

## **IN THE HIGH COURT OF SINDH AT KARACHI**

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR**

**C. P. NO.S-909/2016**

Petitioners : Mst. Rifa Jehan, & Mst. Sana Nuzhat.  
Through Mr. Muhammad Arif, Malik Naeem Iqbal  
& Ms. Saba Khan, advocates.

Respondents : III<sup>rd</sup> A.D.J, District Central, Karachi, &  
Abdul Karim,  
Through Mr. Naseebul Hassan Siddiqui advocate for  
respondent No.2.

Date of hearing : 16.03.2018.

Date of order : 16.03.2018.

### **JUDGMENT**

Petitioners assailed the order dated 12.05.2016 passed by respondent No.1 (appellate Court) in FRA No.13/2016 whereby ejectment order dated 17.12.2015 passed by the trial Court in Rent Case No.113/2014 was set aside.

2. Precisely facts, leading to filing of instant petition, are that petitioners are legal heirs of late Mukhtar Ahmed and after the death of their father they have letter of administration, issued by competent Court of law, hence became owners of Plot No.R-695, measuring 120 sq. yards situated at 11 C-3, North Karachi; shop No.3 situated in above premises was let out by their late father to respondent No.2 on monthly rent of Rs.800/ pm vide rent agreement dated 01.02.1997 for a period of eleven months; their late father was a retired government servant, patient of heart and sugar diseases had lost his leg, was on wheel chair; after expiry of said rent agreement, their

father in his lifetime and thereafter petitioner kept asking respondent No.2 for renewal of agreement but he deliberately avoided with malafide intention; therefore petitioners filed Rent Case. It was added that respondent No.2 made alternation in rented shop making material changes in the tenement without prior permission of petitioners hence caused damages to the premises, impaired its value and utility. It was stated that respondent No.2 was bound to increase the rent by 10% after three years as per clause 9 of rent agreement but also failed to do so hence defaulted nor paid taxes of rented premises. Petitioner took specific plea that they required the demises premises for their personal bonafide use for their own business (beauty parlor) in said Shop hence they filed Application u/s 15 of the S.R.P.O. 1979 bearing No.113/2014 before the V<sup>th</sup> Rent Controller Karachi Central.

3. Case of respondent No.2 is as was before the two forums below, that he had acquired the subject shop from father of petitioner after making *pugree* of Rs.300,000/- in January 1997 therefore such clause No.7 was inserted in the tenancy agreement executed on 10.04.201997 and was attested on 09.01.1998; that it was not necessary that a fresh agreement be executed and therefore clause 9 for enhancement of rent was inserted in the agreement; that petitioner illegally wanted to increase the rent which was refused by respondent No.2 therefore petitioner filed false ejectment application to pressurize him. It was added that it was respondent No.2 who was himself maintain and doing white wash and repairing the shop and petitioners failed to perform their obligation; that respondent had increased the monthly rent at 10% after every three years as per agreement and agreed month rent of Rs.1300/- pm was realized by petitioners upto December 2013

hence claim of Rs.3038/- as set out before the trial Court was false; default as alleged was also denied; since rent for January 2014 was tendered but not accepted by petitioners hence respondent No.2 sent the rent through money order dated 10.02.2014 which too was not accepted; another money order for two months' rent was sent on 17.02.2014 that too was not accepted and received back hence he filed MRC and depositing the rent therein. It was denied that there is any default or that shop is required by petitioners for their personal bonafide use.

4. Learned counsel for the petitioner has argued that order of the learned appellate Court is not in accordance with settled principles of law; learned appellate Court legally erred while holding that petitioner / landlord not established personal *bona fide* need as the ejectment proceedings in respect of two other shop(s) were concealed although the learned Rent Controller had rightly responded to such *question* properly. Appellate Court also failed in following *criterion*, so set for interpreting personal *bona fide* need therefore, the order of the learned appellate Court is not maintainable and merits interference.

