

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-772 of 2002

Present

Mrs. Justice Kausar Sultana Hussain

Ayyaz Uddin and one another,.....Petitioners

V e r s u s

The Vth Additional District Judge (East) Karachi
and one another.....Respondents

Date of Hearing 25.04.2018 & 27.8.2018

Date of Judgment 26.10.2018

Mr. Azizullah Kumbhar, advocate for Petitioner
Mr. S.M. Haider, advocate for respondent No. 2.

J U D G M E N T

Kausar Sultana Hussain, J.:- Through this Constitution Petition under Section 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners/landlords have impugned a judgment dated 30.05.2002, passed by learned Vth Additional District Judge Karachi East in First Rent Appeal No. 164 of 2001, filed by the respondent No. 2/tenant against the judgment dated 20.11.2000 whereby, he prayed for setting aside the said judgment dated 20.11.2000 passed by the learned VIIIth Rent Controller, Karachi East, in Rent Case No. 604 of 1993, filed by the petitioners/landlords against the respondent No. 2/opponent/tenant.

2. The necessary facts spelt out from instant petition are that the respondent No. 2/opponent is the tenant of applicants/petitioners in respect of Quarter No.68/1, 4-D, Landhi No.6, Karachi, at a monthly

rent of Rs.300/= per month. It is stated that the applicants are the co-owners of the property and had purchased the same from its previous owner namely Liaquat Ali Son of Ahmed Ali for their personal bonafide need, use and occupation. It is stated that the said quarter consists upon 5 shops out of which 2 small shops are in possession of the applicant and 3 shops are in possession of 3 tenants including the Opponent. It is stated that the opponent is carrying on his business under name and style of "Siddiqui Fashion Mall", while their other two tenants namely Qamar and Mahmood are occupying other two shops and running their independent business of Sweet Manufacturing and Kiryana Hardware respectively. It is stated that after purchasing the property the petitioners/applicants sent notice on 10.07.1993 Under Section 18 of Sindh rented Premises Ordinance, 1979, in respect of change of ownership but the same was remained un-responded from the respondent/opponent side while it was replied by the other two tenants through their advocates. It is alleged that the respondent/opponent negotiated with the petitioners/applicants and agreed to vacate the premises on receipt of Rs.40,000/-, which was paid but the respondent/opponent refused to vacate the demised premises despite of having received the amount as agreed. It is further stated that petitioners/applicants therefore, filed a Civil Suit bearing No.770/1993 for recovery of aforesaid amount, which is pending adjudication before the learned Vth Senior Civil Judge, Karachi Central. It is stated that the opponent has failed to pay the rent to the petitioners/applicants from May, 1993 till the filing of ejectment application, thus committed wilful default in payment of monthly rent

from May to August, 1993 @ Rs.300/= per month, amounting to Rs.1200/= being rent for the 4 months, hence liable to be evicted from the premises. It is further stated that the petitioners/applicants are in possession of some small shops and they want to expand their business therefore they have purchased the said quarter measuring 80 square yards and they want to divide the plot into two equal portions, each of 40 square yards and the same they want for their personal bonafide need, hence they filed this ejection application.

3. The respondent/opponent has filed written statement and has admitted the petitioners/applicants as the owners of the property in question as they had purchased the same from its outgoing owners. The respondent/opponent also admitted that two shops are in possession of the petitioners/applicants and these are the biggest shops. It is stated that the respondent/opponent has expended huge amount of Rs.1,00,000/= in construction of shops, for which outgoing landlord agreed to pay the respondent/opponent but he left and has not paid the said amount to him, which is still due, for which the present petitioners/applicants promised to pay the said amount. The respondent/opponent has admitted the rate of rent and stated that the petitioners/applicants refused to accept the rent therefore the respondent/opponent has left with no other option but to deposit the rent in court in MRC No.539/1993. The respondent/opponent has denied that he has taken Rs.40,000/-. He further denied that the premises is required by the petitioners/applicants for their personal use and prayed for dismissal of rent application.

4. As per record, both the parties led their evidence, and after evaluating the evidence and arguments advanced by the learned counsel for the parties, learned Rent Controller allowed eviction application on the ground of personal need, declining the point of default vide order dated 20.11.2000. The respondent No. 2 assailed said order through FRA No. 87 of 2001 (Renumbered No. 164 of 2001), which was ultimately allowed by the Court of learned Additional District Judge-V, Karachi (East) vide impugned judgment dated 30.05.2002. Being aggrieved, the petitioners have preferred instant Constitutional Petition.

