

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

**C.P. No. S- 172 of 2020**

Malik Faraz Ahmed and others ----- Petitioners

VERSUS

Agha Khursheed & others ----- Respondents

**Date of hearing** : **28.9.2020**

**Date of decision** : **9.10.2020**

Mr. Suresh Kumar, Advocate for Petitioners  
Mr. Muhammad Arshad S. Pathan, Advocate for Respondents  
Mr. Allah Bachayo Soomro, Addl.A.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - In this lis, the Petitioners are seeking a declaration to the effect that the 'Orders dated 28.2.2020 and 14.11.2019 passed by Respondent No. 7 and 8 are without lawful authority and of no legal effect.'

2. Precise facts of the case are that the private Respondents are owners/landlord of property bearing C.S No.714-F Ward-F (132-01 square yards) situated at Khokhar Mohallah, Risala Road, Hyderabad (Premises) having inherited the same from their father who had constructed showroom/shop on ground/mezzanine floor and flats on the first floor. Father of Respondents/Applicants initially rented out the showroom/shop situated on the ground floor along with its mezzanine floor to father of the Petitioners. And, on the death of the father of the petitioners, a new Rent Agreement dated 01.02.2008 was executed for three years commencing from 01.02.2008 to 31.01.2011 at the rate of Rs.9000/- per month for the showroom and mezzanine floor with an advance amount of Rs.204,000/-. Per Respondents/Applicants, the current market rate of rent for the showroom and mezzanine floor is more than Rs.150, 000/-, therefore, Respondents/ Applicants demanded enhancement in rent. But, Petitioners/Tenants did not pay any heed. The Respondents/Applicants have further asserted in the Rent Application that the Premises were gifted to them by their father and their names are also mutated in the record of Rights. Subsequently, Respondents/Applicants informed the Petitioners/Tenants about the gift who assured that they will pay the rent to the nominee of

Respondents/Applicants. It is further mentioned in the Rent Application that after the death of their father Respondents/Applicants decided to start a business in the Premises. Such intimation was also conveyed to the Petitioners/Tenant with the request to vacate the Premises; but, no response came. Rent Application shows that Respondent No.1 was working in Saudia Arabia but, because of the financial crisis returned to Pakistan to start a furniture business in the Premises. The Petitioners/Tenant did not pay rent for December 2016 and January 2017. But, when Respondents/Applicants demanded monthly rent, the Petitioner/Tenant deposited monthly rent from January 2017 before the Rent Controller by filing Miscellaneous Application No.36 of 2017. The Petitioners contested the rent proceedings and controverted the allegations leveled against them.

3. The learned Trial Court framed the following issues from the pleadings of the parties:-

- (i) Whether the rent application is maintainable?
- (ii) Whether the opponent committed default in payment of monthly rent?
- (iii) Whether the Premises required for personal bonafide use of applicant as they intended to start business therein?
- (iv) Whether the father of the opponent constructed the Premises as per terms and conditions settled between the opponent's father and applicant's father, if so what the effect thereof is?
- (v) What should the order be?

4. To prove his claim, Respondent/Applicant (Agha Khursheed Ahmed, Son of Agha Khuda Bux Afridi) filed an Affidavit in Evidence (Ex.17). Thereafter, appeared in the witness box and reiterated the contents of his Affidavit in Evidence (Ex. 17) on oath. He produced a certified copy of Misc. Rent Application No.36 of 2017 along with its order dated 14-03-2017 (Ex.17/A and Ex.17/B respectively), Tenancy Agreement dated 01-02-2008 (Ex.17/C), the General Power of Attorney (Ex.17/D), extract of property bearing C.S No. 714 (Ex.17/E). The witness was duly cross-examined by the learned counsel for the Petitioners/Opponents. The witness No.2 of Respondent/Applicant namely Syed Muhammad Rizwan, Son of Syed Haroon Rasheed filed an Affidavit in Evidence (Ex.18). Thereafter, appeared in the witness box and reiterated the contents of his affidavit on oath. The witness was also cross-examined by the counsel for Petitioners/Opponents. The witness No.3 of the Applicant namely Ayaz Ali, son of Muhammad Ibrahim filed an Affidavit in Evidence (Ex.19). Thereafter, appeared in the

witness box and reiterated the contents of his affidavit on oath. The witness was also cross-examined by the counsel for Petitioners/Opponents.

