

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Zulfiqar Ahmad Khan

C.P No.S-1143 of 2016

Mohamad Nasir Khan & another
Vs.
Muhammad Ateeq and others

Date of Hearing : 05.12.2016
Petitioner : Through Mr. Abdul Baqi Lone
Advocate
Respondent No.1 : Through Mr. Muhammad Ibrahim
Advocate

Judgment

Zulfiqar Ahmad Khan, J:- Petitioners are tenants of office premises located on the 1st floor of a commercial building in Karachi being possessed by them w.e.f. 01.06.2007 (for the initial term of 11 months) @Rs.30,000pm. Other than a typical landlord/tenant dispute, the twisty bit in the instant case is that the landlord has an office on the 4th floor of the same building which he is using for running his mechanical/engineering work and needed the first floor (tenanted) premises to open a showroom-cum-office for the products produced by him on his 4th floor office. It was however not only on account of this personal bona fide need, per the legal notice (dated 16.06.2008) sent by the landlord, in the eviction application filed by him 'default' was also alleged. The learned trial court framed the following issues, and decided them in affirmative by allowing the rent application:

1. Whether the applicant requires demised shop for personal need in good faith?
2. Whether the opponent is willfully committed default in payment of monthly rent from the month of May, 2008?

3. What should the order be?

2. As to personal bona fide need, the learned trial court observed as under:

The Applicant has clearly mentioned that he has also another shop No.404, situated on 4th Floor in the same building and he is doing mechanical engineering work and now he intends to open a showroom-cum-office for the product of the same, therefore, the demised office is required for personal use of Applicant in good faith. On the other hand the opponents remained failed to negate the claim of Applicant. The opponents contended they have not committed any default in payment of monthly rent as the Applicant demanding to increase arbitrary rent and refused to receive the monthly rent from the opponents. The opponents sent the monthly rent through money order but the Applicant refused to receive the same, hence started to deposit monthly rent through MRC in the Court of law.

From the evidence on record, it has been proved that the Applicant has his personal bonafide need. Hence, as per discussion above, the Applicant has proved the personal bonafide need of the office in question therefore, the answer of this point is in affirmative.

3. As to default, the trial court held as under:

The opponents have submitted in their statement that the Applicant demanded increasing of monthly rent out of the terms and conditions of tenancy agreement. It is to be noted that the opponents have not mentioned that what amount was claimed by the Applicant on account of enhancement of rent as there is no any amount has been mentioned by the opponents. The opponents only stated that due to enhancement of monthly rent on arbitrarily rate, the Applicant refused to receive the monthly rent and thereafter, they sent the monthly rent through money order and subsequently started depositing monthly rent through MRC after refusal of money order. It is further to be noted that only verbal evidence having no value in the eyes of law as the version of opponents is going against them. The cogent reasons for depositing rent in MRC have not been proved by the opponents. Therefore, it has been proved that opponents have willfully committed default in payment of monthly rent as they remained failed to enhance monthly rent after expiry of 11 months of agreement from Rs.30,000/- to 33,000/- per month. Hence the answer of this point is also in affirmative.

4. Being dissatisfied from the above outcome, tenants preferred an appeal where the impugned order has been passed. On the issue of personal bona fide use, the appellate court gave following findings:

Regarding personal need, the learned Rent Controller concluded that the respondent had not concealed of having his office at fourth floor of the same building. However he in his rent application as well as during his deposition clarified that the tenement is needed by him for establishing a showroom. In this respect, my view is that respondent has an alienated right to choose and select any property belonging to him for any sort of his personal need. This right of the landlord cannot be denied or jeopardized on account of the fact that he had some other property or properties suitable for his personal utilization. However, the personal need of the landlord in the instant matter is not a question of selection but enhancement of his existing business. As per record, he is engaged in chemical business and not willing to establish a showroom for his chemical business for which, in his idea, the tenement in possession of the appellant is suitable. In these circumstances, I am of the view that the respondent has successfully established his case of personal bona-fide need before the lower forum. Intrinsically, the learned Rent Controller has rightly came to conclusion that the appellant is required to vacate the premises under his tendency and hand over its direct and peaceful possession to the appellant.