5. On his turn, the learned counsel for the respondent no.2 vehemently opposed the maintainability of the petition while arguing that order of learned appellate Court is strictly in accordance with law and there has been committed no *illegality*. It was further added that since it also proved on record that present petitioners never came with *clean* hands as they deliberately suppressed facts of ejectment petitions, filed in respect of other shops. This fact alone is sufficient to dismiss the instant petition. He

placed reliance on 2008 SCMR 398, 2001 MLD 1817, 2006 SCMR 152, 1994 CLC 2141, 2006 SCMR 117, 2003 CLC 96, PLD 1985 639, 1993 CLC 2250, 1991, CLC 1047, NLR 1995 10, 1997 CLC 1085 and PLD 1992 314.

6. Heard the respective parties as well examined the record *carefully*.

7. I would not hesitate in saying that *conflict* between Rent Controller and appellate Court is always a *circumstance* justifying examination of the case even by resort of *Constitutional Jurisdiction* which *otherwise*, no doubt, is not available as a *substitute* to appeal. The constitutional jurisdiction *though* is not available as a substitute to an *appeal* but such jurisdiction can always be exercised to undo a *prima facie* wrong or to reverse an *illegal* conclusion which is against settled principle. Reference may well be made to the case of Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors (PLD 2006 SC 214) wherein it is held as:-

**“8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. ....** The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible. The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.”

I would also add that if the view of the appellate Court is found to be *not* in line with settled principles, so enunciated, by Honourable Apex Court, or

appreciation of available material does not stand well with dealing with *issues*, involved, then findings can well be reversed in Constitutional Jurisdiction of this Court. Reference may well be made to the case of *Safeer Travels (Pvt.) Ltd. v Muhammad Khalid Shafi through L.Rs* (PLD 2007 SC 504) it has been held as:-

“26. This Court, on several occasions, has held that the High Court in its constitutional jurisdiction can interfere with the judgment and order of the appellate Court if the view taken by the appellate Court was not only contrary to the established principles of law, but also contrary to evidence on record or had flouted the provisions of statutes or failed to follow the law relating thereto as held in the case of *Lal Din Masih v. Mst. Sakina Jan and another* 1985 SCMR 1972.”

Having said so, I find it in all fairness to refer relevant portion of order of appellate Court which reads as:-

“..... What is meant by "requires in good faith" is that the landlord requires the premises for his reasonable needs and he is not seeking eviction on the pretext of requiring additional accommodation with an oblique motive of realizing some extraneous purpose. The term 'requires' means that there must be an element of need before a landlord can be said to require premises for his own use and occupy the premises. What is necessary is that he should need them for his own use and occupation. The need has to be reasonable and bona fide. The onus of proof of this is certainly on the landlord. Although the reasonableness does not appear in the ordinance, the question of reasonableness is relevant in deciding the bonafide of the landlord. Gross unreasonableness may in proper circumstances lead the controller to reach a conclusion that the landlord's requirement is not in good faith. Therefore, while deciding the question of good faith, the reasonableness of the need or requirement is relevant. Full effect will have to be given to the expression used in the clause, namely, 'requires in good faith'. The words good faith means honestly and not actuated by bad faith or oblique motive. Mere wish or intention of the landlord is not sufficient to give him a right to evict the tenant. As already observed the Ordinance is promulgated with the avowed object of protecting tenants against unreasonable eviction and at the same time to make a provision that the landlord will be entitled to get the possession of their premises on the ground enumerated therein. One of such ground is that a landlord requires the premise in good faith for his own occupation. Sub section 2 of section 15 further enjoins a duty upon the controller to enquire into the requirement of the landlord and if on enquiry the controller is

satisfied that the requirement of the landlord will be not by occupation of the premises, then he has to pass an order of eviction. Therefore, all the relevant factors will have to be objectively considered before such a question is decided by the controller.

