

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C. P. No. S – 14 of 2020

[Abdul Aziz vs. Mst. Hurrat-ul-Maleka and two others]

Dates of hearing : 07.02.2020 and 17.02.2020

Petitioner : Abdul Aziz, through
Mr. Aqeel Ahmed Siddiqi, Advocate.

Respondent No.1 : Mst. Hurrat-ul-Maleka through
Barrister Jawad Ahmed Qureshi,
Advocate.

Respondents No.2& 3 : Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J:- The above named Petitioner has filed this Constitutional Petition and challenged the two decisions of Appellate and learned Rent Controller, dated 19.12.2019 and 12.10.2019, respectively, passed in First Rent Appeal No.55 of 2019 and Rent Application No.125 of 2018.

2. Mr. Aqeel Ahmed Siddiqi, Advocate for Petitioner has argued that both Courts below have erred while deciding the relationship between Petitioner and Respondents. It is further contended that both orders passed by learned Rent Controller and the Appellate Court lacked proper reasoning, because they failed to appreciate the very pertinent point that rent proceeding was filed by incompetent / unauthorized person; similarly, both grounds of Rent Application, viz. default and personal *bona fide* need have been wrongly decided because the testimonies of parties were not properly appreciated. It is averred that neither Petitioner is a defaulter in payment of rent, nor the demised premises is required for personal *bona*

fide need of the Respondent. Lastly, it is argued that property in question falls within the territorial jurisdiction of Hyderabad Cantonment Board. To augment his arguments, the learned counsel for Petitioner has relied upon following case law_

- i. Unreported Judgment of Hon'ble Supreme Court in Civil Petitions No.73-K, 74-K & 545 to 547 of 2018.
[Dr. Itefaq Hussain vs. Abdul Haq and others]
- ii. PLD 2001 Karachi page-238
[Mehboob Alam vs. Miss Tehseen Shafqat Khan and others]
- iii. 2003 CLC page-1581 [Karachi]
[Mst. Nazira Bibi vs. Vth Additional District Judge, Karachi East and 2 others]
- iv. 1990 CLC page-810 [Karachi]
[Attaul Haq and 6 others vs. Mirza Masood Ali Warsi]
- v. 2006 CLC page-1196 [Karachi]
[Messrs Akbari Stores and others vs. Additional District Judge, Karachi South and others]

3. Barrister Jawad Ahmed Qureshi appeared for Respondent No.1 (Landlady) and while controverting the arguments of Petitioners, learned counsel has submitted that in Written Statement of Petitioner, he himself has admitted the relationship of landlord and tenant, when the Petitioner has stated that grandfather of Respondent rented out the premises to grandfather of Petitioner. It is further argued that in the evidence, the Petitioner did not deny the default in payment of monthly rent; that both Courts have properly appreciated the evidence and after framing Issues, decided the Rent Case and Appeal in accordance with law. Lastly, learned counsel for Respondent has referred to pleadings of Petitioner, that the issue of territorial jurisdiction was never raised and it is an attempt on the part of Petitioner to mislead the Court. He has relied upon the following case law_

- i. 2018 CLC page-940 [Sindh]
[Muhammad Akram and another vs. Xth Additional District and Sessions Judge and 2 others]
- ii. 2019 CLC page-1266 [Sindh]
[Salim Ahmed and another vs. Nasim Imtiaz and 7 others]

4. Arguments heard and record perused.

5. The rent proceeding was filed by Respondent through her son as attorney against Petitioner in respect of the residential property (House) at city surveys numbers 99/1 and 99/2, Risala Road, Hyderabad-*the demised premises*. Crux of the case law cited by learned counsel for Petitioner is that landlord has been defined in Sindh Rented Premises Ordinance, 1979, (*SRPO*), who can also be a person authorized to receive the rent on behalf of the owner; since petitioner (of the cited case) was only a co-owner, who neither rented out the rented premises nor was collecting the rent, it was held that he could not maintain the eviction proceeding; for determining the claim of personal *bona fide* need, at least the landlord should file the rent proceeding himself / herself, even if the evidence is given by the attorney, in order to show a genuine personal *bona fide* need. That under Section 14 of SRPO landlord cannot seek possession of more than one building or a part thereof. However, the reported decision of Mst. Nazra Bibi (*supra*) relied upon by learned counsel for Petitioner, does not support the contention of Petitioner, because it is held that the case filed by landlady through her son who acted as attorney, was permissible and the landlady could not have been non suited on that ground alone. In this case the rent application although was filed by the attorney (son), who also led the evidence, but it is observed that the rent application also had the thumb mark of landlady herself.