5. On the other hand, opponent Malik Faraz Ahmed, son of Malik Iqbal Ahmed filed an Affidavit in Evidence (Ex.22). Thereafter, appeared in the witness box and reiterated the contents of his Affidavit in Evidence (Ex.22) on oath. He produced Expenditure Book (Ex.22/A), Approval Letter from the Sindh Building Control Authority (Ex.22/B), approved Map (Ex.22/C), Money Order dated 22-02-2017 and 04-03-2017 along with Receipt dated 08-03-2016 (Ex.22/D, 22/E & 22/F respectively) along with four applications to the Postmaster, Hyderabad (Ex.22/G, 22/H, 22/I and 22/J respectively), Postal Receipts along with Postal Order original and Application dated 05-01-2008 (Ex.22/K and 22/L respectively), the Agreement dated 08-02-1984 along with Receipt dated 04-12-1984 and 08-02-1984 (Ex.22/M and 22/N respectively). The witness was also cross-examined by the counsel for Respondents/Applicants.

6. The learned Trial Court after recording evidence and hearing the parties decided the case in favour of the Respondents vide Judgment dated 14<sup>th</sup> November 2019. The Petitioners impugned the said judgment in First Rent Appeal No.74 of 2019 before learned Additional District Judge, Hyderabad, who after hearing the parties concurred with the decision of the learned Trial Court vide judgment dated 28.2.2020 with the following observation:-

“12. As is discussed above, the rent application filed was allowed on both grounds of default in payment of rent and so also personal bonafide need. First of all, the relationship of landlord and tenant in between the parties is an admitted fact which needs no discussion. Insofar as the ground of default in payment of rent is concerned, the respondents in the application and so also evidence adduced claimed that the opponent committed default in payment of rent since December 2016 while such claim is denied by the appellant stating that it was paid regularly till December 2016 and thereafter since it was refused, it was deposited in court by filing application No.36 of 2017. Thus the burden to prove is shifted upon the appellant to prove the refusal. A minute look at the evidence adduced by the appellant including that of his written reply shows that he has not given specific statement to show that as to how refusal was made by the respondents. No doubt, he has produced receipts of money orders but those documents do only mention that it was refused by one Agha Muhammad Sohail. However, the shown documents do not mention that for which months the rent was tendered. Strange to be noted that per reply to eviction application specifically para No.4, I would quote in which the opponent claim that prior to filing of the eviction application applicant Agha Sohail used to receive the rent and subsequently

refused to collect. This particular statement goes contrary to the version that deceased father of respondent used to receive the rent till December 2016. Further to this aspect of the matter, MRC No.36 of 2017 was filed in which court granted permission to opponent for depositing rent and this application speaks the period of the rent for which it was going to be deposited since January 2017. Thus, if it is assumed to be correct that deceased father of respondent received the rent till December 2016 then how the opponent in his written reply and so also affidavit in evidence claimed that it is respondent Agha Sohail who used to receive the rent but subsequently refused. Yet, the record is silent that on which dates and at which time the rent given to him was refused, whether the rent tendered was already due or it was of the current month in which it was intended to be paid, this all is missing. Furthermore, the money orders by which the rent was sent are exhibited on record which are claimed by the respondent as fabricated documents and if it is so; the appellant was required to examine the Post Master to prove Veracity of such document but record is silent in this regard. Be that as it may, needless to mention that learned Rent Controller also made much emphasize in its long drawn order to this aspect of the matter which, to my humble opinion, is more than sufficient to prove that it is the appellant who committed default in payment of rent. As regards the personal bonafide need, admittedly the eviction application does not specifically mention such fact in its prayer clauses of the eviction application, however, he has stated so at para No.11 of the eviction application that the demised premises is required to him to start his business as after he returned from Saudia Arabia he is in crisis. Furthermore, even if it is assumed to be correct that he failed to establish that sufficient requirement do exist, the landlord is not bound to prove each ground raised by him in the eviction application. To my humble opinion, no illegality, irregularity or misreading and non-reading of the evidence and documents placed on the record is pointed in the impugned order which may call for interference of this court. Therefore, the point under discussion is answered in negative.

