

# IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. S-543/2017

Petitioner : Asghar Hussain, through Mr. Zahid Marghoob, Advocate.

Respondent No.1 : Mst. Muneer-un-Nisa, through Mr. Raja Sikandar Yasir, Advocate

Date of hearing : 02.05.2017

Date of Judgment :

## J U D G M E N T

**YOUSUF ALI SAYEED, J:-** The Petitioner has assailed the Judgment of the learned VIIth Additional District Judge, Karachi (Central) dated 28.02.2017 (the “**Impugned Judgment**”), dismissing First Rent Appeal No. 100 of 2016 that had been filed by him against the Order of 20.09.2016 (the “**Rent Order**”) made by the learned 3rd Rent Controller, Karachi (Central) in Rent Case No.59 of 2013 (the “**Rent Case**”) instituted by the Respondent under S.15 of the Sindh Rented Premises Ordinance, 1979 (the “**SRPO**”), seeking possession of Shop Nos. 1 and 2, situated at Plot No. 111-F, 16/15, Nazimabad No.3, Karachi (the “**Shops**”) on the ground of personal need as well as non-payment of utility bills.

2. Whilst default in payment of utility bills remained unproven in the Rent Case, the Respondents claim was upheld on the ground of personal need and in terms of the Rent Order the Petitioner was directed to peaceably handover vacant physical possession of the Shops to the Respondent within 30 days from the date thereof. This finding was maintained in appeal.

3. Learned counsel for the Petitioner submitted that the Courts below had fallen into error as the case set up by the Respondent did not qualify as 'personal need' within the contemplation of S. 2(g) of the SRPO, since the need expressed by the Respondent in terms of her Application under S.15 was that of her grandson, whereas S. 2(g) only envisaged the “use of the premises by the owner thereof, or his wife, or husband, son or daughter”. He pointed out that in the aforementioned Application, the Respondent had stated that she wanted to start a business for her grandson, Syed Muhammad Usman, and contended that this showed that she had no personal need for the Shops. He referred to certain excerpts from the evidence and submitted that whilst the Respondent had sought to subsequently introduce her sons into the equation, which he contended was an endeavour to cure this defect, the case of need, as advanced, apparently remained that of her grandson. He placed reliance on a single-bench judgment of this Court in the case reported as *Khurshid Ahmed v. Himandas & others* 2001 YLR 2157, where, on appeal, the need of a brother of the owner was held to be an invalid ground for ejection. On this basis, he prayed that the Impugned Judgment and the Rent Order be set aside.
  
4. Learned counsel for the Respondent strongly controverted this proposition and submitted that the Courts below had rightly decided the matter as the need in respect of the Shops was clearly that of the Respondent, who was admittedly the owner and landlord. He contended that the Petition was misconceived and submitted that the Petitioner, who has enjoyed the benefit of the Shops since 1973, ought not to be allowed to keep the Respondent out of her right to use the Shops for her personal bona fide use.

5. I have considered the arguments advanced at the bar and perused the material on record. From the Application under S.15 it is evident that the professed basis of need in respect of the Shops was that the Respondent wanted to start a business for her grandson, and it was also submitted that her son would be sitting alongside him to look into the business. This stance was reaffirmed by the Respondent in her Affidavit-in-Evidence and maintained under cross-examination, where it was also voluntarily stated by the Respondent that her two sons were also now unemployed and would require the Shops. The Respondents grandson also filed his Affidavit-in-Evidence, where he stated that he was jobless and that the Respondent thus wanted to start a business and needed the Shops for that purpose, where his father and uncle would also be in attendance to look after the business.
  
6. Indeed, from the Respondent's Application under S.15 and her evidence, what comes to the fore is that it is she who intends to establish a business at the Shops, and whilst such business would be operated by her grandson and other family members, it can be said that the aforementioned desire and intent on the part of the Respondent is sufficient for the element of personal need to be attributable to her, and the mere fact that such business may be intended to also benefit someone other than the class of persons specified in S.2(g) would not take the case beyond the pale of personal need.

7. From a reading of the Rent Order, it is apparent that the learned Rent Controller came to the conclusion, as per the evidence, that there was nothing to show that the Shops were not required by the Respondent for the purpose of starting a business as stated, and, on appeal, the finding to that effect was reaffirmed by the learned ADJ, who found the evidence to be consistent with the basis of personal need set out in the pleadings. Having considered the matter, I am of the opinion that on a holistic reading of the evidence, it cannot be said that such a view could not reasonably have been formed.
8. It is well settled that the Constitutional jurisdiction in matters under the SRPO is narrow in scope, and that this Court does not sit as a court of appeal or revision on questions of findings of facts. In this regard, it was held in the case reported as Haji Muhammad Saeed v. Mst. Bano Begum 2012 CLC 1195 that:--

"High Court while exercising jurisdiction under Article 199 of the Constitution may interfere only when it was necessary and a wrong or illegal conclusion had been drawn by the courts below. High Court in its constitutional jurisdiction was not to sit as a court of appeal on questions and findings of facts, recorded by a competent court and would not interfere in the same in constitutional jurisdiction in a routine"

In the case reported as Muhammad Arshad v. Syed Ali Hussain Rizvi and 2 others 2013 CLC 1129, it was held that:

"Landlord in evidence had deposed that demised premises was bona fide required by him for his personal use. High Court in exercise of its constitutional jurisdiction could not evaluate evidence and decide such factual controversy"

9. Furthermore, in the case reported as Shakeel Ahmed & another v. Muhammad Tariq Farogh 2010 SCMR 1925, it was held by the Honourable Supreme Court 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."

10. A similar statement is to be found in the Judgment of this Court in the case reported as Hafiz Shafatullah v. Mst. Shamim Jehan and another PLD 2004 Karachi 502, where it was observed that: --

"By conferring only one right of appeal under section 21 of Sindh Rented Premises Ordinance, 1979, Legislature in its wisdom seemed to have tried to shorten the span of litigation in rent case and in such circumstances interference by High Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution in judicial order passed by Tribunal of competent jurisdiction, merely on ground that another view of the matter was also possible, would not serve any other purpose, but would add to the misery of prolonged litigation for the parties and would defeat the spirit and object of statute."

11. In light of these guiding principles, this Court cannot proceed to unsettle the concurrent findings of the Courts below based on a reappraisal of the evidence, in as much as the view taken therein appears to be one that is reasonably sustainable.

12. In view of foregoing, no case for interference stands made out. Accordingly, this Petition is dismissed with no order as to costs.

JUDGE

Karachi.

Dated \_\_\_\_\_