

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No. S-303 of 2017

Dated	Order with signature of Judge
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Petitioner : Muhammad Yaseen,
through Mr. Rizwan Rasheed, Advocate

Respondent No.1 : Haji Rang Elahi Haji Eye & General Hospital
(Nemo)

Respondent No. 2 to 3 : IX Rent Controller, Karachi-East & another
(Nemo)

Date of hearing & order : 11-04-2017

ORDER

ZAFAR AHMED RAJPUT.J:- The respondent No.1 / applicant / owner filed rent ejectment application, under Section 15 of Sind Rented Premises Ordinance, 1979 being Rent Case No. 60 of 2015, against the petitioner / opponent / tenant in respect of rented premises viz. Shop No.1 of the respondent hospital on the ground of personal bonafide need as the applicant - a welfare and charitable hospital being run by Haji Rang Elahi Haji Mehboob Elahi foundation – is indispensable need for upgrading and extending its laboratory, which is presently housed in the premises immediately adjacent to the shop No.1 in occupation of the petitioner. Petitioner contested the ejectment application by filing written statement wherein he denied the requirement of the rented shop for the personal need of the respondent hospital and alleged that there is sufficient accommodation in the hospital where the respondent can establish a lab. The learned IXth Rent Controller, Karachi-East after recording pro and contra evidence of the parties allowed the rent ejectment application, vide order dated 14.05.2016. Against that, the petitioner preferred FRA No. 67 of 2016, which was heard and dismissed by the learned IVth Additional District Judge, Karachi-East,

vide judgment dated 19.01.2017, directing the petitioner to vacate the rented shop within sixty (30) days from the date of judgment. It is against that judgment, the instant Constitutional Petition has been preferred by the petitioner.

At the very outset, the learned counsel for the petitioner was put to notice to satisfy the Court on the maintainability of this petition.

The learned counsel for the petitioner has mainly contended that the learned Courts below did not appreciate that the respondent No.1 had failed to prove that the rented shop was required for personal bonafide need. He has further maintained that the learned Courts below did not consider that the representative of the respondent No.1 had not produced the memorandum and article of association and the authority so produced by him did not empower him to file ejectment proceedings against the petitioner before the learned Rent Controller and to appear as a witness of the respondent; hence, the impugned judgment being bad in law are liable to be set aside. In support of his contentions, the learned counsel has relied upon the cases of *Unair Ali Khan and others vs. Faiz Rasool and others* (**PLD 2013 SC 190**), *Zawar Hussain vs. Abid Hussain Qureshi* (**1994 MLD 2251**) and *Abdul Fayyaz Khan vs. IIIrd Additional District Judge, Karachi, South and 4 others* (**2012 CLC 793**).

As regard the first contention of the learned counsel for the petitioner, it may be examined that the respondent No.1 has categorically pleaded in its ejectment application that the rented shop is required for personal bonafide need in order to extend their laboratory. It may be relevant to mention here that the respondent is a welfare and charitable hospital being run by a Foundation, registered under the Societies Registration Act, 1860 and the petitioner in his cross-examination has admitted that the rented shop is situated at the corner of the building with the laboratory. The plea taken by the petitioner that

sufficient accommodation for extension of laboratory is available has no force for the reasons that it is the right of the respondent hospital being owner to decide which portion of the hospital is more suitable to meet with their need and requirement. It may also be observed that in the case of Charitable Institution or Trust properties, the trustees could require the premises to carry out the Trust more effectively or for the use of beneficiaries or to advance the objects of the Trust, which being charitable are bound to benefit a large number of people.

As regard the second contention of the learned counsel, it may be seen that alongwith ejection application, the copies of the resolution of the trustees of the Foundation appointing a sub-committee for management and administration of the hospital and letter of authority nominating, constituting and authorizing Mr. Fasih Muzaffar, the Management Officer to act, perform, manage and look-after the affairs of the hospital in all respects have been filed and the same have been produced in the evidence as Exh. A/1 and Exh. A/2, respectively. For the convenience sake Letter of Authority is reproduced as under:-

LETTER OF AUTHORITY.

By and through means of a Resolution passed by the Board of Trustees of the Haji Rang Elahi Eye & General Hospital situated at ST-4B, Block4, Gulshan-e-Iqbal, Karachi on 23rd October, 2012 the Management Committee of the Hospital was constituted and authorized to manage, look after and administrate the affairs concerning the Hospital in respect of its overall administration, management and control.

Through means hereof, we the Management Committee so authorized, do hereby nominate, constitute and authorize Mr. Fasih Muzaffar s/o. Mr. Ejaz Hussain Resident of Karachi appointed and working as the Management Officer of the Hospital to act, perform, manage and look after the day to day affairs of the Hospital in all respects and for such purpose to make orders, interact and appear before all persons, forums and authority/ies as may be required or expedient for such purpose, under intimation and acting for and on behalf of the Trustees/management committee of the Haji Rang Elahi Eye & General Hospital Karachi.

The perusal of the Letter of Authority shows that Mr. Fasih Muzaffar was duly authorized to act on behalf of trustees / management committee of the hospital in all respects and to appear before all forums and authorities as may be required. As such, Mr. Fasih Muzaffar was duly authorized to file ejectment application before the Rent Controller on behalf of the respondent hospital. It may be observed that the petitioner has raised objections on the authority of Mr. Fasih Muzaffar first time in this petition as the same has neither been taken by him in his written statement nor in his affidavit-in-evidence or even in cross-examination of the witness of respondent No.1. So also he has not taken any such ground in F.R.A. or even in the arguments before the appellate Court; hence, he is stopped from taking this ground first time in this Constitutional Petition.

Under the circumstances, the concurrent findings of the Courts below on issue of personal bonafide need of the rented premises by the respondent No. 1 does not appear to suffer from any legal infirmity much less the jurisdictional defect; hence, the same cannot be interfered with by this Court under its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The case-law cited by the learned counsel for the petitioner being distinguishable are not helpful for the case of petitioner. Accordingly, this petition is dismissed in limine by directing the petitioner to vacate the rented shop within thirty (30) days hereof, alongwith listed application.

J U D G E

Athar Zai