**POINT NO.II.**

13. In the light of the discussion held in preceding point, instant F.R.A stands dismissed and the order impugned shall hold the field. The parties to bear their own costs. Let true copy of order be transmitted to learned trial Court along with R&Ps for information and record.”

7. Mr. Suresh Kumar learned counsel for the Petitioners submitted that on 8.2.1984, both Malik Iqbal Ahmed and Agha Khuda Bux entered into a Rent Agreement in respect of Katcha Pucca shops on plot bearing C.S No.714/F Ward (132-01 Sq. Yards) Khukhar Muhalla, Risala Road, Hyderabad. Said Tenancy Agreement is available on record. He submitted that Malik Iqbal Ahmed passed away on 11.11.2007 and left behind Petitioners, who, entered into a new Tenancy Agreement dated 1.2.2008 and

enhanced the rent from Rs.6000 to Rs.9000 per month, unilaterally without looking into the contents of the previous Tenancy Agreement dated 8.2.1984; that after the death of Agha Khuda Bux notice under section 18 of Sindh Rented Premises Ordinance, 1979 was not served upon the Petitioners; that the Petitioners attempted to deliver the rent to the legal heirs of late Agha Khuda Bux but they refused to receive from January 2017. Therefore, the rent was deposited in Court in Miscellaneous Application No.36 of 2017. He next argued that Respondents have failed to show default or bonafide need of subject premises in good faith. He argued that the tenancy right of the Petitioners is protected under the Agreement dated 8.2.1984, hence, they cannot be evicted from the subject premises. He argued that false grounds have been made by the Respondents just to get Petitioners evicted; that Respondents/Applicants have failed to prove bonafide need of the premises; that the execution of Agreement dated 8.2.1984 between the predecessors of the parties is admitted and the condition of not evicting the tenant is incorporated in lieu of expenditure of a heavy amount of Rs.3, 18,000/- and heavy advance of Rs.2, 04,000/-. He further argued that if Respondents have any cause of action then that cause of action will accrue after adjustment of entire received advance rent which had determined the period of rent between the parties; that both the Court below failed to consider that from 1984 till December 2016 the rent has been continuously paid and the non-payment of rent for January, 2017 was on account of refusal by the Respondent to receive the same; however, the same was deposited in Court; that the Rent Agreement does not provide an increase in rent. On the findings of both the courts below, learned counsel has contended that the impugned Judgments passed by both the courts below are full of errors based upon misreading and non-reading of evidence; that the findings of learned courts below are arbitrary and perverse; that the averments of Petitioners made in the Affidavits in evidence were not considered in the impugned Judgments, therefore, both the judgments are a nullity in the eyes of law; that both the learned courts below have failed to appreciate the material aspects of the matter, therefore, the impugned Judgments are illegal and against the law, thus, are liable to be set aside; that both the courts below have failed to appreciate the case-law cited by the learned counsel for the Petitioners; that learned Appellate Court failed to consider the grounds of Appeals agitated by the Petitioners. He further argued that the Respondents had filed the Ejectment Application in violation of terms and conditions of the Agreement as discussed supra; that in presence of a valid Tenancy Agreement the Petitioners could not be ordered to be evicted from the premises on the ground of personal need; that both the courts have failed to appreciate that the Rent Application of private Respondents was not

maintainable before the learned Rent Controller, therefore both the Judgments do not sustain on this ground alone, thus, liable to be set aside. He lastly prayed for setting aside both the Judgments rendered by the courts below. In support of his contention, he relied upon cases of H.M Saya and Co, Karachi Vs Wazir Ali Industries Ltd Karachi & another (PLD 1969 SC 65), Mrs. Zehra Begum Vs Mesrrs Pakistan Burma Shell Ltd (1992 SCMR 943), and Mirza Fazal Ghani Vs Bahadur Khan (2017 YLR 1312)

