

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-233 of 2016

Muhammad Aslam
Versus
Mst. Fozia Aqeel Zaheer Lari & others

Date of Hearing: 11.12.2017

Petitioner: Through Mr. Naeem Suleman Advocate.

Respondent No.1: Through Mirza Sarfaraz Ahmed Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-The subject application bearing Rent Case No.58 of 2009 filed by respondent No.1 against the petitioner was remanded to the Rent Controller to be considered under section 15 of Sindh Rented Premises Ordinance, 1979 by the Hon'ble Supreme Court which was disposed of by the Rent Controller after recording evidence and so also by the appellate Court. The Rent Case bearing No.58 of 2009 was allowed on 28.11.2014 on the ground of personal requirement, which order was maintained by the appellate Court vide order dated 11.01.2016, which is impugned in this petition.

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

3. The petitioner has seriously challenged the personal bona fide need of respondent No.1 on the basis of quality of evidence that has come on record after remand of the Rent Case, as stated above. Mst. Fozia Aqeel Zaheer Lari, the respondent No.1, filed her affidavit-in-evidence wherein she stated that she required shop No.6 situated in Lari Building constructed on Plot No.33-F, Commercial Area, Muhammad Ali Memorial Cooperative Housing Society, Karachi for her personal bona

vide need. In paragraph 8 she disclosed that she possessed degree in M.Sc. and Diploma in Interior Designing and the rented shop is required by her as being suitable for running such business.

4. She also disclosed in paragraph 9 that she had also filed rent cases No.59, 60 and 61 of 2009 against tenants and obtained possession of the respective shops from them. In paragraph 10 the landlady disclosed that the shop in possession of petitioner is genuinely required to start business of interior decorator/interior designing by opening a showroom as well as office and wide space is required as such. She was cross examined at length by the counsel for the petitioner in which she admitted to have filed three rent cases as under:-

- i. Rent Case No.59 of 2009 against Abdul Salam; Shop No.3 & 4
- ii. Rent Case No.60 of 2009 against Zeenan Snacks Shop No.6 and
- iii. Rent Case No.61 of 2009 against Syed Amir Ali Shop No.1

5. She has also admitted in cross examination that she filed four rent cases for personal need. During cross-examination the landlady admitted to have accommodated Abdul Salam, against whom Rent Case No.59 of 2009 was filed, by handing him over premises of Syed Amir Ali. She however maintained that it was on humanitarian ground and that she does not know whether Abdul Salam was paying rent of the premises.

6. In further cross-examination recorded on 14.11.2014 she again admitted that Abdul Salam used to pay her rent of Rs.20,000/- per month for new place i.e. the premises of Syed Amir Ali. In respect of Shops No.3 and 4, which were originally in possession of Abdul Salam, she however maintained her ignorance that the premises was let out to "Berrylicious Californian Frozen Yogurt" in between November 2012 to February 2014. She also stated that the shops i.e. Shop No.3 and 4 might have been rented out to Berrylicious Californian Frozen Yogurt. She also admitted that few months (two months) prior to the filing of instant rent

case she sold out the very adjacent plot No.34/F. She also admitted that Abdul Salam who was accommodated at the premises of Syed Amir Ali was running New Asmat General Store. She also admitted in the cross-examination that she has come to Pakistan to proceed with this case and that she is not sure when will she return abroad.

7. The petitioner Muhammad Aslam filed his affidavit-in-evidence and was also subjected to cross-examination. In paragraph 10 he denied/controverted the personal requirement of the respondent and has stated facts about the rent applications preferred by the respondent No.1 against her respective/other tenants and the fact of handing over one of the premises that is of Syed Amir Ali to Abdul Salam who is running his general store at the said premises. The tenant/petitioner has denied the suggestion of the advocate of the landlady/respondent that without vacation of the subject premises the applicant/respondent cannot use the building beneficially. The tenant/petitioner was also suggested by the counsel that he has produced photographs showing only billboards of Berrylicious Californian Frozen Yogurt and has not mentioned the name of the alleged tenant running the Berrylicious Californian Frozen Yogurt as well as the quantum of rent. The tenant/petitioner was also suggested by the counsel that in the photographs showing billboards of Berrylicious Californian Frozen Yogurt no person was found selling or buying the ice-cream. The counsel for the landlord/respondent further suggested that it was a billboard installed by the company for the purpose of advertisement which suggestion was denied.

8. The personal bona fide need of the landlord/landlady is measured on the basis of a gauge which is dependent upon consistent and conscious inspiring evidence and the existence of such evidence provides presumption as to existence of genuineness unless evidence contrary to such bona fide requirement is available. The touchstone provided by the

Hon'ble Supreme Court in such circumstances is that the landlord/landlady should be expressive as to the insufficiency of space already in possession. She may have obtained possession of any adjacent premises under section 14 of the Sindh Rented Premises Ordinance, 1979 but bona fide requirement of subject shop is to be determined on the basis of available evidence. The bona fide requirement also get disturbed or shaken when the landlady was found to have let out other premises or found to have handed over possession of the premises, which was the subject matter of connected rent application, wherein the very premises required for personal need (as could be ascertained from evidence) was handed over to other tenant irrespective of the fact if it was acquired under 14 of the Sindh Rented Premises Ordinance, 1979.

