IN THE HIGH COURT OF SINDH, KARACHI

C.Ps.No.S-1260, 1261, 1262 & 1263 of 2017

Muhammad Akram and another
v/s.
Xth Additional District Judge, Karachi (East)
and others

Before: ***Justice Mrs. Ashraf Jahan.***

Petitioners	:	Muhammad Akram and Ishrat Ali, Through M/s. Abdul Hameed Bhopali and Ms. Tabassum Hashmat, Advocates
Respondent No.3	:	Mst. Rukhsana, Through Mr. Arif Khan, Advocate
Date of Hearing	:	20.12.2017
Date of Judgment	:	13.02.2018

JUDGMENT

MRS. ASHRAF JAHAN, J.: The present constitutional petitions are directed against the Judgments dated 19.05.2017, passed by the learned Xth Additional District Judge, Karachi (East), whereby First Rent Appeals No.97 & 98/2016 filed by present Respondent No.3 were allowed, while First Rent Appeals No.102 & 103/2016 filed by present Petitioners were dismissed. As the parties as well as the subject premises are same, therefore, present constitutional petitions are disposed of by this single judgment.

2. The brief facts of the case as stated are that Respondent No.3 (Mst. Rukhsana Begum) filed Rent Cases under section 15 of Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as "SRPO, 1979") bearing No.267 & 268/2014 for ejectment of the present Petitioners on the ground of default in payment of rent and personal bonafide need. The Respondent No.3 (landlady) is stated to be owner of "Qamaruddin Rabi Shopping Centre" constructed on plot No.1/388, admeasuring 80 square yards, situated at Block-1, Shah Faisal Colony, Karachi by virtue of lease deed dated 30.05.2014 and the Mutation Order No.AD/SFT/KMC/KDA WING/14/141/2 dated 02.07.2014. The husband of Respondent No.3 died on 16.05.1994, leaving behind his widow (Respondent No.3), Amiruddin, Muhammad Asim and Muhammad Iqbal (sons), Rehana Sultana, Rizwana, Shahbana Naz, Rabia Adnan, Sehrish Jabeen and Qurat-ul-Ain (daughters). The legal heirs relinquished their shares in favour of Respondent No.3 regarding the above leased property. Late husband of Respondent No.3 being the owner of the shopping centre had rented out shops No. 1 & 2 measuring 6x8 square feet (9.33 square yards) of the above shopping centre to the Petitioners by virtue of tenancy agreement dated 01.05.1986. The Petitioners used to pay the rent to Respondent No.3 and lastly paid rent for the month of December, 2010 at the rate of Rs.1050/- for both shops vide rent receipt No.124 dated 31.12.2010, but thereafter they failed to pay rent w.e.f. January, 2011 till August, 2014 (44 months). Resultantly the huge amount of arrears of Rs.46,200/- accumulated. Further the present Petitioners while using electricity through Meter No.0615817190035 Consumer No.AL-881358; also committed

default in payment of electricity charges w.e.f. January, 2005 for which statement from K-Electric Ltd. was obtained for last three years. It is further the case of Respondent No.3 that her son Muhammad Asim used to work at Jeweller's Shop No.11 measuring 6x27 square feet, which was gifted to him by her mother by virtue of declaration and confirmation of oral gift, whereas other seven shops besides the rented shops and Shop No.3 measuring 6x4 square feet (2.66 square yards) were rented out to other tenants. The other son of Respondent No.3 namely Muhammad Iqbal was working at Javeria Centre, Saddar, Karachi as goldsmith. Now Respondent No.3 decided to put her son in rented shops as well as in shop No.3 to carry out business of cosmetic, artificial jewellery and allied works, the shops No.1, 2 & 3 measuring 11.99 square yards can meet their requirement. Therefore, she filed rent cases before the learned Rent Controller with the prayer that the opponents be directed to handover above mentioned shops to the Applicant.