8. Mr. Muhammad Arshad S. Pathan learned counsel for the private Respondents has argued that a Rent Agreement was executed between the father of Respondents and Petitioners. Subsequently, rent was enhanced from time to time and a new Agreement was executed between the parties on 1.2.2008 for three years commencing from 1.2.2008 to 31.1.2011 at the rate of Rs. 9000/- per month. That all earlier transaction amount merged in the last agreement. That the Respondent No.1 being Attorney submitted his Affidavit in Evidence and pleaded his case on the point of default in payment of rent with effect from December 2017 to date; that enhanced rent was not paid which is also the default. He pointed out admissions of the Petitioners in their evidence and pleaded the point of personnel bona fide need of the subject premises by the Respondent for running the business. Learned counsel emphasized that the personal need of the landlord as enacted in clause (viii), subsection (2) of Section 15 has an overriding effect. Once, the personal bonafide need is established, the Rent Controller has no option but to direct eviction of the Tenant under the mandatory provision of Section 15, which, the learned Rent Controller accordingly did. And, the learned Appellate Court concurred with. He supported the impugned Judgments passed by the courts below and contended that the private Respondents are landlord, thus Rent Application was maintainable under the law; that there are concurrent findings recorded by the competent forums under the special law; that the grounds raised in the instant Petition are untenable; that both the aforesaid Judgments are passed within the parameters of law; that the instant petition is frivolous, misleading and this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot dilate upon the evidence led by the parties; that learned Rent Controller after recording evidence passed just, proper and fair Judgment; that learned Appellate Court after hearing the counsel for the parties passed a well-reasoned judgment under law. He lastly prayed for dismissal of the instant Petition. In support of his contention, he relied upon cases of Khalid Vs 7<sup>th</sup> Additional District Judge Karachi & Ors (2015 CLC 570), Dr. Ahmed Ali Vs Mst. Shahana Younis & Ors (2012 MLD 1190), Chirag u Din Vs Muhammad Shareef & Ors (2018 YLR 1768), Mehdi Nasir Rizvi Vs Muhammad Usman Siddiqui (2000 SCMR

1613), Muhammad Nasir Khan and Another Vs Muhammad Attique & Ors (2017 CLC Note 112), Muhammad Hayat Vs Muhammad Miskeen Through Allors & Ors (2018 SCMR 1441), Ashique Ali & Brothers Vs Aslam Parvaiz & Ors (2017 YLR Note 247), Mst. Naseem Vs Nabi Bux (2000 MLD 175), Pakistan National Shipping Corporation Vs Messrs General Service Corporation (1992 SCMR 871), unreported order dated 20.9.2017 passed by the Honorable Supreme Court in Civil Appeals No. 300, 346, 812 and 851 to 854 of 2017. (Waqar Zafar Bakhtawri & Ors Vs Haji Mazhar Hussain Shah & Ors).

9. I have heard learned counsel for the parties and with their assistance carefully gone through the material placed by them and the case-law cited at the bar.

10. The questions involved in the present proceedings are as follows:-

i) Whether the Premises required for personal bonafide use of respondents?

ii) Whether the tenancy right of the petitioners is protected under the rent agreement and they cannot be evicted from the subject premises?

