

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Zulfiqar Ahmad Khan

C.P No.S-305 of 2008

Muhammad Shafique
Vs.
Ist Additional District Judge (Central) and another

Date of Hearing : 10.10.2016
Petitioner : Through Mr. Javed Ahmed Rajput
a/w Abdul Hameed Thaheem,
Advocates
Respondent No.2 : Through Mr. Khalid Daudpota,
Advocate

Judgment

Zulfiqar Ahmad Khan, J:- Simple point that needs adjudication in the instant petition is where landlord has neighbouring shop where he has been doing his business, what evidence he needs to bring forward to show that the existing premises are not sufficient for his business and he needs the neighbouring rented out shop for his personal bonafide use.

Brief facts of the case are that the landlord had been doing lath machine-shop business over many years and bonafidely needed the adjoining rented out premises, which forced him to file an application for eviction of the tenant under Section 15 of the Sindh Rented Premises Ordinance, 1979, where the trial Court after having considered the evidence, came to the conclusion that landlord has bonafide needs and gave 60 days' time to the tenant to vacate the premises. This resulted in the tenant filing F.R.A No.74 of 2006, where no one appeared on behalf of the tenant despite Court giving him the opportunity of hearing and the Court after examination of the evidence and while relying on the dictum laid down by the Superior Court in the case of 1993 MLD 469

came to the conclusion that the evidence put forward by the landlord in support of the ejection application is bonafide and affirmed earlier orders of the Rent Controller by dismissing the First Rent Appeal. However, the tenant made an application under Order 41 C.P.C for recalling the ex-parte orders passed in the first appeal and for the restoration and re-admission of the appeal to its original stage and to have the appeal decided on merit, which was granted and the matter was reheard, where the Court while observing that the landlord is neither jobless, nor doing business anywhere else, rather admittedly doing the business in the same building held that where the landlord has already acquiring another commercial premises; without giving explanation as to why the current premises are not sufficient and why he badly needs the neighbouring premises, allowed the appeal vide order dated 23.05.2008, which is impugned here.

Learned counsel for the petitioner placed reliance on 1988 CLC 1343 and 1988 CLC 1793, while learned counsel for the respondent No.2 placed reliance on 2000 SCMR 1613, 1993 MLD 469 and 2000 CLC 1708.

Heard both the counsel, perused the record, as stated in the opening paragraph, the question this Court is posed with is whether the landlord is duty bound to satisfy the Court as to the limitation of the existing premises and to satisfy as to why he needs the additional neighbouring premises for the expansion of his business?

It is only Section 15(vii) of SRPO that creates possibility of having a premises evicted from a tenant on the ground that the landlord requires it (in good faith) for his own occupation or use or for the occupation or use of his spouse or any of his children. Courts have held that the said good faith requirement has to be

bonafide and not arbitrary or an unbridled desire. It is though important to note that the word bonafide is neither present nor defined in the SRPO. The word 'require' is though present in the said legislation which denotes a certain degree of want with a thrust within which demands fulfilment. It would be thus relevant to see what does this word means. Blacks law dictionary defines it to mean "*in or with good faith; honestly, openly, and sincerely; without deceit or fraud. Truly; actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud*". The Chambers 20th Century Dictionary defines bonafide to mean '*in good faith: genuine*'. The word 'genuine' means '*natural; not spurious; real pure and sincere*'. Thus the term bonafide or genuinely refers to a pure state of mind. Now I come to the word "require" as used in the legislation, which as stated above, clearly is not a mere desire. The degree of intensity contemplated with what is 'required' is much higher than such in mere desire. Read collectively, the phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of. In other words, thus only a requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would only entitle him to seek ejection of the tenant. Courts have held that, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination. It is also said that while considering the case of 'bonafide requirement', a Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself that as to whether in the facts substantiated by the landlord, the need to occupy the

premises is natural, real, sincere and honest. If the answer is positive, the need ought to be a bonafide one. The failure on the part of the landlord to substantiate the need, or, in a given case, positive material brought on record by the tenant enabling the court to draw an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides the landlord for the premises or additional premises by applying objective standards, then the matter of choosing out of more than one accommodation available to the landlord is a subjective choice. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord alone feels would be most suited for the purpose and the court in such a case would not thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his needs, nor does the tenant has any right to made such dictates.

It is thus not surprising that with regards bonafide requirement there are numerous precedents, which show that for it is on the landlord alone to satisfy the court and it has been accordingly held that unless the landlord is considered to be abusing or misusing the rights to acquire possession of the property in question, in eviction proceedings, the tenant cannot seek details of the business of the adventure, which the landlord wishes to commence in the tenanted premises. To start with, I would like to distinguish the two cases cited by the learned counsel for the petitioner. These being Attia Begum and others vs. Mustafa Ghaffar (1988 CLC 1793) and Allauddin vs. Ghazanfar Ali

(1988 CLC 1343). Having examined the both, I come to the conclusion that none of these are applicable since in both cases, the landlord was not seeking eviction of the tenant from the neighboring shop. In the first case, the landlord, just four months before filing of the eviction against the disputed tenant, rented out a property in the same building to another person and court accordingly held that in such circumstances, no case for bona fide need was made. In the other case, the landlord had another shop adjacent to the disputed shop where he had already placed his signboard etc. thus could not satisfy the court as to his bona fide need for that particular shop in the possession of the tenant. This case thus also failed on the ground of lack of bona fide need of the landlord.

Now looking at the cases on the other side of spectrum, in the case of Mushtaq Ahmed and others versus Tahir Adam and others (2015 YLR 308), where the landlord was trying to evict the tenant for his bonafide need and a question was posed that whether the landlord has the required experience in the business for which he needs the premises. The Court held that the landlord was not bound to disclose the nature of business to be started in the demised premises in order to seek ejectment of tenant on the ground of his personal bonafide need. Proof of having experience in the trade or business by the landlord was not necessary to prove the bonafide of his personal need to such premises. This view also finds support from the case of Shahid Mehmood versus Muhammad Ismail (2008 CLC 87), where Court held that the sole testimony of the landlord was sufficient to establish his personal bonafide requirement and that the tenant cannot dictate the landlord regarding his need or choice of his building. Courts have also observed that when the landlord's assertion that he requires

the building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bonafide and it is not for the tenant to dictate the landlord, as to how else the landlord can adjust himself without tenant handing over the possession of the tenanted premises. These views were also held in the case of Nisar Ahmed Sheikh versus VIIth Additional District Judge (South) Karachi and others in C.P No. S-621 of 2010.

A collective reading of the above, clearly dictates that the tenant is no position to question or to propose alternative options to the landlord, when the landlord needs the tenanted premises bonafidely, which is the case in the current situation, where the landlord is operating his business in the neighbouring shop and it can never be argued that his business needs stood frozen to only one shop and his need for the neighbouring premises, which he has previously rented out is not genuine, merely because the landlord has made interim arrangement at a remote place away from his present premises cannot mean that the said location is alternative suitable accommodation, inasmuch as it is well known that as the location which is adjoining the present premises (of the landlord) obviously is more preferable than a remote premises. In the instant case where the bonafide requirement of the landlord was not shaken as well as where two witnesses also gave testimony in favour of the landlord's bonafide, coupled with the fact that the tenant demanded Rs.600,000/- to have the said premises vacated, it is evident that the impugned order is based on incorrect reading of facts and the appellate court failed to apply established legal principles. For the aforesaid reasons, I maintain the findings of the Rent Controller and accordingly allow this petition by setting aside the impugned order.

Karachi 16.01.2017

JUDGE