I am of the humble opinion hat for considering the true scope of cause (vii) of the said Ordinance, the landlord has to make out a case for his requirement of the premises in good faith. For his purpose he must place all the necessary details which are required for granting relief. A mere ipse dixit of the landlord hat he requires the premises for his personal occupation or use is not enough. He must give details as to whether he requires the premises for residence or godown. If so residence he must give details as to number of members of family and how he requires the premises. If for expansion of business he must give details as to whether it is inadequate or if for new business, details of new business, his sources. **If he owns other houses or buildings, he must show whether they are occupied and if vacant, why it is not available. If he owns other building which he sold, he must show under what circumstances it was sold. Unless the landlord gives such details, the tenant cannot be expected to meet the case of landlord.** The statement of the landlord must be supported by valid reasons as to how his requirement is genuine or in good faith. “

*No doubt*, the landlord would always be required to establish *personal bona fide need* but it would not require the landlord to give details of all of his available properties; details of *earlier* sold properties and reasons thereof; status of their other properties to be on *rent* or *otherwise*. Had these all been *criterion*, the Honourable Apex Court would not have enunciated that:

*Shakeel Ahmed & another v. Muhammad Tariq Farogh & others*  
(2010 SCMR 1925)

“5. ...It is well-settled principle of law regarding appreciation of evidence that the evidence adduced by the parties is to be read, evaluated and assessed as a whole, and the impact of the evidence of an individual witness is also to be gauged in the same manner. .... Here it may also be observed that **the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, and therefore no restriction can be imposed upon the landlord / appellant No.1** on the pretext of restoration of his clearing and forwarding license during the pendency of rent case.

6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, **which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an**

**affidavit-in-evidence as prescribed by law, if it remains un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. .... ”**

I may further add that it is always the *prerogative* of the landlord to choose the business and suitability of premises out of his available number of properties. Such prerogative, being in line with guarantee provided by relevant Articles of Chapter-II of Constitution, can not be questioned by the *landlord* and the Rent Controller *even*. To substantiate this view, the reference may well be made to the case of *Pakistan Institute of International affairs v. Naveed Merchant & Ors* (2012 SCMR 1498), wherein it is held as:-

“10. The claim of appellant as regard their personal need, when examined on the basis of their word to word pleadings in paragraphs Nos.4 and 5 of the rent application and the affidavit in evidence of their witness leaves no room for doubt open for discussion on the subject of their choice and preference which has already come on record and remained un-shattered and un-rebutted from the side of respondents Nos.1 and 2. In these circumstances, subsequent developments which might have been relevant in some other cases are of no help to improve the case of respondents Nos.1 and 2 before the High Court in exercise of its jurisdiction under Article 199 of the Constitution. It will be nothing, but reiteration of settled legation position that the statement on oath of the landlord as regards claim of their / his personal need un-shattered in cross-examination and un-rebutted in defence evidence is to be accepted by the Court as *bona fide*. Moreover, the choice lies with the landlord to select any of the tenement for his personal need and for this purpose *the tenant or the Court have no locus standi to give their advice for alternate accommodation.*”

The above principles, so enunciated by Honourable Apex Court, having binding force, make me to say that statement on Oath of a *landlord* regarding his claim of personal need is to be taken as *bona fide* which *however* must stand well with reasonableness, acceptable to the Rent Controller. This *however* would not require the landlord to give detail (s) of his all other

existing and sold properties but *suitability* of premises in question while exercising his absolute *prerogative*. The *tenant* would be at *liberty* to bring all material into light while submitting written reply/statement so as to turn the claimed *bona fide* into *malafide*.