5. As to default, the appellate court gave the following findings:

Now we come to the question of default in payment of rent. It is admitted position that the property was rented out under a rent agreement. It is also admitted that the tenancy started form June, 2007. It is the plea of appellant that up to April 2008, respondent came to him to collect rent but thereafter did not. In May 2008 appellant tendered the rent amount through money order. According to appellant, the respondent avoided to accept the money order with intention to get him defaulter. Appellant also took plea that respondent told him to enhance rent several times. I am of the view that when there is an inbuilt clause in rent agreement for enhancement of rent, a reminder from the respondent regarding enhancement of rent was fully justified. In the month of May 2008, the appellant deposited rent in the court. However, it was the duty of the appellant to enhance rent after expiry of rent agreement, which was for a duration of 11 months only. Meaning thereby that in May 2008, the appellant was required to pay rent at the rate of Rs.33,000/- instead of Rs.30,000/-. It does mean that at the time of depositing rent in court, the appellant had already caused default. Hence it can safely be held that the learned Rent Controller was fully justified in declaring the appellant as defaulter in the impugned order. I have gone through the entire impugned order in the light of the able assistance provided by the learned members of bar and found it free from any illegality or irregularity.

6. A review of the reasons given by both the forums, using the litmus test prescribed in the Supreme Court's judgment (2001 SCMR 338), this court is only left to only examine whether the impugned order has (i) non-reading/misreading of evidence, (ii) an erroneous assumption, (iii) misapplication of law, (iv) access or abuse of jurisdiction, and (v) arbitrary exercise of powers. The reasons I reproduced portions from both the order/judgment is to ascertain whether they fall in any of the above referred scenarios, so that this court could take cognizance thereof, I do not see any possibility. While default being a question of fact, that cannot be adjudicated through this constitutional petition, the only point that needs consideration is of the bona fide need of the landlord, which I will discuss in the later part of this judgment.
7. Section 2(g) of the Sind Rented Premises Ordinance, 1979, defines personal use, to mean the use of the premises by the owner thereof. Also relevant is the text of Clause-vii of Sub-Section 2 of Section 15 of SRPO, which provides that the Rent Controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in his order, if he is satisfied that the landlord requires the premises in good faith for his own occupation or use. Courts, time and again (1992 SCMR 1158) have held that landlord is relieved from the rigors of elaborate inquiry as to the good faith or his plea for requirement of the premises for personal use and courts to put him in possession thereof in the shortest possible time. It is also held that when the landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide and it is not for the tenant to

dictate terms to the landlord as to how else the landlord can adjust himself without tenant handing over the possession of the tenanted premises. In the case reported as 2015 MLD 1577 Court held that landlord had right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle him from his valuable right to acquire, deal and possess his property. This view was also held in the case reported as 2014 MLD 288 where Court held that landlord had absolute right to acquire and deal with property in the manner best suited to him and tenant had no right to disentitle landlord of his valuable rights to acquire, deal and possess his property which right was guaranteed by Art. 23 of the Constitution. In the case of Muhammad Anwar vs. Abdul Hameed (2010 PLD 33) Court held that the statement of landlord was sufficient to prove issue regarding bona fide personal need of premises by landlord. On the very specific point of landlords' bona fide need in the circumstances that he/she had an office in the same building, Court in the case of Hafiz Ferozuddin vs. Arshad Begum (2010 CLC 365) held that where landlord owns more properties in the same building, it was the landlord to decide as to which would be more suitable to his requirements. Neither tenant nor Court could sit in judgment over such a right of, and exercise of such a right by landlord. Also on the same point of having an alternate option in the same building, Court in the case reported as 1990 CLC 698 held that landlady being the owner of building had the choice and the tenant or the Rent Controller could not force her. Her privilege of taking a decision how best she can use the property, whether by letting it out for monetary gains or by putting it to her own use is for her.

8. It is thus for the aforesaid reasons, and the consistent findings of the two forums, the order impugned does not need any interference. The instant petition is accordingly dismissed with no orders as to costs.

Karachi 07.03.2017

JUDGE