6. The crux of the case law cited by learned Advocate for Respondent is that by now it is well settled that the case of landlord / landlady in respect of personal *bona fide* need, can be pleaded through her attorney. If the evidence of attorney (of landlord) is confidence inspiring and could not be shattered during cross-examination, then burden of proof in support of the claim stands discharged; in more than one premises, suitability of opening a

business is the choice of landlord, provided the same is not tainted with *mala fide* or false claim. In the reported case of Saleem Ahmed (*ibid*) relied upon by Respondents' Advocate, number of reported decisions of Hon'ble Supreme Court concerning writ jurisdiction of High Court in rent matters is discussed. The Apex Court has disapproved the practice of filing Constitution Petitions, by observing, *inter alia*, that ***"We are of the view that the petitioners were fully aware that a writ petition did not lie in these circumstances, but had filed it merely to gain time and delay their eviction from the shop..."***

7. Both impugned decisions of learned Appellate Court and learned Rent Controller have been perused. Specific Issues were framed with regard to the ground of default and personal *bona fide* need.

8. The contention of learned Advocate for Respondents is correct about territorial jurisdiction and relationship between the parties hereto. In Written Statement, the present Petitioner has specifically admitted that Respondent is his landlady, besides stating that grandfather of present Respondents, namely, Tayab Ali Noor Bhay rented out the house / demised premises to the grandfather of present Petitioner, namely, Khuda Bux even before the Partition. ***Secondly***, nowhere in Written Statement and First Appeal, the issue of territorial jurisdiction is raised. ***Thirdly***, even in the present proceeding, learned counsel for Petitioner has not brought on record any plausible material / documents in support of his contention about territorial jurisdiction.

9. The Issue about maintainability of rent application was framed and after discussion of the evidence and it was decided by both Courts that the rent proceeding is maintainable.

10. The Issue of default has been dealt with in detail by both the Courts. Evidence has been discussed; that when it is undisputed fact that Respondent being landlady used to issue receipts after receiving the rent, then the onus was on present Petitioner to disprove the claim of Respondent / landlady about nonpayment of rent from September, 2017 till the filing of Rent Case in November, 2018. The learned Rent Controller has further observed in the impugned order that ***“Opponent has admitted in his cross-examination after filing of Rent Case, he has not approached the landlord and offered rent thus no rent directly was offered to the landlord by Opponent / Tenant and there was no refusal on record qua receiving of the rent ...”***. To a specific question the Petitioner admitted that lastly he paid the rent till 2017, whereas, the claim of Respondent is that Petitioner has defaulted in payment of rent from September 2017 till filing of Rent Application No. 125 of 2018 in November 2018, regarding which witness (son) of present Respondent could not be contradicted in his evidence.

11. In the impugned Appellate decision, admission of present Petitioner has been recorded about payment of rent ***“however, the Appellant in his cross-examination recorded at Exhibit-16 admitted that he paid rent till 2017 but has not produced any receipt thereof”***.

12. The issue of personal *bona fide* need has also been examined in both the impugned Orders on the basis of evidence led by the parties, present Petitioner and Respondents. The testimony of son of Respondent that the demised premises is required for his personal use and he would reside in the demised premises after his marriage, has not been disproved (by Petitioner).

13. Learned Advocate for Petitioner is unable to point out that both impugned decisions have been handed down is contrary to the evidence that

has come on record. In Constitutional jurisdiction, Courts do not exercise jurisdiction as an Appellate Court and thus cannot reappraise the evidence of Courts below, particularly when no material irregularity has been pointed out. The scope of writ jurisdiction in rent matters is primarily limited to scrutinising the legality of decisions handed down by the courts and tribunals (below), including, if the orders are based on complete misreading and non-reading of the evidence in disregard of the established principle(s); the Courts below have not considered the record of the case in its true perspective and failed to exercise jurisdiction of doing justice between the parties in accordance with law; the Courts below have ignored the material and admitted evidence and law that was to be considered in deciding the controversy raised in the matter. In such cases High Court in exercise of its Constitutional jurisdiction has to foster the administration of justice will over rule the decisions, which are manifestly arbitrary, capricious and based on non-considering of established law, and then decide a case on the basis of material/record available.

14. Case law cited by the learned Advocate for Petitioner is distinguishable, in view of the above discussion, particularly, Akbari Stores case (*ibid*) because it relates to the eviction proceeding under Section 14 of SRPO, which is specific for a certain class of persons, but, present proceeding was filed under Section 15 (of SRPO, 1979), which is not a class specific provision but a general one.

15. Both the impugned decisions have correctly applied the case law and have given findings on relevant issues after considering the evidence and therefore, no interference is required in writ jurisdiction. Consequently, the subject Constitutional Petition is dismissed, with no order as to costs.

Karachi.

Dated : _____
M.Javaid.P.A.

JUDGE