

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A. No. 63 of 2016

J U D G M E N T

Date of hearing : 28th March, 2018.
 Date of Judgment : 28th June, 2018.
 Appellant through : Mr. Nisar Ahmed Tarar, Advocate
 Respondent through : Mr. Muhammad Atiq Qureshi, Advocate.

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Kausar Sultana Hussain, J: This is an appeal under Section 24 of the Cantonments Rent Restriction Act, 1963, preferred against the order dated 03.10.2016 passed by Additional Controller of Rents, Clifton Cantonment, Karachi in Rent Case No.99 of 2014, whereby the Ejectment Application under Section 17 of the Cantonments Rent Restriction Act, 1963, filed by the appellant for ejectment of the respondent has been dismissed.

2. Briefly stated, Appellant Haider Ali Ravjani instituted a Rent Case No. 99 of 2014, in the Court of Additional Controller of Rents, Clifton Cantonment, Karachi, under Section 17 of the Cantonment Rent Restriction Act, 1963 against the respondent Gulzar Feroz, wherein appellant seeks order for eviction of tenant respondent Gulzar Feroz from Bungalow No. 89/11, 9th Street, Phase-VI, Defence Housing Authority, Karachi and he stated that the applicant/appellant is absolute and lawful owner in respect of property in question and the opponent/respondent is tenant of the applicant/appellant at the monthly rent of Rs. 2,00,000/- excluding utility bills and other charges. The opponent/respondent paid a sum of Rs. 16,00,000/- in which Rs. 12,00,000/- was paid as advance rent for six months and Rs. 4,00,000/- was the security deposit of the rented premises. The respondent/opponent gave assurance to the applicant/appellant to pay the monthly rent regularly without any delay or default and further to

vacate the rented premises as and when asked for and required by the appellant/applicant, therefore, due to those assurance of the respondent/opponent, the appellant/applicant rented out the premises to the respondent/opponent. On 13th March, 2014, the appellant/applicant requested the respondent/opponent to vacate the rented premises as per terms and conditions of tenancy agreement as the above rented premises is required to the appellant/applicant for the personal use of his children and there is no alternate space available to him to reside. The appellant/applicant also sent a Legal Notice to the respondent/opponent through his counsel, but the respondent/opponent has not paid any head, however, inspite of his hectic efforts the respondent/opponent failed to vacate the same and as such he has committed willful default in vacation of the rented premises, hence the respondent/opponent is liable to be evicted from the property in question.

3. The respondent/opponent resisted the matter by filing his written statement, wherein he has alleged that the plea of the appellant/applicant for personal use of demised premises is inconsistency and self-contradictory. It was alleged that the appellant/applicant through their gunda elements tried to evict the respondent/opponent although he has fulfills the entire legal obligations in respect of the tenancy and very much regular in payment of rent and other payments against the tenancy.

4. The learned Additional Controller of Rents on the basis of the pleading of the parties framed the following issues:-

1. Whether the applicant needs the demised premises for his personal use?
2. What should the order be?

5. As per record, the appellant/applicant filed his affidavit-in-evidence and the learned counsel for the respondent/opponent cross-examined the appellant/applicant and his counsel closed his side for evidence. Similarly, the respondent/opponent filed his affidavit-in-evidence and he was duly cross-examined by the learned counsel for the appellant/applicant and respondent/opponent side was closed. Therefore, the learned Rent Controller Karachi Cantonment dismissed eviction application vide order dated 03.10.2016. Being aggrieved the appellant/applicant has preferred instant appeal.

6. The learned counsel for the appellant has contended that Rent Controller travelled contrary to law and passed an illegal, inconsistent, hypothetical and against the principles of law settled by the superior courts hence not sustainable. He further argued that the learned trial Court has completely failed to consider and appreciate evidence produced by the appellant although such evidence of the appellant has not been challenged by the respondent hence deemed to have been admitted. It is further contended by the learned counsel for the appellant that whenever the appellant visited Pakistan he was compelled to stay in rest house, now appellant and his family has shifted to Pakistan permanently therefore he needs the demised premises as he now resides in rental premises. The learned counsel for the appellant has pointed out that no suggestion was put before the appellant in his cross examination by the learned counsel for the respondent that he did not need the premises. The learned counsel for the appellant has put reliance upon the case law reported in NLR 1988 Civil 630 and 2012 SCMR 1498 on the point of personal need. It has been decided in NLR 1988 Civil 630 that "***In the matter of personal need the land lord himself is the sole arbiter***" The learned counsel for the appellant has

contended that the learned trial Court has indulged itself in misreading of the evidence of the parties particularly the evidence of the learned counsel for the appellant which clearly qualify to make out a case of personal bona fide need within the parameters prescribed by the apex courts, hence the impugned order is liable to be set aside.

