

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-75 of 2016

Before: Mr. Justice Muhammad Shafi Siddiqui

MM/s, Shakoor Automobiles ----- Petitioner

Versus

Mst. Jamshed Malik & others ----- Respondent

Date of Hearing: 07.11.2017Petitioner: Through Mr. Mehmood Habibullah along with
Mr. Fahim Zia Advocate

Respondent: Through Muhammad Ali Lakhani, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: This petition is filed by the tenant against the concurrent findings of two Courts below in respect of an application under section 15 of the Sindh Rented Premises Ordinance, 1979. The ejectment of the petitioner was sought on the ground of default and personal requirement. The trial Court after effecting service allowed the parties to lead evidence. The respective affidavit-in-evidences along with the relevant documents were filed and the witnesses were subjected to cross examination. The trial Court framed the following issues:-

1. Whether the applicant required the demise premises for her personal bona fide use?
2. Whether the petitioner had defaulted in the monthly rent from 03.2.1993?
3. What should the order be?

1. The trial Court allowed the ejectment on both the grounds and so also the appellate Court and dismissed the appeal of the petitioner.

2. The brief facts are that respondent claiming to be owner of the subject premises namely "Malik Square" situated on Survey Nos. 9 and 10, survey sheet NO. PR-II, M.A. Jinnah Road, Karachi and on the basis of a registered Conveyance Deed filed the ejectment application. In the ejectment application tenant/petitioner claimed to have been depositing rent in MRC No.204/1993 (Ledger No.1161/1993) in the Court of 1st Rent Controller, Karachi (South) in the name of deceased husband of respondent. It is claimed in the ejectment application that despite the fact that the husband has no title he continued to deposit the rent as aforesaid. In para-3 of the ejectment application respondent contended that a notice dated 10.9.2002 was served upon the petitioner that the premises are required for personal bona fide need. In para-4 again a notice dated 18.7.2011 was stated to have been sent which relates to personal requirement as it does not specify any amount of default or the period for which default was claimed. The ejectment application was then filed on 03.8.2011. After service of notice/summons the written statement was filed wherein the petitioner has stated that he has been depositing rent in MRC No.204/1993 and nothing is due and outstanding and the personal requirement was denied.

3. I have heard the learned Counsels and perused the material available on record.

4. To begin with, I first consider the point of personal requirement which claimed to have been established through evidence. The affidavit-in-evidence of the applicant is available as annexure-D to the petition. In para-6 the respondent/owner stated that she required the demised premises for personal bona fide need and to expand her business and her company of which she claimed to be a director. The attorney of the landlord/owner who filed affidavit-in-evidence was subjected to cross examination. The kind of requirement for which premises was required

was somehow vague. It is stated to be required for personal need as well as for the company of which she was a director. Neither the name of the company is mentioned nor any personal bona fide need was explained. The two claims i.e. the need of respondent/owner and the need of a private limited company are different and distinct. The requirement of an individual, who may be a director of a company, cannot be considered at par with the requirement of the company. The property was not owned by the company nor it is stated that the respondent/owner is attempting to provide the property to company as her investment as argued at the later stage by the Counsel. It is nowhere in the entire evidence established beyond any reasonable doubt that the applicant required premises for her bona fide personal use as she also stated that it was required for the use of company as being director and has filed the ejectment application. This contrary version militates and/or overshadowed the bona fide. The applicant's attorney also admitted in the 5th line of cross examination that he has not mentioned in his affidavit-in-evidence the name of the company whose owner is respondent. The applicant admitted that they have other vacant premises in their possession in the same building and that the total measurement of the building is 2000 square yards. It is further stated that there are two tenants in building while rest of the building is in possession and use of the applicant. It is stated that the total area of the "subject premises" is around 200 square yards whereas in the written statement it has shown as 400 square feet which is admitted to be correct. The entire Ground Floor and 1st Floor are stated to be in possession of respondent/owner along with back portion of the building which is also lying vacant. Apart from these two tenements which are in occupation of the petitioner, two additional showrooms on the Ground Floor are also in possession of the respondent/owner. The respondent has not explained as to why the entire building except the tenements which are hardly of 400 square feet is not suitable for personal bona fide

