

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

**Constitution Petition No. S- 363 of 2010**

Pir Muhammad Hassan Qadir ----- Petitioner

VERSUS

Muhammad s/o Amoon & another----- Respondents

**Date of hearing** : **28.09.2020**  
**Date of decision** : **05.10.2020**

Mr. Abdul Hameed Bajwa, Advocate for Petitioner  
Mr. Muhammad Sulleman Unar, Advocate for Respondent No.1  
Mr. Allah Bachayo Soomro, Addl.A.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - In this lis, the Petitioner has impugned Judgment dated 20.5.2010 passed by learned II-Additional District Judge, Badin in First Rent Appeal No.02 of 2010, whereby the Appeal of Respondent No.1 is allowed and order dated 20.2.2010 passed by learned Rent Controller, Badin in Rent Application No.05 of 2009 is set aside.

2. Per Petitioner he owns the properties viz. shops, open plot, rice factory and an open plot over Serial Nos. 249 and 473 total admeasuring 02-13 acres situated in Deh Badin near Kazia wah Bridge, Badin Town; that the rice factory of the Petitioner was abandoned, as such Respondent No.1 approached and obtained the open area in front of the gate of rice factory on rent for fishing business. Subsequently, Respondent No.1 constructed shops on the demised premises and also failed to pay rent to the Petitioner. The Respondent No.1 had filed his objection / written statement, wherein *inter alia* he denied the allegation of default in payment of rent and requirement of the rented premises by the Petitioner for personal use.

3. The parties had led their evidence before the learned Trial Court on the following issues/points: --

- "(1) Whether the opponent has committed willful default in payment of monthly rent?
- (2) Whether the demised shop is required by the applicant for his personal fide use?
- (3) What should the order be?"

4. The learned Trial Court gave finding on the aforesaid issues and allowed Ejectment Application of the Petitioner through impugned order on the ground of personal bonafide use. Thereafter, Respondent No. 1 impugned order dated 20.02.2010 in First Rent Appeal No.02 of 2010 before learned II-Additional District Judge, Badin who vide judgment dated 20.05.2010 allowed the First Rent Appeal and set aside the order of learned Rent Controller as discussed supra.

5. Learned counsel for the Petitioner has argued that the learned Appellate Court failed to appreciate the findings of learned Rent Controller as well as evidence; that the Petitioner and his witnesses have taken pleas on the point of personal bona fide need of demised shop and brought on record documentary proofs; that learned Appellate Court has not assigned any justification for passing the impugned judgment hence, the same is liable to be set aside by this Court; that the impugned judgment passed by learned Appellate Court is based upon conjectures and surmises which have no basis in the eyes of law; that the impugned judgment passed by learned Appellate Court suffers from patent illegalities, hence liable to be set aside. He further contended that Respondent No.1 and his witnesses admitted relationship of landlord and tenant between the parties in their depositions and also admitted the personal bonafide use of the subject premises by the Petitioner; that said aspect of the case is ignored by the learned Appellate Court. He lastly prayed for allowing the instant Petition.

6. Conversely, learned counsel for Respondent No. 1 has supported the impugned Order of learned Appellate Court and has contended that powers under Constitutional Jurisdiction of this Court are limited in Rent Matters and confined only to ascertain whether the learned lower courts have flouted the statute or failed to follow the law relating thereto? In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the impugned order passed by the learned Appellate Court; besides, there is no misreading or non-reading of evidence by the learned Appellate Court which could warrant interference of this Court; hence, prayed for dismissal of instant Petition.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The only point involved in this matter is personal bonafide use of the subject premises by the Petitioner. The deposition of Attorney of the Petitioner explicitly shows that Respondent No.1 blocked the main gate of the Petitioner's rice factory by erecting a shop in front of the gate of rice

factory without any permission from the Petitioner. He also deposed that Respondent No.1 failed to pay monthly rent to the Petitioner since July 2008. He also deposed in favour of personal bonafide use of the subject premises by the Petitioner. On the other hand, Respondent No.1 has failed to prove his case before the courts below.

9. In the given circumstances discussed supra, it is well-settled law that sole testimony of landlord is sufficient to establish personal bonafide need of the rented premises if the landlord's statement on oath is consistent with the averments made in the Ejectment Application. It is also well-settled that the said testimony of the landlord if not rebutted in cross-examination discharges him from the burden of proof. I am fortified by the decision of the Honorable Supreme Court given in the case of *Pakistan Institute of International Affairs v. Naveed Marchant and others* (2012 SCMR 1498).

10. Keeping in view the facts and law discussed supra, I am of the view that the decision of learned Trial Court is fair and the decision of learned Appellate Court is against the dicta laid down by the Honorable Supreme Court in the case of *Pakistan Instituted of International affairs* supra. Therefore, I hereby set aside the judgment dated 20.05.2010 passed by learned Appellate Court and maintain the judgment dated 20.02.2010 of learned Trial Court. Resultantly, Respondent No.1 is directed to vacate the subject premises and hand over its vacant and peaceful possession to the Petitioner within sixty (60) days from the date of receipt of this order.

11. Consequently, the Petition stands allowed in above terms with no order as to costs.

JUDGE