

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

C.P. No.S-618 of 2018.

| | | |
|---------------------------|-------|-------------|
| Muhammad Kamran | ----- | petitioner |
| Vs. | | |
| Muhammad Aslam and others | ----- | Respondents |

Date of hearing: 21.09.2020.
Date of decision: 25.09.2020.

Mr. Mumtaz Ali Soomro advocate for the petitioner.
Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.
Mr. Nisar Ali Mughal advocate for respondent No.1.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant petition, the Petitioner has impugned the Order dated 14.3.2017 passed by learned IInd Senior Civil Judge / Rent Controller-Hyderabad, whereby his Rent Application No.2 of 2015 was dismissed. The petitioner being aggrieved by and dissatisfied with the aforesaid Order filed First Rent Appeal No.19 of 2017, which too was dismissed by learned District Judge, Hyderabad, vide judgment dated 20.2.2018, hence the instant petition.

2. Precisely, the case of the petitioner is that he being landlord of subject rented premises i.e. plot No.206 admeasuring 1566.00 square feet constructed upon the C.s No.2423 situated at Pehoon Karkhana, Meat Market, Phullelipar, Hyderabad, (hereinafter be referred as "the Premises") filed ejectment application on the ground that the subject premise is required by him for his personnel bonafide use. Learned Rent Controller, formulated the points for determination; whether the petitioner required the premises for personnel bona fide use and hearing the counsel for the parties dismissed the Rent Application on the ground that the petitioner was not able to carry out business due to paucity of funds. The learned Appellate Court also dismissed his appeal on the same analogy.

3. Learned counsel for the petitioner has contended that the Petitioner is co-owner with his brother in the subject premises and both of them are jobless and being landlord of the subject premises they required the same for

their personnel bona fide use; therefore, the orders passed by both the courts below need to be reversed.

4. Learned Counsel for respondent-tenant has argued that the instant petition is not maintainable on the premise that he is regularly paying the monthly rent. Moreover, the petitioner has admitted in his deposition that he has not been able to do any business due to insufficient money and his brother is laborer as well; therefore, the question of personal bona fide need does not arise. He supported the impugned orders passed by both the courts below. It is contended that interference by this Court in exercise of its Constitutional jurisdiction under Article 199, in the judicial orders passed by the Rent Controller, merely on the ground that another view of the matter is also possible, would not serve any other purpose but would add to the misery of prolonged litigation for the parties and would defeat the spirit and object of the statute; that in the instant case the two Courts below have given concurrent findings of facts against the petitioner, against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such finding could be termed as perverse or having jurisdictional defect or based on misreading of facts. In support of his contention, he relied upon the case of *Muhammad Yousuf and another Vs Muhammad Ibrahim Khandwani (PLD 1991 Karachi 226)*.

5. I have considered the submissions of learned counsel for the parties and have gone through the record as well as the case-law cited at bar.

6. On the proposition of term personal use, Section 2(g) of the Sindh Rented Premises Ordinance, 1979, (SRPO) which defines personal use, to mean the use of the premises by the owner thereof or his wife (or husband), son or daughter. Clause-vii of subsection (2) of section 15 of SRPO provides that the Rent Controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in his order if he is satisfied that the landlord requires the premises in good faith for his occupation or use or the occupation or use of his spouse or any of his children. A collective reading of section 2(g) and Section 15(2)(vii) makes it very clear that SRPO treats the landlord and his spouse or his son or daughter as 'one unit' and to be satisfied to handover the possession to the landlord under Section 15(2)(vii). There are numerous precedents, where the word (bona fide) in relation to the need of landlord has been dealt with. A conclusive reading of these precedents shows that for proving bona fides, it is the landlord who has to bring evidence of his necessity, desire, and the preparations made by him for using the property for his proposed need. The conclusion from the above examples cements the

understanding that where the landlord bonafidely or genuinely requires the property, such bona fide be assessed by the Court only by examining the landlord and the trial Court would not require the testimony of forthcoming occupier.

7. I have noticed that the petitioner has been non-suited by both the courts below on the sole ground that the petitioner failed to establish his case for ejectment on the ground of personnel bona fide use of subject premises. In my view, this is hardly a ground to non-suit him. It is well-settled law that the sole testimony of landlord is sufficient to establish his personnel bone fide need if the statement of bonafide on oath is consistent with his averment in the ejectment application. On the aforesaid proposition, I am fortified with the judgments of Honorable Supreme Court rendered in the cases of *Muhammad Hayat Vs Muhammad Miskeen and other (2018 SCMR 14441)*, *Pakistan Institute of International Affairs Vs Naveed Marchent And Others (2012 SCMR 1498)*, *Shakeel Ahmed & Ors Vs Muhammad Tarique Farogh & Ors (2010 SCMR 1925)*, *Zarina Ayaz Vs Khadim Ali Shah (2003 SCMR 1398)*, *Abdul Rehman Through Legal heirs & Ors Vs Pakistan State Oil Company Ltd & Ors (PLD 2004 SC 921)*.

8. Reverting to the second point in issue that the petitioner is co-owner of the property falls in the definition of landlord, which is given in SRPO, 1979, which is reproduced as under:

2. (f) "Landlord" means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.

9. It is a settled principle of law that Application for ejectment filed by co-sharer cannot be defeated on the ground that remaining co-sharers were not joined as applicants in the ejectment application. A co-owner can file ejectment proceedings against a tenant without impleading other co-owners. The wisdom behind such principle is that the co-sharer acts on behalf of and represents the interest of all the co-owners of the property. Reliance is placed on case law reported in (2002 SCMR 1112).

10. Prima-facie, the order of learned 1st Senior Civil Judge / Rent Controller-Hyderabad and learned District Judge, Hyderabad, negates the findings of Honorable Supreme Court, rendered in the aforesaid cases. In my view, the Judgment / order, which is against the judgment of Honorable Supreme Court, is nullity in the eyes of law. It appears from the record that the decisions of both the court below are not under the principle of law laid

down and enunciated by Honorable Supreme Court in its various pronouncements.

11. In view of the above, this petition is allowed and both the orders passed by learned Trial Court as well as Appellate Court are set aside. The private respondent is directed to vacate the subject premises within sixty (60) days from the date of receipt of this order. In case of failure, the respondent No.1 shall be ejected from the subject premises without notice and police aid.

12. Petition stands disposed of in the above terms.

JUDGE