3. The present Petitioners (opponents) in their separate written statements denied the allegations levelled against them and stated in preliminary objections that the attorney had filed the rent cases on the ground of personal bonafide need; therefore, such cases are liable to be dismissed. Further, Respondent No.3 had failed to send notice under section 18 of SRPO, 1979 to them. The Petitioners are real brothers and working together. The deceased owner/husband of Respondent No.3 had let out the shops No.1 to 3 to Ishrat Ali (Petitioner No.2), while shop No.10 was given to Muhammad Akram (Petitioner No.1.). They alleged that the agreement pertaining to year

1986 was void and barred by law. As per their contention no agreement was executed between the deceased husband of Respondent No.3 and Petitioner No.2. As per case of Petitioners the deceased husband of Respondent No.3 in the year 1990 had taken Rs.50,000/- from Ishrat Ali as per the iqrarnama/receipt, but wrongly mentioned the name of Muhammad Akram, again on 10.10.1993 promised to execute tenancy agreement regarding shop No.10 with Muhammad Akram and in all he took Rs.2,00,000/- (Rupees Two Lacs only) as security/goodwill from him. They denied the default, if any, in payment of rent and taken the stand that Rent Cases have been filed with malafide intention based on incorrect facts, hence liable to be dismissed.

4. Upon pleadings of the parties following points were formulated by the learned Rent Controller:

1. Whether the Applicant required the demised premises for the accommodation for her son?
2. Whether the opponent has committed default in payment of monthly rent?
3. What should the order be?

Both the parties led evidence, the above rent cases were heard and decided by the learned Rent Controller vide Judgment dated 17.08.2016, whereby the rent cases were allowed in view of its findings on Point No.2; whereas the rent cases were dismissed to the extent of personal bonafide need. The above order was challenged by both the parties i.e. Respondent No.3 (Mst. Rukhsana Begum) and the present Petitioners before the Court of learned Xth

Additional District Judge, Karachi (East), who vide Judgment dated 19.05.2017 decided these appeals in favour of Respondent No.3 and against the Petitioners. Being aggrieved from the above referred Judgments, the present Petitioners challenged the same before this Court.

5. I have heard the learned counsel appearing for the parties and have perused the case record. It is contended by learned counsel for the Petitioners that the order of the learned Rent Controller and First Appellate Court are based on misreading and non-reading of evidence, therefore, are liable to be set aside. It is further contended by learned counsel that Respondent No.3 had failed to examine herself before the Rent Controller and had examined her attorney, on this account alone; her rent case was not maintainable. Further the present Petitioners have not committed any default in payment of rent; therefore, the orders of the two Courts below are liable to be set aside. In support of his arguments, he relied upon the following case law:

- PLD 2001 Karachi 238 (Mehboob Alam v/s. Miss Tehseen Shafqat Khan and others).
- 2004 SCMR 1640 (Muhammad Saleem and others v/s. Sardar Ali and others)
- 1995 SCMR 1243 (Jamia Mahmoodia Masjid through its Nazim v/s. Additional Commissioner (Revenue) Multan Division and 2 others).
- 1999 MLD 2989 (Syed Abdul Hameed v/s. Syed Boo Ali Shah Zaidi).

6. Conversely, it is contended by learned counsel for Respondent No.3 that in the instant cases Mst. Rukhsana, who is the widow of Deceased Qamaruddin examined her son Muhammad Iqbal, who is also one of the legal heirs of the deceased, therefore, his evidence is lawful and justified in the circumstances of the case. He categorically deposed that the Petitioners have committed default in payment of rent besides they have also committed default in payment of electricity charges and such certificate obtained from K-Electric has been produced on record. It is further the case of Respondent No.3 that the shops in question are required for use of her sons, therefore, First Appellate Court had rightly decided the issue of bonafide personal use in her favour; there are concurrent findings of two courts below, which cannot be interfered in constitutional petition, therefore, instant petitions are liable to be dismissed with costs. In support of his contentions he relied upon the following case law:

- PLD 2003 Supreme Court 277 (Mst. Jehan Ara through Attorney v/s. Raja Zafarullah Janjua)
- 1997 SCMR 1062 (Juma Sher v/s. Sabz Ali).
- PLD 1982 Quetta 49 (Syed Ibrahim v/s. Dr. Mrs. Saleema Firdause).
- 1998 SCMR 2525 (Syed Abdul Rauf v/s. Abdul Sattar)
- PLD 1985 S.C 38 (Arshad Umar and another v/s. Begum Nazrul Askari).

