

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-125 and 126 of 2018

Dr. Muhammad Naqi & Muhammad Yousuf
Versus
Shamsuddin & others

Date of Hearing: 19.03.2018

Petitioners in both CPs: Through Mr. Muhammad Azhar Faridi
Advocate.

Respondent No.1: Through Mr. Ali Mustafa Hashimzadeh
Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two petitions involve eviction of tenants from Shops No.1 and 2 situated on Plot No.421/6, Liaquatabad, Karachi. Respondent No.1 filed eviction applications bearing Rent Case No.117 and 118 in respect of Shops No.1 and 2 respectively. Earlier an application for eviction filed by respondent disclosed in paragraph 4 that all seven sons are in need and trying to start business of their own which application was resisted in terms of written statement, whereafter the application was amended. In paragraph 4 of the ejection application, the respondent/applicant then disclosed after amendment that his three sons are trying their best to start their business at their own on suitable place. In paragraph 7 the respondent/applicant stated that they bona fide require demised premises in good faith for his unemployed sons to start their own business. He further stated in paragraph 7 that one of the sons of the applicant namely Muhammad Kamil is skilled in tailoring and has serious intention to establish a ladies tailoring shop in the demised premises i.e. Shop No.1 and Muhammad Kamil (son) would also allow two of his brothers to join him in the prospective business. In the other application

the requirement of Muhammad Aqil was shown and it is stated in paragraph 7 that Muhammad Aqil would allow one of his brothers to join him in prospective business.

It is argued that another application was filed by respondent for his son Ali Raza which premises was handed over to him by executing Court/Rent Controller hence the requirement is now confined to two brothers. It is petitioner's case that the personal requirement is not at all established firstly in view of pleadings as one of the unemployed brother has agreed to accommodate in case one shop is handed over to them. He further relied upon the cross-examination of the respondent/applicant wherein he admitted that there are total six shops in the building as against five shops as pleaded and mentioned in the ejectment application. Two of his sons Muhammad Raheel and Muhammad Yamin were also stated to be in occupation of two shops and running their business however one shop was stated to be lying vacant which was being used as sitting area by the applicant/landlord. It is the case of the petitioner that they have not disclosed the sixth shop which is being used as Otaq and hence the personal requirement is shattered.

The identical evidence was reproduced in the connected matter/ Rent Case No.118 of 2014. The only question that arises is whether the concealment of availability of another shop by landlord/respondent while filing an application for ejectment would disentitle him to evict a tenant on the ground of personal requirement and should his affidavit-in-evidence be considered as an honest statement on oath.

Learned counsel for the respondent on the other hand submitted that the premises which is being referred as sixth shop is in fact being used as sitting area of the applicant/respondent and it cannot be used or considered suitable for business purpose. He submitted that it is prerogative of the landlord to choose a particular shop or premises for his/her own need and requirement, however a tenant cannot dictate

such terms including as to which shop should he occupy and be suitable for business of landlord. Counsel has relied upon the cases of International Computers Limited v. Standard Chartered Bank Limited (PLD 2012 Sindh 481) and Muhammad Sharif v. Nisar Ahmad (1988 SCMR 1587).

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

The concurrent findings are not sacrosanct and if the findings are based on illegality, infirmity, misreading or non-reading of evidence or deviates from settled principle of law and based on extraneous material, the High Court, irrespective of the concurrent findings of two Courts below, would be justified in either setting aside, modify or remanding the matter for its disposal in accordance with law. This is perhaps the case where the evidence was not properly appreciated. The evidence that how and why the sixth shop may not be suitable for the business, which applicant's/respondent's sons intends to start/pursue is not available. There are only three sons stated to be unemployed out of whom Ali Raza occupied a premises in third Rent Case whereas the evidence on the basis of cross-examination as well as affidavit-in-evidence and pleadings reveals that one of his brothers was willing to accommodate his other two unemployed sons, especially in paragraph 7 of the ejectment application. The judgment of the trial Court as well as of the appellate Court is based on the prerogative of the landlord. Such prerogative could only be exercised once the statement on oath discloses all material facts. A substantial issue, which relates to the concealment of fact regarding sixth shop, was a material one as it provides negative impact on the personal requirement of the respondent and his sons.

In the case of Allied Book Corporation v. Sultan Ahmad reported in 2006 SCMR 152 it has been held by the Hon'ble Supreme Court as under:-

“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.”

In the other unreported case of Nisar Hussan & another versus Muhammad Murad Jamali in CP No.245-K of 2014 the Hon’ble Supreme Court while relying on the aforesaid judgment has observed as under:-

“7. In a case reported as Allied Book Corporation v. Sultan Ahmed (2006 SCMR 152) it was held by this Court that “Landlord though has the prerogative 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 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”. In cited case also the landlord did not disclose the factum of premises having become vacant, it was held that bonafide personal need was not established and ejectment of the tenant was disallowed. In the case in hand as discussed above, the petitioners firstly made a misstatement that they are residing in a rented apartment, second they did not disclose that the two portions of the first floor of the subject Bungalow were lying vacant when the ejectment application was filed and thirdly that the said portions were let out subsequently, without offering the same to the respondent and or explaining non-suitability of the

same for their own occupation. Such suppressions of material facts, which surfaced in cross-examination, demolished the case of the petitioners' for bonafide personal need."

The insistence of the respondent's counsel that it was not a proper shop but is a sitting area, which leads to the staircase of the building is not borne out of the pleadings or evidence. The respondent has not even filed a layout plan or completion or approved building plan to demonstrate such fact. In fact the landlord/respondent has conceded in simple words that there are five shops in the building. Despite this the tenant/petitioners have suggested that in case it is so it could be remanded to the trial Court/Rent Controller so that the evidence in this regard may come on record which concession surprisingly was not acceptable to the landlord/respondent's counsel.

Insofar as reliance by the counsel for respondent on the case of Muhammad Sharif (Supra) is concerned, it is only a leave refusing order and hence in the presence of a detailed judgment in the case of Allied Book Corporation (Supra) carving out a principle of law, the resort to such order refusing the leave cannot be made. Even otherwise, in the cases of University of Health Sciences v. Mumtaz Ahmad (2010 SCMR 767) and Cantonment Board, Rawalpindi v. Lt. Col. (Retd.) Allah Dad Khan (2015 SCMR 832) leave granting or refusing leave to appeal order is held to be of no binding effect and the same principle has again been fortified in a recent pronouncement by Hon'ble Supreme Court in the case of Karachi Development Authority v. Hawa Bai reported in 2017 SCMR 1801 by holding that leave refusing order passed by the Supreme Court was not law enunciated by the Supreme Court and had no binding effect. Similarly in the case of International Computers Limited (Supra) the choice and prerogative of landlord certainly vests with the landlord but such prerogative cannot be exercised in case of concealment of substantial facts and hence this case is also distinguishable.

In view of the above facts and circumstances and also on account of the fact that it is a case of personal requirement for rest of the two sons of the respondent/applicant I deem it appropriate to allow these petitions, set aside the orders passed by the two Courts below and remand the case to the Rent Controller who may decide the applications de-novo in accordance with law after allowing an opportunity to the parties who may be desirous to lead further evidence only to the extent of controversy involved in these petitions regarding sixth shop and its suitability. In case the Rent Controller is of the view that out of two shops one shop is sufficient in terms of the evidence of the parties, the choice may be left to the desire of the respondent/landlord.

Dated:

Judge