

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-434/2018

Petitioner : Abdul Hafeez,
through Mr. Samiullah Soomro, advocate.

Respondents : Muhammad Yousuf and others,
Respondent No.1 in person.

Date of hearing : 09.04.2018.

Date of announcement : 20.04.2018.

JUDGMENT

Salahuddin Panhwar, J: This petition impugns Order dated 31.01.2018 passed by learned District Judge, Karachi Central, in FRA No.212/2017 filed by respondent No.1 (tenant) whereby order of ejectment passed by learned Rent Controller concerned in Rent Case No.710/2016, was set aside.

2. Petitioner states that he is landlord and respondent No.1 is his tenant in respect of shop No.4 located in the house situated on plot No.1/8-A, Sector 5-E, Paposh Nagar, main road, Nazimabad, Karachi, by way of oral tenancy agreement on monthly rent of Rs.2825/-; petitioner is residing on upper floor of the tenement and using staircases on back side small street of the house, those already small stairs have now become more small due to encroachment and back street (*gandi gali*) and sometimes incidents of theft, snatching and misbehaving in back street were also reported hence not suitable for passage; that children of petitioner are marriageable and back

street passage to petitioner's house is not suitable for him. It is stated that there is front side, main road facing staircases in petitioner's house where respondent No.1 is running his shop and same is under and over the passage of front side staircase and petitioner requires that shop for personal bonafide need in good faith for passage and to enter his house/upper floor, which passage opens to a 60-0 wide road which is according to building plan. It is further contended that respondent No.1 has also failed to pay the rent after July 2016 and has also encroached common passage of the building by putting his goods/articles/tables beyond his shop hence violated terms of tenancy.

3. Case of respondent No.1 is that his father was tenant in the subject shop since 1966 on goodwill basis, petitioner had purchased the property in 2004 and never objected or required the shop for passage; since petitioner did not issue receipt for receiving rent hence respondent No.1 filed MRC No.513/2016 and depositing rent in that case; it is stated that shop of respondent No.1 is situated on road side while there are two staircase, one from front and another from back side of the house; the petitioner without any approved plan claims that he wants to construct staircases from the subject shop. It is alleged that since value of properties in the city is increasing so also monthly rental and intention of petitioner is to get the premises vacated and to let it to some other person at higher rent.

4. The trial Court after discussion, refused to accept the ground of default of rent however while considering ground for

personal bonafide need, ordered eviction of respondent No.1 from the demised premises. In appeal by respondent No.1, appellate Court did not accept affirmative findings of the trial Court on petitioner's requirement for personal bonafide need hence set aside the trial Court's Order.

5. It is contended by learned counsel for petitioner that petitioner, who is residing on upper floor of his house, is compelled to use staircases and passage on alley (*gandi gali*) where sometimes incidents of theft, snatching and misbehaving have taken place hence that passage is not suitable for his family; further due to encroachments, street has become narrow; that children of applicant are now marriageable and back street passage is not suitable for applicant and for the quests who visit his house in connection with marriage of his children. It is pointed out that there is staircase in petitioner's house that is on front side and main road facing however respondent No.1's shop is situated there and same is under and over the passage of front side staircases thus petitioner is in bonafide personal need of that rented premises in good faith for his passage to enter his house/upper floor and is according to building plan. It is further contended that respondent No.1 has encroached common passage of the building by putting his goods/articles/tables beyond his shop hence violated terms of tenancy. He has relied upon 1998 SCMR 2119, 2001 SCMR 1197, 1986 SCMR 946 and 1996 SCMR 1178.

6. Respondent No.1 appeared in person and contended that that his father has remained tenant in the subject shop since 1966

on goodwill basis, petitioner had purchased the property in 2004 and thereafter never objected or required the shop for passage; since petitioner refused to issue receipt for receiving rent hence respondent No.1 filed MRC No.513/2016 and depositing rent in that case; that there are two staircase, one from front side and another from back side of the house; the petitioner has no approved building plan to construct staircases on the subject shop; that petitioner wants to get property vacated from him because he wants to let it to some other person at increased rate of rent as monthly rent in the area has increased however subject shop was acquired by respondent No.1 is on *pugri* basis by paying huge amount of money at relevant time.

7. Heard the respective sides and carefully examined the available material.

8. The *perusal* of record shows that both the two Court have lasted in *concurrent* findings in respect of the point No.1 however in respect of point No.2 both came out with *conflicting* views, therefore, the *point*, involved in instant petition, is that as to whether the finding of the learned appellate Court in respect of point No.2 was *correct* or that of learned Rent Controller. Point No.2, as available at page 7 of impugned judgment, was formed that:-

“Whether the respondent/applicant needed the shop in question for personal bonafide need?”

Since *prima facie* the question of *personal* bonafide need is involved therefore, I find it in all fairness to refer the relevant provision of

Sindh Rented Premises which is Section-15(vii) of the Ordinance which reads as:-

*“the landlord requires the premises in good faith for his own **occupation** or **use** or for the **occupation** or **use** of his spouse or any of his children.”*

The words ‘*occupation*’ and ‘*use*’, since not been defined by the Ordinance, hence their *ordinary* meaning would be taken. Since the *terms* have deliberately been used *independently* therefore, *prima facie* former appears to be relating to a case where eviction is being sought to ‘**occupy**’ while the *later* i.e ‘**use**’ appears to deal with cases where eviction is being sought for using the premises for purpose business/earning purpose, as was being used by *tenant*. At this *point*, I would insist that the *criterion* for establishing a case of *eviction* on count of ‘**requirement of premises for his own occupation**’ would be much *lighter* from that of ‘**requirement of premises for his own use**’ because the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is *otherwise* guaranteed by Article 23 of the Constitution. Reference may well be made to the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui 2000 SCMR 1613 wherein it is held as:-

“4. ... It is well-settled that the landlord has the absolute right to acquire and deal with his property in the manner best suited to him and a tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is again guaranteed by Article 23 of the Constitution.”

