92 of 2024. Both orders have been impugned in the present petition with a prayer that the same may be set aside and restrain the Respondent for dispossession.

2. Briefly stated, the facts of the case are that the Petitioner is a tenant of Shop No.03, Ground Floor, Shazco Apartment, Sub-Plot No.B of Plot No. SB-7, Block No.04, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi (Demised Premises). Respondent No.03 is the current owner of the demised premises, having purchased it from the previous owner in March 2022. Following the purchase, Respondent No.03 (Landlord) approached the Petitioner (Tenant) regarding the change of ownership and requested the tenant to vacate the premises on the ground of bona fide personal need. However, the tenant failed to comply. Consequently, landlord filed

an ejectment application on the grounds of personal bona fide need and default in rent, alleging that the Petitioner has failed to pay rent from April 2022 onwards. The tenant, being the opponent in the rent proceedings, filed a reply denying the claims of the Landlord. The tenant specifically denied having any knowledge of the change in ownership and refuted the assertion of bona fide personal need, terming it as false and baseless. Both parties led their respective evidence before the learned Rent Controller. After hearing the parties and evaluating the evidence, the Rent Controller allowed the ejectment application in favour of landlord. The tenant challenged the said order before the Appellate Court; however, the appeal was dismissed. Aggrieved by the concurrent findings of the courts below, the tenant has filed the instant petition.

3. Learned counsel for the Petitioner/Tenant submits that both impugned orders suffer from legal infirmities and are the result of misappreciation of the material available on record. It is contended that the Respondent/Landlord failed to establish a case of rent default or bonafide personal need. On merits, it is argued that although the previous owner sold the demised premises, the Petitioner was never formally informed about the change of ownership. Upon gaining knowledge in October 2022, the Petitioner attempted to tender the rent to the new owner, which was refused, and even the money order sent in this regard was returned. In view of these facts, learned counsel prays for setting aside the impugned orders and seeks a direction to restrain the Landlord from dispossessing the Petitioner from the demised premises.

4. On the other hand, learned counsel for the Respondent/Landlord supports the impugned orders and submits that the Petitioner has concocted a false story to avoid lawful eviction. It is argued that the cheques were issued in the name of the previous owner and were never encashed following the sale of the property. Furthermore, in his cross-examination, the Landlord consistently maintained his bonafide requirement, stating that he returned to Pakistan specifically with the intention of commencing his own business in the demised premises. It is further asserted that the Tenant was duly informed about the change in ownership through a properly served legal notice. Therefore, the Petitioner has no legal ground to retain possession of the premises, and

the Landlord, being deprived of its use, is entitled to relief. Learned counsel, accordingly, prays for the dismissal of the present petition.

5. Heard argument; and perused the material available on record.

6. The record clearly reflects that the landlord-tenant relationship is not in dispute. As per the history of the case, the demised premises originally belonged to the previous owner and subsequently, in March 2022, Respondent No.3 lawfully acquired ownership and thereby became the landlord. The record further shows that a legal notice was issued by the Landlord to the Tenant on 07-06-2022, informing him of the change in ownership. It also emerges from the record that there were two rent agreements, one reflecting monthly rent of Rs.25,000/- and another of Rs.75,000/-. The tenant denied the existence of the latter agreement, which led to the dispute over the actual rent amount and ultimately to rent default. However, the cheques issued by the tenant in the name of the previous owner, amounting to Rs.25,000/- and Rs.75,000/-, corroborate the existence of both agreements. Therefore, the claim of landlord regarding the agreed rent stands substantiated, and the tenant is failed to pay accordingly, which established a clear case of default.

7. In assessing the bona fide personal need of landlord, the maxim *Nemo potest esse judex voluntatis alterius, meaning: no one can judge another's intent* is firmly established." In the present case, the landlord clearly stated in his evidence that he returned to Pakistan solely for the purpose of establishing his own business in the demised premises. As the lawful owner, he cannot be deprived of his right to utilize the property for his legitimate use. His testimony reflects a genuine intent to start a business, which ought to be encouraged rather than obstructed. On the other hand, the tenant's bare denial of this assertion is unsubstantiated and appears to be a mere attempt to retain possession unlawfully. Such denial does not rebut the established right of landlord.

8. In Case of *Alay Javed Zaidi v. Habibullah and others, 2024 SCMR 781*, it is held by Honourable Apex Court that "13.Despite of acquiring knowledge about the change of ownership of subject tenement, the petitioner avoided / neglected/ refused to pay the rent to the respondent no.1 rather he continued to deposit the rent amount in the name of previous landlady vide MRC

No.39 of 2017 in the Court of learned Vth Rent Controller Karachi East which constitutes a willful default on the part of petitioner..." .

9. Furthermore, I am fortified by the case of *Mst. Mussarrat Shaheen v. Mst. Verbeena Khan Afroz and others* (2024 SCMR 1796), wherein the Hon'ble Supreme Court held that: "12. When a landlord pursues eviction on the grounds of personal bonafide need and non-payment of rent, such a claim cannot be dismissed simply by challenging the ownership of the property. It is pertinent to consider that the substance of the landlord's claim regarding the legitimate need for the property and the alleged default in rent payment...."

10. In view of the case law cited supra, the change of ownership, default in payment of arrears, and the bona fide personal need have been duly explained and established. In the instant matter, the petitioner is not entitled to any relief, as the respondent has successfully substantiated the grounds for eviction. Therefore, the respondent is rightly entitled to seek vacation of the demised premises.

11. At this juncture, it is pertinent to note a constructed Latin expression that conveys the underlying legal principle: "*Locator jus habet rem vindicandi ab inquilino*" meaning, "*The landlord has the right to vindicate (recover) the property from the tenant.*" This expression reflects the Roman law remedy of *Actio rei vindicatio*, "***action for the recovery of a thing***" which entitles landlord to reclaim possession of his Property/ Demised Premises) from any individual, including a tenant, who retains it without lawful right.

12. In view of the foregoing discussion, I find no infirmity or illegality in the concurrent findings of the learned Trial Court and the learned Appellate Court. Accordingly, the instant petition, along with the listed application, stands dismissed being devoid of merit. There shall be no order as to costs. These are the reasons for the short order announced earlier, even of date.

**JUDGE**