5. The learned counsel for the petitioners has emphasized on the fact that the impugned order has been passed by the appellate Court in a slipshod manner and ignored the material facts as well as settled law. While elaborating his submissions, learned counsel referred legal notice dated 10.07.1993 as well as contents of eviction application and affidavits in evidence, pressed on the facts since inception, the petitioners stated to have purchased the subject quarter containing the shops for their personal bonafide use to extend and expand their respective business. He has further argued that no inconsistency surfaced through cross-examination conducted by the rivalry at length. He has stated that it is settled law that assertion or claim on Oath made by the landlord, if found consistence for requirement of demised premises, must be accepted. He has referred case law reported in **1992 SCMR 1996**. He has further pointed out that the respondent No. 2 during his cross-examination admitted the fact that articles of

Hardware of the shop of the petitioner No. 2 are lying in front of shop of the petitioner No. 2. He has further argued that learned appellate Court failed to appreciate the fact that it is a prerogative of the landlord to choose any of his premises for his personal need and expansion of business is a wide term comes within the need and requirement of the learned counsel and could not be restricted and discarded by the learned appellate Court merely due to the fact that the petitioners have acquired other shops during the proceedings of the case, as such, the findings of the learned appellate Court in the impugned order is perverse and basing upon mis-appreciation and wrong presumption so much so contrary to settled position of law, hence liable to be set aside. He has also referred the case laws reported in **1994 MLD 958 Karachi, 1992 MLD 315 Karachi, 1994 MLD 487 Karachi.**

6. Conversely, the learned counsel for the respondent No. 1/tenant has strongly opposed the submissions so agitated by learned counsel for petitioners. Learned counsel while supporting the findings of the learned appellate Court further referred the admission of the petitioner's side, who categorically admitted that during the proceedings, they have received possession of two other shops in the same quarter. He has further argued that the learned appellate Court after evaluating the entire material on record, rightly arrived to a conclusion that the need of the petitioners after having received the possession of the two shops in the same quarter, has been fulfilled, as such, no illegality or mis-appreciation of evidence has been committed, hence, instant petition merits no consideration, liable to be dismissed.

7. Considered the submissions so advanced by the learned counsel for the parties and perused the record in the perspective of relevant provisions of law. It is noted that learned Rent Controller found the plea of personal need as consistent and allowed eviction of the respondent No. 2 from the demised shops, however, it was reversed by the learned first appellate Court only for the reason that during the proceedings of rent case they have obtained vacant possession of two shops situated in the same quarter; after demolishing, constructed one shop over the same, as such they are in sufficient place in their possession and their testimony on Oath became inconsistent as they have admitted such fact. Since there is divergent and conflicting findings of the Courts below on this points, as such, need emerges to vet entire material on record so as to reach at a just and proper conclusion. It is noted that the petitioners in eviction application as well as in their affidavit in evidence categorically stated that they purchased the subject property for their personal bonafide use to extend and expend their respective business. On examination of record, it is revealed that learned appellate Court mis-appreciated and failed to consider the important fact that the petitioners have already referred about two other shops situated in the same quarter being possessed by the other tenants. Even, during the cross-examination of petitioner No. 2 Noorullah Sharif, it was explained that the petitioners filed three cases against three different tenants situated on subject quarter and during the pendency, they obtained vacant possession of two shops situated in the subject quarter. In presence of above explanation, when the petitioners have already set their personal need

requiring the whole three shops situated in the subject quarter, no inconsistency could be attributed to them merely owing to the fact, that since they have obtained the possession of two other shops in the same quarter, their need has been fulfilled or eviction of the respondent No. 2 sought by the petitioners based upon any bad faith. As per section 15 (2) (vii) of Sindh Rented Premises Ordinance, 1979, the landlord/owner is under obligation to prove the ground of personal requirement in good faith. The version of the petitioners/landlord regarding the personal bonaifde need of the demised premises has been found un-shaken. There was no substantive valid evidence that the demand of landlord in respect of the demised premises is malafide or for some motivated purpose. At this juncture, I am benefited with the guiding principles so set forth by the Hon'ble Supreme Court of Pakistan, in cases of *S.M. Nooruddin and others v. Saga Printers (1998 SCMR 2119)* and *Shakeel Ahmed v. Muhammad Tariq Farogh and others (2010 SCMR 1925)*, the apex Court has set the dictum that landlord has a complete option to choose from one of the several tenements occupied by tenants to avail of the personal requirement and the discretion is not assailable, except in the rarest cases of bad faith. Likewise, in another case of *Haroon Kassam and another v. Azam Suleman Madha (PLD 1990 Supreme Court, 394)*, it was also held by the apex Court that, if the landlord possess more than one premises, it is surely matter within his prerogative and discretion and law does not give either to the tenant or the Rent Controller the power of determine where the landlord should personally reside and the question as to which portion of the building would suit the landlord better use be left to his

discretion. In another case of *Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui (2000 SCMR 1613)*, the apex Court set the principle that where landlord's statement on Oath being consistent with the case pleaded by him and same has not been seriously challenged must be given weight. It may be observed that besides above, the Sindh Rented Premises Ordinance, 1979, provides safe guard to the tenant under the proviso 15-A, which envisages where the landlord, who has obtained the possession of a building under Section 15 (vii) of the Ordinance, re-lets the premises to other person, or put it to a use other than personal use, the tenant will be entitled to get the possession restored to him. The claim of the petitioners had not been shaken in cross-examination. Their need could not be defeated by adversely interpreting evidence to reach another conclusion as did by the learned appellate Court ignoring the material facts while deciding the point of personal need, discussed above. The conclusion drawn by the learned first appellate Court, thus, not sustainable in the eye of law.

8. For the reasons, recorded above, petition in hand is accepted/allowed, the impugned order passed by the first appellate Court is hereby set aside and eviction of the respondent No. 2 from the demised shop on the ground of personal need as directed by the learned trial Court is restored and maintained, accordingly. However, the tenant is allowed three months' time to vacate the demised premises provided due rents are paid regularly.