

**IN THE HIGH COURT OF SINDH, AT
KARACHI.**

Constitutional Petition No. S-572/2011

Petitioner : Muhammad Fazil Khan, through Mr. Mufti Muhammad Bashir, Advocate.

Respondent No.1 : Aziz Khan, through Mr. Syed Faique Rizvi, Advocate.

Date of hearing : 03.05.2017

Date of Judgment :

J U D G M E N T

YOUSUF ALI SAYEED, J:- The Petitioner has impugned the Order dated 21.04.2011 made by the 1st Additional District Judge, Karachi (Central) in F.R.A No.151/2010, dismissing the FRA and upholding the Order dated 22.05.2010 made by the learned 3rd Rent Controller, Karachi (Central) in Rent Case No.494/2005, whereby the Petitioner, who is the tenant of the Respondent No.1, was directed to hand over vacant physical possession of a shop situated on the ground floor of the building situated on Plot No. III-G, 9/1-A, Nazimabad, Karachi, to the Respondent No.1 within 60 days from the date of thereof on grounds of default in rent and personal need.

2. As per learned counsel for the Petitioner, the underlying Order dated 22.05.2010 is the product of earlier Orders made on 05.01.2010 and 01.02.2010, whereby the learned Rent Controller firstly closed the side of the Petitioner for cross-examining the Respondent No.1, and then subsequently closed the Petitioner's side for evidence.

3. He pointed out that an Application had been filed seeking recall of the said Orders of 05.01.2010 and 01.02.2010, and was dismissed by the learned Rent Controller vide Order dated 26.04.2010, following which the Rent Case culminated in the Order dated 22.05.2010. He contended that the learned Rent Controller had acted fancifully and whimsically in adopting this approach, and thus deprived the Petitioner of proper opportunity to establish his case. He further contended that the learned ADJ had similarly fallen into error in upholding the Order dated 22.05.2010, whilst failing to appreciate that the Petitioner ought to have been afforded further opportunity to cross-examine and to lead evidence, and matter ought to then have been decided on merits.

4. The point raised on behalf of the Petitioner in that regard is that the learned Rent Controller, in making and maintaining the Orders dated 05.01.2010 and 01.02.2010, failed to take into consideration that counsel for the Petitioner was busy before this Court in various cases, and had moved an Application for adjournment on those dates, which ought to have been granted rather than the side of the Petitioner being closed and the matter being decided on the basis of the record, as available.

5. Additionally, whilst not specifically raised by way of a ground in the Memo of Petition, it was submitted by learned counsel that the case of personal need had been erroneously allowed by the learned Rent Controller and upheld by the Appellate Court whilst overlooking that the particulars of the circumstances constituting and underpinning such need had not been pleaded.

6. He submitted that the Respondent No.1 had to prove his need to be genuine as at the time of filing of the eviction proceedings and placed reliance on a Judgment of the Honourable Supreme Court in the case reported as Javed Khalique v. Muhammad Irfan 2008 SCMR 28. He contended that, as such, the Respondent No.1 was obliged to have stated the nature of business that he intended to establish at the premises in his Application under S.15 of the Sindh Rented Premises Ordinance 1979 (the “**SRPO**”), and cited single-bench Judgments of this Court in the cases reported as Jamaluddin v. Muhammad Anwar 1993 MLD 876, and Muhammad Arif v. Choudhry Gulzar Ahmed 1991 CLC 1850 in support of this proposition. He also contended that as the Respondent No.1 had not been cross-examined, his Affidavit could not be considered as evidence. In this regard, he placed reliance on a Judgment of the Honourable Supreme Court in the case reported as Mrs. Mariam v. Naeem Ahmed 2001 SCMR 1676.

7. Learned counsel for the Respondent No.1 strongly controverted the submissions made on behalf of the Petitioner. He submitted that the side of the Petitioner was rightly closed after affording numerous opportunities and there was no equity in favour of the Petitioner for the same to be reopened. He further submitted that Respondent No.1 had fully established his case and the learned Rent Controller had correctly decided the Rent Case on the basis of the record.

8. What primarily merits consideration in the exigencies of the given situation is the conduct of the Petitioner during the course of proceedings in the Rent Case and whether there was any deprivation of proper opportunity, as has been alleged.

9. Having examined the Impugned Order and considered the submissions made by learned counsel in light of the record, it is apparent that the Petitioner had been afforded ample opportunity for cross-examination over a protracted period, and had also been put on notice as to the consequences of indolence/neglect in that regard in as much as his side had previously been closed and then reopened as per Orders made on 30.05.2009 and 24.12.2009, with a note of caution.

