

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-2129 of 2018

Muhammad Akram

Versus

M/s Jamia Imamia Trust

Date of Hearing: 30.03.2021 & 12.04.2021

Petitioner: Through Mr. S. M. Abid Ali Qadri Advocate.

Respondent No.1: Through Ms. Mehreen Ebrahim Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- M/s Jamia Imamia Trust, being landlord of the premises in question, filed eviction application on the ground of default and personal requirement for the extension of Madarsa and for teachers/Ustad of Madarsa to provide them some residential accommodation. The notices were served and the petitioner filed written statement followed by recording of evidence. The eviction application was ultimately allowed on the ground of personal requirement only declining the ground of default for the ejection. Aggrieved of it First Rent Appeal No.84 of 2018 was filed before III-ADJ Central who concurred with the views of the Rent Controller.

2. The preliminary objection of the petitioner's counsel was that the Trust Deed had expired and that the trustees who should have formed the Trust, were not cited as witnesses. He further argued that the eviction application was filed by an unauthorized person. This being the gist of the arguments, learned counsel for petitioner further attributed the malafide on the part of the respondent/landlord on the ground that

the default was unnecessarily pleaded which shows that the respondent came with unclean hands.

3. Learned counsel appearing for respondent No.1 has refuted the arguments of the learned counsel for petitioner. In order to rebut the preliminary objections, learned counsel has filed relevant documents including minutes of meeting etc. which, per learned counsel, were not filed before the Rent Controller as no such pleas were taken in the written statement.

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

5. Admittedly on account of alleged refusal, the rent was/is being deposited in MRC No.218 of 2011 however in utter violation and disregard of the arguments of the petitioner's counsel, the rent is still being deposited in the name of Jamia Imamia Trust through one Mirza Abbas, thus admitting and agreeing the relation. Thus, the contention of the counsel for the petitioner that there exists no such trust or that the trust deed had expired or that the trustees have not resolved to initiate legal proceedings have lost its credibility. The rent is still being deposited in the name of Jamia Imamia Trust through one Mirza Abbas who is disclosed as rent collector.

6. Furthermore, there is no specific plea in the written statement that the trustees have been unlawfully appointed as trustees of the trust named above, as is evident from the contents of the written statement. However, in the cross-examination questions were put to the witness of the respondent/landlord Zeeshan Abbas that the trust was not renewed after its expiry whereas the witness stated that there are 14 trustees at the moment, details of whom were not filed. Hence, on such premises, learned counsel for petitioner has agitated this ground before this Court.

7. It is immaterial for the tenant as to who are the trustees and how those trustees were/are being replaced. It is indoor/internal management of the trustees and trust which has nothing to do with the relationship of landlord and tenant between Jamia Imamia Trust and the petitioner. None of the alleged trustees who were deprived of any benefit of being a trustee was cited as a witness or summoned by the petitioner.

8. As to the objection vis-à-vis competence of the person through whom eviction application was filed, the resolution in favour of Zeeshan Abbas to initiate legal proceedings was cited/filed as Ex.A/1. However, on the insistence of the petitioner's counsel, the Minutes of the meeting whereby one Firdous Shamim Naqvi was appointed as managing director of the trust was called which were accordingly placed before this Court by learned counsel for respondent No.1. Though controversy here in this rent proceedings has nothing to do with such indoor/internal management of the trust, yet for the purpose of keeping record straight resolution which was exhibited before the trial Court is now supported by Minutes of meeting duly signed by all trustees. In these circumstances I would thus score of this objection that eviction application was not filed by an authorized representative of the trust/landlord.

9. Insofar as merits of the case are concerned, it was stated on oath that respondent Jamia Imamia Trust required the premises for extension of Madarsa and some rooms/space for accommodating teachers and the students as the demised premises is adjacent to Jamia Islamia Trust itself. This statement on oath is not seriously shattered in the cross-examination except a suggestion that for the accommodation of teachers' residence flats at the above said premises could be more suited. In fact it is by now a settled principle/law that choice of a premises is prerogative of the landlord and this cannot be left at the

decision/option of the tenant as to which premises is more suited for the landlord and which is not suited for the extension of Madarsa/ accommodation or any other purpose.

10. This petition, as far as personal requirement is concerned, is against concurrent findings of two Courts below and nothing is disclosed and/or pointed out by the petitioner's counsel either in the evidence or otherwise, which could enable this Court to interfere in the findings of two Courts. Accordingly, instant petition is dismissed along with pending application.

Dated:

Judge