I would further say that in such like cases the landlord would only require to *establish* that requirement is *reasonable* and does not appear to be *mala fide* one. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such occupation. This would carry presumption of *truth* hence strong evidence would be required from *tenant* to rebut it. Conclusion is drawn from case of Mehdi Nasir Rizvi supra wherein it is held as :-

“4. ...there is no circumstance available on record tending to show that the desire of the respondent to use his own property is tainted with malice or any evil design. In fact respondent’s statement on oath has not been seriously challenged and in law it being consistent with the case pleaded by him must be accepted on its face value and given due weight. In the absence of any strong evidence to rebut the presumption of truth in the statement of the respondent it is difficult to dislodge the conclusion drawn by the learned Rent Controller as well as the learned High Court..”

In another case of Akhtar Qureshi v. Nisar Ahmed 2000 SCMR 1292 it is held as:-

“7. **The assertion or claim on oath by the landlady / landlord that she / he required the premises for her / his personal use, should be accepted by the Rent Controller as bona fide**, if such claim, or assertion although by itself may not be sufficient, yet is consistent with his / her averments made in the application and are neither shaken in the cross-examination nor are disproved in rebuttal...”

Having detailed the difference, now I would revert to merits of the case. Perusal of the record shows that it was never denied by the petitioner / applicant that he (petitioner / applicant) and his family had been using the *back-side* staircase opening in *Gandi-Galli* where incidents of theft, snatching and misbehaving have also happened

hence continuity of use of such *back-side* stair-case was not suiting to him (petitioner/applicant) and his family which includes *sui-juris* daughters of petitioner / applicant; it also causes inconvenience to guests, visiting in connection with marriage of his children, therefore, he (petitioner / applicant) needs *premises* in good faith for **passage** and **entrance** of the house / upper floor which is in his use. Since there can be no denial to the fact that every head of the family would always prefer the *safety, dignity, honour* and convenience for himself as well for his family which sense stands doubles when family includes *sui-juris* daughters. Therefore, suitability of use of *front-side* staircase was not only reasonable but must *suited* in given circumstances. It is also a matter of record that the respondent / tenant has not challenged / denied said assertions of petitioner / applicant which he (petitioner / applicant) also stated on oath, therefore, such statement was always worth *accepting*, as was rightly concluded by learned Rent Controller. Reference may well be made to the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925 wherein it is held as:

- “6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is need to fortify this ..

The reasons, detailed by learned appellate Court, to draw a conflicting view, *prima facie* are not in line with settled principles of

law. To base such view, the learned appellate Court *mainly* observed that:

“The applicant himself admitted that small passage is still available if the applicant feels any hurdle by construction of any wall then he would have filed a civil suit for removal of wall or entrance the passage for the front side stairs.”

I do not find any reason to *agree* with such view for simple reason that suitability of *safe passage & staircase* by the landlord, in given circumstances, cannot be claimed as *mala fide* or that a *landlord* (owner) be kept compelled to use *inconvenient* and *unsafe* passage & stair-case else the *prerogative* and *privileges*, provided by Article 9 and 23 of Constitution to an *owner* would stand infringed which, I have no hesitation to say, cannot be in demand or objective of any law, including Ordinance. Worth to make it clear that claimed circumstances in use of back-side *staircase* were never rebutted by respondent / tenant by worth believing evidence.

Another reason, given by learned appellate Court, is :

“...Admittedly the respondent/applicant has purchased the property in 2004 if he had any problem with the passage he would have filed ejectment application soon after purchase of property/building in 2004. By filing this ejectment application in 2016 a number of questions arises regarding bonafide need of the applicant of the shop in question.”

It was categorical case of the petitioner / applicant that it were the *developed* circumstances which made him to *prefer* suitability of front-side staircase, therefore, filing of the ejectment petition in year 2016 was also well justified but was not *properly* appreciated by learned appellate Court. Why the *landlord* should be compelled to avail other remedies when the *rights* of the tenant in case of *eviction*

under this clause, are well protected by Section 15-A of the Ordinance which not only provides a remedy for tenant to get landlord convicted if he does not stand by his *ground* of eviction but also provide a right in tenant to seek possession. The provision reads as:-

“15A. Penalty for use of premises other than personal use.—Where the landlord 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 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.)

Reference in this regard may also be made to the case of Muhammad Iqbal v. Syed Sohail Wajid Gillani 2004 SCMR 1607 wherein it is held as:

- “5. ... The landlord is not bound to mention the name of business in his statement as he keeping in view his financial position, margin of profit and the chance of success, may select any suitable business after obtaining the possession of premises and therefore, in absence of choice of the business the bona fide personal need is not effect. The law has provided sufficient safeguard for the tenant under section 17(6) of the Cantonment Rent Restriction Act, 1963 wherein it is provided that if the landlord after obtaining the possession of premises on the ground of personal need, doe not occupy the same within a period of one month, the tenant is entitled to ask for restoration of possession.

In view of above, I would conclude that the findings of the learned appellate Court in respect of the point No.2 are not sustainable as the petitioner/applicant not only established *reasonableness* of requirement of premises for his and his family **'occupation'** but also reiterated the *pleaded* circumstances on oath which were never *successfully* rebutted by the respondent / tenant.

In consequence to what has been discussed above, I am inclined to accept the petition and same is allowed accordingly. The Order of the learned appellant Court is hereby set-aside and that of learned Rent Controller is maintained.

Imran/PA

J U D G E