10. Be that as it may, the further opportunities afforded to the Petitioner were also squandered, and the right of cross-examination appears to have been gambled in an endeavor to protract the proceedings. That the inevitable conclusion of this gambit came to pass in terms of the closure of the Petitioner's side for cross yet again is scarcely surprising, and the responsibility for this outcome rests on no one but the Petitioner, or counsel. Furthermore, when the case was fixed for filing of the Affidavit-in-Evidence of the Petitioner on subsequent dates of hearing (i.e. 11.01.2010 and 19.1.2010) the Petitioner again sought adjournments to file the same, but did not do so, and on 01.02.2010 his side was closed.

11. It also merits consideration that in the Affidavit filed in support of the Application moved on behalf of the Petitioner before the learned Rent Controller on 03.02.2010, seeking recall of the Orders dated 05.01.2010 and 01.02.2010, the reason advanced to explain the inability of counsel to proceed with the Rent Case on 05.01.2010 was that of his being unwell, which, as noted by the learned ADJ, runs contrary to the very Application for adjournment that had been submitted on that date, wherein it had been stated that counsel was busy before this Court. Needless to say, in light of this contradiction, the plea of the Petitioner appears disingenuous. Even otherwise, as also noted, as per the vakalatnama filed on behalf of the Petitioner in the Rent Case, there were three advocates who had thereby entered appearance and there was thus no foundation or valid rationale for adjournment.

12. As such, it is manifest that reasonable opportunity was afforded to the Petitioner to cross-examine and to lead evidence whilst the proceedings before the Rent Controller remained pending at the evidentiary stage over a protracted period. However, the matter was handled in a casual manner by and on behalf of the Petitioner without due care, despite the Petitioner being earlier put on caution during the course of proceedings, as noted herein-above.

13. As regards the plea that the Respondent No.1 had failed to establish a case personal need, I have perused the Application under S.15 of the SRPO filed by Respondent No.1 for initiating the Rent Case as well as the Affidavit-in-Evidence filed by him during the course of those proceedings, from which it is clear that the Respondent No.1 had set up a case of personal need based on the

requirement that the shop was needed for the establishment of a business for his son in good faith as he was not possessed of any other shop, and his deposition in evidence remained consistent with this position. In the cases reported as *Iqbal Book Depot v. Khateeb Ahmed* 2001 SCMR 1197 and *Pakistan Institute of International Affairs v. Naveed Merchant & others* 2012 SCMR 1498, the Honourable Supreme Court held that where the statement of a landlord on oath was consistent with the averment made in the ejectment application and the same had neither been shaken nor anything has been brought in evidence to contradict the statement of the landlord, such statement on oath would be considered sufficient for acceptance of the ejectment application. Therefore, this plea is of no avail to the Petitioner.

14. As to the plea that the nature and particulars of the business intended to be established ought to have been stated. I am of the view that the same is misconceived as it also stands well settled in terms of the Judgments of the Honourable Supreme Court in the cases reported as *Haji Mohibullah & Co. and others v. Khawaja Bahauddin* 1990 SCMR 1070 and *Juma Sher v. Sabz Ali* 1997 SCMR 1062, that it is not necessary for landlord to disclose what business he intends to start in the premises. Therefore, this plea is also of no avail.
15. Accordingly, it is clear that in the matter at hand the Respondent No.1 had succeeded in discharging the evidentiary burden and had established his case of personal need. The reliance placed by the Petitioner on Mariam's case (Supra) is wholly misplaced as that case turned on its own facts. Furthermore, in the matter at hand the failure to cross-examine the Respondent No.1 lies

with the Petitioner, who cannot be permitted to take advantage of his own failure and use the same as a basis to vitiate the proceedings.

16. Accordingly, the case of the Petitioner is evidently baseless and ill-conceived, and in the given circumstances I find no illegality or irregularity in the approach of the statutory fora that admits to or warrants correction in exercise of the writ jurisdiction of this Court. It is well settled that the Constitutional jurisdiction in matters under the SRPO is narrow in scope and concurrent findings of the Courts below are not to be interfered with under Article 199 unless the findings are wholly perverse, arbitrary, based on a misreading of evidence or have resulted in a miscarriage of justice, which does not appear to be the case in the matter at hand.

17. In view of the foregoing this Petition is hereby dismissed with no order as to costs.

JUDGE

Karachi.

Dated:_____