

IN THE HIGH COURT OF SINDH
CIRCUIT COURT, HYDERABAD

C.P. No.S-16 of 2020

General Secretary Fayaz Education Society -----

Petitioner

VERSUS

Muhammad Javed Khan and others -----

Respondent

Date of hearing:

07.09.2020

Date of decision:

18.09.2020

Mr. Irfan Ahmed Qureshi advocate for petitioner.

Mr. Muhammad Saleem Khaskheli advocate for respondent.

Mr. Allah Bachayo Soomro Additional Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant petition, the petitioner-Society has called in question the order dated 29.11.2019 passed by learned Model Civil Appellate Court-II / VIIIth Additional District Judge, Hyderabad in First Rent Appeal No.81/2018, whereby the judgment of Trial Court / Rent Controller was set-aside.

2. Precisely the facts of the case are that the petitioner-society is tenant of subject premises. Respondent No.1 being landlord filed ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979 on the ground of personal bona fide use. The said ejectment application was dismissed by the Rent Controller vide order dated 31.10.2018 on the ground that respondent No.1 was unable to establish personal bona fide use of the subject premises. Against the said order Respondent No.1 filed First Rent Appeal under Section 22 of Sindh Rented Premises Ordinance 1979, which was allowed vide order dated 29.11.2019; against which the petitioner-society has filed the instant Constitutional Petition.

3. Mr. Irfan Ahmed Qureshi learned counsel appearing for the petitioner-society has contended that it is incumbent upon respondent No.1 / landlord to establish 'bonafide need of the subject premises with good faith' through cogent evidence; that until and unless the landlord proves with tangible evidence that the premises is needed in good faith the ejectment application cannot be granted; that it is apparent on the face of record that landlord has failed to establish his personal need in good faith; that the findings of trial

Court on this issue are unexceptional which ought to have been maintained by learned Appellate Court; that the appeal filed by respondent No.1 had no merits and it should have been dismissed rather than allowed; that the evidence adduced by the parties is to be read, evaluated and assessed as a whole; that the learned Appellate Court has failed to consider the deposition of the witnesses examined by the petitioner-society before the learned Rent Controller, thus the findings of learned appellate court are against the law, facts and equity hence, liable to be reversed. That the Rent Appeal was allowed on the sole ground of arrears which stood not proved before the learned Rent Controller. That, learned appellate Court while passing the impugned order, misread the evidence on record. That learned appellate Court while passing the impugned judgment failed to give any plausible reasoning. That the tenement is used for school purpose and the Rent Agreement was also made for the purpose of school; that the school is providing education to the poor people of the locality; where the school is situated, poor persons are residing. That, while moving Rent Application the point urged for vacation of tenement was not proved through evidence. That learned Appellate Court has given assertion in the impugned order which cannot be accepted by a prudent mind. That it is well settled principle of law and natural justice that complete justice between parties takes place when the case is decided on merits rather than based on technicalities. In support of his contention, he relied upon the cases of Mst. Shamim Akhtar Vs Zakaria Yousuf and Others (1998 CLC 410), Mst. Kulsoom Vs Abdul Rasheed (1995 CLC 230), Abdul Rehman & Ors Vs Pakistan State Oil Co. Ltd. (1997 CLC 1085), Ghani-Ur-Rehman Vs Pir Haider Ali Shah and 4 Ors (1997 CLC 1092), Mst. Noorunissa Vs Qamurul Huda (1988 CLC 1933), Sultan Press Ltd. Vs Muhamamd Hassan (PLD 1985 Karachi 624), Messrs Glaxo Laboratories Ltd. Vs The Registrar of the Trade Marks, Government of Pakistan (PLD 1985 Karachi 630), Attiya Badar Vs Haji Munshi Khan (1994 CLC 1875).

4. Conversely, learned counsel for respondent No.1 supported the learned Appellate Court order dated 29.11.2019 on the ground that learned Rent Controller failed to appreciate the evidence adduced by the appellant while determining the question of personnel bona fide need. That respondent/applicant has filed instant Rent Application on the basis of default as well as personal need and raised various grounds in support thereof. He argued that the rent agreement between parties has already expired and the opponent is occupying the rented premises without paying rent. He further argued that Respondent No. 1/Landlord is heart patient and doctors have advised him to avoid using staircase, hence he requires premises for his

personal bona fide use. He next argued that for seeking eviction of a tenant from the rented premises, the only requirement of law is the proof of bona fide need by the landlord, which is discharged the moment landlord appears in witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law; that the case of Respondent No. 1/Landlord remains un-rebutted by the Petitioner/Tenant; that jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot be invoked against the order of learned Appellate Court; that the impugned judgment of learned Rent Controller suffers from misreading and non-reading of evidence. He lastly prayed for dismissal of instant petition.

5. I have heard learned counsel for the parties, perused the record and the case law cited at bar.

6. *I have noticed that learned appellate Court vide order dated 29.11.2019 allowed the appeal by directing the Petitioner-society to vacate the rented premises within 60 days on the ground of default in payment of rent, utility charges, personal bonafide need of landlord and damage to the rented premises. It is well settled principle of law that the sole testimony of landlord is sufficient to establish his personal bona fide need provided the statement on oath of landlord is consistent with his averments made in the Ejectment Application. Reference in this context can be made to the case of Mehdi Nasir Rizvi v. Mohammad Usman Siddiqui reported in 2000 SCMR 1613. In the instant case, the petitioner-society could not succeed to shatter the evidence of Respondent No.1 on this point.*

7. I am fortified of the view that in rent matters, constitutional jurisdiction of this Court is limited and confined only to ascertain whether the Appellate Court has flouted the statute or failed to follow the law relating thereto?

8. In the instant case, there is no jurisdictional error nor any perversity, illegality or infirmity in the order passed by the learned Appellate Court. Besides, I do not see any misreading or non-reading of evidence in the appellate court's judgment which could warrant interference of this Court. Besides, the judgment of appellate court appears to be in accordance with the principles enunciated by Honorable Supreme Court in the cases of Muhammad Hayat vs. Muhammad Miskeen (deceased) through LRs and others (2018 SCMR 1441) and Shakeel Ahmed another vs. Muhammad Tariq Farogh and others (2010 SCMR 1925).

9. The case law cited by learned counsel for the Petitioner-society is distinguishable from the facts and circumstances of present case.

10. In the light of facts, circumstances and the law cited above, the instant Constitutional Petition is dismissed along with pending application(s) and the Order passed by learned Model Civil Appellate Court-II / VIth Additional District Judge Hyderabad in First Rent Appeal No.81/2018 is maintained. The Petitioner-society is directed to vacate the premises in question and handover its vacant and peaceful possession to Respondent No.1 within sixty (60) days from the date of this Order.

JUDGE

Karar-hussain/PS*