7. The learned counsel for the respondent while supporting the impugned order, has contended that the appellant has changed his version time to time regarding personal bonafide need as through notice dated 30.04.2014, the appellant showed that premises is required to him for marriage of his granddaughter, while in eviction application he has mentioned reason of personal use for his sons who according to the appellant reside in Dubai while admitted fact is that all children are settled in UK, and in affidavit in evidence he deposed that premises is required to him for his own use on medical grounds. He further argued that it is settled principle of law that eviction order can only be passed when assertions or claim of personal need is consistent and not shaken in cross examination, but in the instant case, claim of personal need of the appellant totally inconsistent and shaken in cross examination. He in this regard relied upon 1992 SCMR 1292. He further argued that cogent evidence was required to the appellant to prove his case of personal need but the appellant miserably failed to discharge his burden even the ground taken that the appellant is residing in rented premises is not sufficient to prove the bonafide personal requirement. The learned counsel for the respondent relied upon 1985 CLC 2455. Per learned counsel for the respondent, while cross examination of the applicant, it came at record that children of the appellant are independent and there is no indication that they want to settle in Pakistan. He relied upon the case law reported in 1985 CLC 1053, 1986 CLC 1485 and 1982 CLC 1324. He further argued that no doctor's certificate has been produced

by appellant to show that he has advised to change the country. In support of his argument the learned counsel for the respondent also put reliance upon following case law i.e "1986 CLC 2628, 1993 CLC 1080, 1986 CLC, 448, 1988 CLC 1297, 1988 CLC 1833, NLR 1981 CIVIL 707, 1988 CLC 648 AND 2013 YLR 2705". He finally argued that there is no presumption even can draw that the family of the appellant will leave UK and come to Pakistan permanently, hence the learned trial Court has rightly decided this case in favor of the respondent

8. I have gone through the case file, order dated 03.10.2016, passed by the learned Additional Controller of Rents, Clifton Cantonment, arguments advanced by the both the side and also written synopsis submitted by the respondent/opponent side.

9. The learned Additional Controller of Rents, framed two issues relevant for disposal of present case. While deciding the same, the learned Additional Controller of Rents put all emphasis on various reasons given by the landlord during different stages of the case and concluded that the appellant/applicant is very much confused to specify particular ground on which he wants to evict the tenant from the demised premises and that applicant failed to prove that the property in question is required to him for personal use in good faith; consequently, the learned Additional Controller of Rents, dismissed the ejectment application.

10. Perusal of record of the proceedings before the trial court, reveals that the landlord advanced different reasons at various stages of the case, however all such reasons were directed to personal bonafide use or personal requirement. Mere technicalities do not infringe his right of personal use as all varied reasons given by the landlord are based on personal needs. Anyhow if the appellant/applicant does not want to use

the premises for personal need in one month time period as provided in Section 17 (6) of the Cantonment Rent Restriction Act, 1963, possession could be reverted to tenant.

11. It is also revealed from the record that on 24.04.2014, while replying to legal notice of the landlord, the learned Advocate on behalf of the present respondent categorically mentioned that "it was clear understanding between you and my client that the tenancy shall not be terminated till five years of tenancy". Subsequently, during proceeding of the case, the advocate appearing on behalf of the respondent/opponent categorically stated in his affidavit signed on 13.01.2015 that "that I say the agreement was signed between opponent and applicant with the clear cut understanding that the demised premises not to be vacated prior to five years and that's why the huge payment in shape of advance payment was made to the applicant". It is thus clear from the view point of tenant that the tenancy was for five years and not for two years as written in the agreement executed between both the parties. However, tenancy will complete six years on 30.6.2018 instead of five years as stated by him.

12. It is also a matter of fact that the landlord is an old age person of more than seventy five years of age and he himself is the sole arbiter in the matter of personal need of his own premises.

13. From the above discussion, it is clear that landlord/appellant has made out a good case and the case laws produced by the learned counsel for the respondent are distinguishable from the facts of the present case. Accordingly, order dated 30.10.2016 passed by the learned Additional Controller of Rents is set aside. The tenant should vacate the premises within three (03) months of this order.