use of respondent/ owner. Since the respondent/ owner herself has not established her personal bona fide need beyond reasonable doubt and/or to the satisfaction of the Court, the requirement of a company of which respondent is only a director could hardly be considered. In the case of Mst. Shirin Bai vs. Famous Art Printers (Pvt.) Ltd. & others (2006 SCMR 117) the Hon'ble Supreme Court has defined "good faith" with reference to personal bona fide need of a landlord/landlady which is being claimed under Sindh Rented Premises Ordinance, 1979. The Hon'ble Supreme Court has defined "good faith" as honest act and capable of being proved or disproved only by evidence of conduct. The landlord must plead and prove his requirement by evidence that inspires confidence. It is stated to be state of mind which may be inferred from circumstances attending to each case and Courts ordinarily accepts requirement of landlord without imputing bad faith unless strong circumstances indicates to the contrary. In the instant case the respondent may have pleaded requirement but has failed to prove to the satisfaction of the Court.

5. Similarly In the case of Allies Book Corporation vs. Sultan Ahmed (2006 SCMR 152)2006 SCMR, the Hon'ble Supreme Court for undisclosed occupied premises, in para-14 observed that these were very material facts in establishing the good faith and bona fides of the respondents for their bona fide personal requirement for occupation and use of the demised shops and by suppressing/concealing them they had completely demolished their case that the demises shops are required by them for bona fide personal occupation and use.

6. Coming to the next point of default, the record shows that without any objection on the part of respondent/owner Mst. Jamshed Malik, her husband was receiving rent against receipt duly signed by him. Building was named as "Malik Square" after his name. Since 1993 for the reasons that may have been mentioned in the Miscellaneous Rent

Case, the petitioner started depositing rent in MRC No.204/1993 (Ledger No.1161/1993). These facts are stated in the ejectment application itself. The legal notices which were issued before initiating the ejectment proceedings does not talk about such default as claimed in these proceedings and notice dated 10.9.2002 was silent as far as any default is concerned. It only claims that the dues to be cleared towards the utility. This notice also does not say that Mr. Malik who was earlier receiving rent has expired. The next notice was followed by letter dated 18.7.2011 wherein the premises was required for personal bona fide use of respondent/owner, however no specific default or arrears either in terms of quantum or period was claimed. The notice was replied by the Counsel for the petitioner on 27.7.2011 which is also annexed with the ejectment application. Until 2011 the petitioner was not informed that Riaz Malik husband of respondent/owner has expired. It only came to the knowledge of the applicant when ejectment application was filed. In para-2 it is stated that the rent in the MRC referred above was deposited in the name of deceased husband of Mst. Jamshed Malik wife of Riaz Malik and by said application in terms of para-2 he was informed that the deceased Riaz Malik had no title in the property.

7. As against this information in terms of para-2 of the ejectment application which was replied accordingly, the petitioner made no attempt to tender rent at least from the date of such knowledge to the respondent wife of Riaz Malik and as being owner. He continued to deposit rent in said MRC despite having knowledge of his sad demise. He made no attempt to enquire about the legal heirs although in all fairness he could have deposited the amount at least in the name Mst. Jamshed Malik as he was informed accordingly by virtue of an application under section 15 of the Sindh Rented Premises Ordinance, 1979. There is no evidence on record that prior to filing of such application, the tenant was ever informed about the sad demise of Riaz Malik. Admittedly the building was named after his name as Malik Square and admittedly

receipts were being issued duly signed by Malik. The petitioner though could not be saddled with the responsibility of paying rent to the respondent since he was never informed but that advantage is only till the date of service of notice of ejectment application. When the notices of ejectment application were served at least from October, 2011 when the written statement was filed the petitioner must offered the rent to the present owner. The petitioner however chooses to deposit the rent continuously in the name of a deceased person despite having knowledge. He may have deposited the rent for the years of 2014 and 2015 but it was deposited after acquiring knowledge of sad demise of Riaz Malik hence it was not a lawful deposit after service of notice of ejectment application.

8. I, therefore, render the petitioner defaulter with effect from the date of service of notice of ejectment application. He is liable to tender rent to the respondent after acquiring knowledge of sad demise of Riaz Malik and since he has failed to offer rent to the respondent, he has rendered himself as defaulter in payment of rent with effect from the date of service of ejectment application which in any case is subsequent to 03.8.2011 which is a date of institution of the application and prior to filing of the written statement which is October, 2011. There is no evidence that he has offered rent in between or thereafter to the respondent.

9. The cumulative effect of the above is that the petition is dismissed and the ejectment application is allowed only on the ground of default and declined on the ground of personal requirement.

10. The files of MRC No.204/1993 and Record & Proceedings be sent back to the trial Court.

Dated:

Judge