11. The first proposition is evaluated and settled by the Honorable Supreme Court in the case of Muhammad Hayat Vs Muhammad Miskeen Through Allors & Ors (2018 SCMR 1441) that “*sole testimony of the landlord is sufficient to establish his personal bona fide need if the statement of the landlord on oath is consistent with his averments made in the ejectment application.*” In the instant case, the Petitioners have failed to rebut the evidence of the Respondents on this point.

12. On the propositions mentioned in para 10 supra, the learned trial court has appreciated the factual as well as the legal aspect of the case. And, gave its findings in favour of the private Respondents in the following terms:

**“Point No.5:-**

19. Now virtue findings qua discussion herein supra, both default and personal bonafide need is observed against the opponent in the case. I would like to take another argument of opponent side that no prayer qua personal bonafide need is available within pleading which is countered by the applicant on score that in prayer only eviction is sought from the Court on the grounds mentioned within application. Indeed it is observed that within prayer clause eviction only is sought against the opponent and no specific prayer is available on grounds of default and bonafide need but the same is not detrimental to interest of applicant-landlord or for deciding the fate of case as the grounds

within application are multiple grounds and if successful in any of them, eviction is to be ordered thus in terms of drafting, though no specification in respective prayer is mentioned but where each ground culminate into eviction independently then seeking of eviction sole without specification is suffice upon the very ground within rent application instead of mentioning same in specific within prayer. Otherwise even if considered to some gravity would make the irregularity but certainly would not render the rent case redundant. **Thus where the terms of admitted agreement between parties been found in violation to statutory provision of law thus terms therein precluded from consideration which precluded landlord from seeking eviction on personal need and default compromised for period of 03 months non-payment, thus with no consideration thereto, rent application is maintainable and virtue evidence where default in terms as surfaces that opponent has failed to prove the direct offer of rent and refusal thereof by applicants before having tendered the money order and remitted the rent within MRC, so also it surfaces that no statutory increase been observed by the opponent in lapse of almost 12-years since under tenancy per own executed agreement which element thus render and classify default against the tenant. Similarly the applicant being consistent in pleadings and evidence qua requiring the premises in good faith for personal bonafide use where despite cross examination, nothing on contrary surfaced thus applicant has proved both his ground on basis of which is seeking eviction from Court.** The recovery of rent is always an element within domain of a Civil Court therefore considering all propriety of the record and proceedings as before the Court, the rent application stands allowed qua eviction on score of default and personal bonafide need of the landlord and opponent-tenant is hereby directed to vacate and handover the peaceful and vacant possession of demise rented premise viz., C.S No.714-F Ward-F, measuring 132-01 square yards situated at Khokhar Mohallah Risala Road, Hyderabad within a period of 45 days without fail.”

13. The Affidavit in Evidence / Deposition of the Petitioner (Malik Faraz Ahmed) in the Rent Application depicts the factual position of the case, wherein, he has admitted that the Respondent after coming from Saudi Arabia sought subject premises for personnel need which was denied by them. He further admitted the execution of the Agreement dated 13.2.2008.

14. The learned Rent Controller after recording evidence and hearing the parties gave a decision against the Petitioners. The learned Appellate Court concurred with the decision of the learned Rent Controller on the same premise. The impugned Judgments passed by both the courts below explicitly show that the matter between the parties has been decided on merits based on the evidence before them.

15. I am of the view that the learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. And, the learned Appellate Court has considered every aspect of the case in its well-reasoned Judgment.



16. After perusing the record, I have formed the view that there is no material illegality, infirmity, or irregularity in Judgments of courts below. Therefore, interference by this Court in Constitutional jurisdiction is unwarranted.

17. In light of the above facts and circumstances of the case, I hereby maintain the concurrent findings of two courts below. And, dismiss the instant Petition along with the listed application(s) with direction to the Petitioners to vacate the subject premises and hand over its vacant and peaceful possession to the private Respondent within sixty (60) days from the date of receipt of this judgment. In case of failure, petitioners shall be evicted from the subject premises without any notice with police aid.

JUDGE