9. No doubt a consistent demand and desire was made by respondent No.1 that she required the premises for running an office/ showroom for interior designing yet the very fact that the two premises, which were required for personal bona fide need, were handed over to different tenants smell, other than bona fide requirement. The only tool to analyze the genuineness demand of landlord is the veracity of the evidence which is to be examined critically. The landlady may not have stated that one of the premises was rented out by her but the very acceptance that her son might have rented it out, even for a limited purpose or period, required strict scanning of evidence for personal requirement. It also required serious scanning that only two months before filing of the ejectment application the very adjacent plot, which was vacant and could have been used suitably, was sold out and no explanation was given by the landlady/respondent. The further evidence that has shaken the personal requirement was handing over of the premises vacated by Syed Amir Ali to Abdul Salam, which though is

claimed to have been handed over on humanitarian grounds but respondent No.1 however admitted to have been receiving the rent at the rate of Rs.20,000/- per month and the gentleman is running a general store therein. This all happened during the pendency of these rent applications.

10. The landlady further admitted in cross-examination that she has come to Pakistan to proceed with the matter and that she had no idea when she would leave abroad. This statement when read with the affidavit-in-evidence of the respondent, the bona fide gets shaken as to whether she genuinely need the subject premises to run such business as she had admitted to have come for the purpose of proceeding of this matter and then she may leave abroad. It is not the case of the respondent that she required the premises for her son. The premises was required for her own use and occupation. She has not pleaded that she would run her business through her associates and/or manager.

11. In the case of Mrs. Shahnour Fazal v. Ghulam Akbar Mangi reported in 1987 SCMR 2051 the Hon'ble Supreme Court has held as under:-

“The learned counsel for the petitioner was unable to convince us as to how in the absence of a specific pleading as to the vacant premises not being sufficient for her needs she could seek ejectment of the respondent from the disputed premises. Accordingly, the order of the High Court is unexceptionable.”

12. Similarly, in the case of Allies Book Corporation v. Sultan Ahmad reported in 2006 SCMR 152 it has been held that:

“13. We are mindful of the settled law that it is the prerogative of the landlord to choose a particular house, shop or building for his bona fide personal occupation and use in case the landlord has more than one premises but for exercising such prerogative it is the duty of the landlord to give plausible and satisfactory ground/ explanation for his insistence to occupy a particular

premises in preference to occupy any other premises available for occupation and use. From perusal of the material on record it transpires that not a single word has come from the respondent as to why the shop on the first floor, which is in their occupation would not be sufficient and would not meet the demands of the business sought to be established by respondent Mansoor Ahmed. With regard to Shop No.6 on the ground floor the respondents even did not make a mention of the same having fallen vacant and let out during the litigation going on between the parties. The respondents instead of providing plausible, satisfactory and cogent grounds for not occupying the shops which had become available for occupation did not even disclose the factum of a shop on the ground floor having become vacant which completely negated their good faith and bona fides. This Court in the case of Mst. Saira Bai v. Syed Anisur Rehman 1989 SCMR 1366 and Ghulam Haider v. Abdul Ghaffar and another 1992 SCMR 1303 categorically pronounced, that concealment by the landlord of one or more premises having fallen vacant during pendency of the ejectment proceedings would reflect adversely on the bona fide personal need and good faith of the landlord and would be detrimental to his case.”

13. In the case of Muhammad Inayat v. Saleh Muhammad reported in 2001 SCMR 599 the Hon’ble Supreme Court while dealing with a non-residential building in terms of Section 13 of West Pakistan Urban Rent Restriction Ordinance 1959, which is same as that of Section 15(2)(ii) of Sindh Rented Premises Ordinance, 1979, has held as under:-

“10. Be that as it may, requirement of the law for seeking ejectment from non-residential building on the ground of personal requirement is not only that the landlord does not occupy in the same urban area any other building or rented land suitable for his needs at the time but also that he has not vacated such a building or rented land without sufficient cause. Technically speaking, respondent may be correct that on the date of ejectment application he was not occupying any other shop suitable for the needs of his son but it is evident and undisputed that only two months before seeking eviction of the appellant he had parted with a shop bearing equal accommodation in the close proximity of the demised shop premises without any sufficient cause. The burden to prove that the shop was let out on rent for a noble cause and without realizing the reasonable need of his son heavily rests on the shoulders of the respondent but he

neither explained this position in his eviction application nor in his evidence before the Rent Controller. Much emphasis was laid on the circumstances that respondent's son had discontinued his studies in Class IX and was jobless for the last over two years but the fact remains that if was the landlord himself who chose to let out a shop suitable for the needs and requirements of his son only two months before approaching the Rent. Controller which would adversely reflect upon the reasonableness and bona fides of his requirement."

14. In the case of Muhammad Atique v. Muhammad Hanif Khan reported in 1996 SCMR 1260 it is observed:

"5. The above finding has been concurred with by the learned Judge in Chambers in the High Court. Since it is a concurrent finding supported by evidence on record, this Court cannot interfere with merely on the ground that it might have taken a different view on the basis of the above available material. The main factor which has gone against the appellant is that he did not disclose in the memo of rent case that he was in possession of two rooms on the second floor. The suppression of the above fact has adversely affected the credibility of the appellant. Both the Courts have taken into consideration the above factor....."

15. In the instant case:

- i) It has not been explained convincingly as to why the very adjacent plot owned by respondent was sold out two months before the filing of ejectment application, which could have been utilized accordingly to the suitability/requirement.
- ii) One of the shops i.e. Shop No.1 required by the respondent for personal need, was handed over to tenant Abdul Salam.
- iii) The Shops No.3 and 4 were also let out (even though the tenancy did not last long) to "Berrylicious Californian Frozen Yogurt".
- iv) She had planned to come only to record evidence and she stated that she may leave abroad.

16. In view of the above, the veracity of evidence is not convincing and there appears to be sufficient material to reverse the

findings as recorded by two Courts below, which evidence was not even been discussed by two Courts below satisfactorily. Accordingly, the petition is allowed and the order and judgment of the Courts below are set aside, resultanty the ejectment application is dismissed.

Dated: 08.01.2018

Judge