8. I would also add that importance of the *pleadings* and *binding* limitation (s) thereof continues even in *rent matter (s)* therefore, *landlord* and *tenant* would be required to plead in proof of *bona fide* and to turn the same into *mala fide*. None of them will enjoy a right to surprise *opposite* by going beyond pleadings. Reference may well be made to the case of Hyder Ali Bhimji v. VI<sup>th</sup> Addl. District Judge, Karachi & Ors. (2012 SCMR 254) wherein it is held as:-

**“14.. .... The appellant was legally bound by the case set up in his pleadings. He did not have freedom to depart therefrom and raise a different case. Also that in absence of specific pleadings, the court could not allow the appellant to grope around and draw remote inferences in his favour from his vague expressions.”**

Now, I would conclude that a *properly* pleaded *reasonable* claim of *bona fide*, once stated on Oath, would shift burden upon *tenant* to shatter it which *too* must cause *reasonable* doubts in *claimed* bonafide personal need of *landlord*. The failure of *tenant* to shatter such claim or turning thereof into *mala fide* or *unreasonable* would consequence into accepting such claim. The above discussion makes me to say that the conclusion (*criterion*), drawn by learned appellate Court for establishing *personal bona fide need*, cannot be stamped.

9. The learned appellate Court *entirely* failed in appreciating that the *tenant* himself had admitted in *categorical* terms that:-



“It is correct that I am well aware about the facts of rent application. It is correct that father and mother had been died and applicant has no any brother also. It is to my knowledge that applicant had acquired the demised shop for her personal bonafide need.”

The petitioner ( *landlord*) not only claimed *personal bona fide* need on Oath but same was *categorically* accepted thus, it was always sufficient to prove the point no.1 which was:-

“Whether the applicant required the demised premises for his person bonafide need?”

The *tenant* (respondent no.2) also admitted that the petitioner (*landlord*) has no brother (*male member*) hence requiring shop for *Beauty Parlour* was / is also reasonable and mere absence of *certificate* of beautician course is not sufficient to treat it as *unreasonable*. The failure of the respondent no.2 (*tenant*) to turn claimed *personal bona fide need* into *mala fide* may well result in *direct* eviction of the tenant. Reference may well be made to the case of Messrs CARPET CENTRE V. Mustafa Farabi Tapu Javeri & Ors (2016 SCMR 1926) wherein it is held as:-

“3. We have noticed that personal need of the respondent was duly explained in a very categorical manner by stating that the person for whom the premises is required comes from a family of jewelers but he has adopted the profession of photography and wants a commercial premises to set up his own photo studio. The statement of the respondent that he has a studio does not mean that such studio is in some commercial premises. No question was put in the cross-examination to suggest that respondent already has a commercial premises where he has set up his photo studio. In the circumstances, the failure to establish in evidence mala fide on the part of the respondent-landlord was sufficient to direct eviction of the petitioner from a commercial premises. ...”

It is evident that the *tenant* (respondent no.2) has not been able to establish that landlord (petitioner) was / is doing some commercial activities in another commercial shop of her own which fact also advances the case of *landlord* (petitioner) towards eviction of *tenant* (respondent no.2) from premises in question.

10. As regard the eviction of *two* other shop (s), it may well be stated that such *plea* was not raised before the Rent Controller nor it was included in the *pleadings* by the *tenant* (respondent no.2). This was the reason because of which no such question / point was framed by the Rent Controller therefore, this fact is sufficient to exclude such *plea*.

Even otherwise, such subsequent event (s), if are not established to have shattered on Oath claim of *personal bona fide need*, would be of no *use* for tenant particularly when choice of premises is absolute *prerogative* of landlord. The view is guided with above *principles* particularly one, enunciated in the case of *Pakistan Institute of International affairs v. Naveed Merchant & Ors* (2012 SCMR 1498) *supra*.

11. In consequence to above discussion, I am of the clear view that the findings of the learned appellate Court regarding the point no.1 was neither proper nor was in accordance with principles, enunciated by Honourable Apex Court, therefore, the same is hereby reversed and that of Rent Controller is restored.

12. However, as regard the findings on other *points*, since such findings are *concurrent* and *prima facie* there is no challenge by the petitioner,

hence such concurrent findings need no interference. Accordingly, the instant petition is allowed.

These are the reasons for short order dated 16.03.2018.

IK/PA

**JUDGE**