7. I have considered the arguments advanced before me and have perused the case record, which goes to reveal that the learned Rent Controller while deciding Rent Cases No.267 and 268/2014, though dismissed the case so far as the personal need is concerned, but allowed the Rent Cases on the ground of default in payment of rent

and has further directed the Applicant in that case and the Respondent No.3 in the present case to pay the amount, which had been paid on account of goodwill before eviction of the Petitioners. Thereafter the learned First Appellate Court while deciding the case of Respondent No.3 in these petitions set aside the findings of learned Rent Controller regarding personal use and maintained the findings regarding default in payment of rent and in this way passed the Judgment on both points in her favour.

8. The first objection raised by the Petitioners in the instant cases is that Respondent No.3 had not examined herself during the evidence before the Rent Controller and had examined her attorney Muhammad Iqbal; therefore, her case was not maintainable under the law. So far as this contention/objection is concerned, by this time, law is very clear on this point that if a lady instead of examining herself, examines her attorney in support of her case, it will not affect her case in any manner. It is also relevant to mention here that in the present case the attorney Muhammad Iqbal is son of Respondent No.3 and one of the legal heirs of deceased Qamaruddin, therefore, his evidence, which even otherwise is confidence inspiring and could not be shattered during cross examination, is natural and sufficient to prove the case of Respondent No.3 regarding her case of personal bonafide use. It will suffice to observe that even solitary statement of the landlady or landlord, may be through lawful attorney, would be sufficient to discharge the burden of proof, if such statement is consistent to the pleadings, steady and supported by the surrounding circumstances. It is pertinent to mention here that the

norms of justice would not require that in each case where party to the lis did not appear but arranges its appearance through attorney, adverse inference should be drawn against him/her. Such rule, if laid down, would result into great hardship in cases where parties for instance were residing abroad or incapacitated, pardanasheen lady, who would have to sue or defend herself through attorney, thus mere non-appearance of Respondent No.3 was not fatal to her case in the facts and circumstances of present matter. Such view finds support from the case of Mst. Jehan Ara through Attorney v/s. Raja Zafarullah Janjua (PLD 2003 S.C.277), where it has been held by the Apex Court that:

> "Landlady could not be non-suited only on the ground of non-examining herself in support of her personal bona fide need and her representation through attorney was not fatal to her case---Record, in the present case, showed that landlady had been able to establish her case by producing sufficient evidence of her attorney and one witness in support of her contention---Not a single question was put to the attorney of the landlady to rebut the claim of her personal bona fide need---Witnesses had categorically stated in their evidence that the landlady needed the premises for her personal bona fide need and she had demanded the premises many a time to be vacated but tenant refused to do the same which version was never controverted by the tenant in his evidence---Supreme Court, while accepting the appeal of the landlady allowed 30 days' time to the tenant to vacate the demised premises, in circumstances."

This being the position, I am clear in my mind that only on this sole ground no adverse inference can be drawn so far as the case of Respondent No.3 is concerned.

9. The next objection raised by the learned counsel for the Petitioners is that the shops in dispute were not required by the landlady for her personal bonafide use. So far as this point is

concerned, there is categorical and specific evidence of the attorney of Respondent No.3, who being her real son was working at some other shop and now wants to start his own business in the subject property, therefore, findings of the First Appellate Court are based on logical reasoning and proper appreciation of evidence thus need no interference.

10. The other issue is that of default in payment of rent, in this regard also the evidence brought on record by Respondent No.3 through her son/attorney could not be shattered in cross examination and both the Courts below have given their concurrent findings, which in my humble view cannot be challenged in constitutional jurisdiction. This view finds support from the case of Shakeel Ahmed and another v/s. Muhammad Tariq Farogh and others reported as 2010 SCMR 1925, wherein it has been held by their Lordships that:

> "We have carefully perused the impugned judgment passed by the learned Single Judge in chambers of High Court of Sindh and seen that not only the said judgment is outcome of misreading and non-reading of evidence, but also the learned single Judge in chambers failed to appreciate, that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e. Sindh Rented Premises Ordinance, 1979."

11. Moreover, the case law cited by the learned counsel for the Petitioners is distinguishable and not applicable to the facts and circumstances of the present case.

12. As a sequel of above discussion, I am of the considered view that the present petitions merit no consideration, which are dismissed accordingly and the Judgments of the First Appellate Court are upheld.

Judge

Manzoor