

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-623 of 2014

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For Katcha Peshi.
2. For hearing of MA 9262/14

**08.12.2017.**

Mr. Arbab Ali Hakro, Advocate for the petitioner.

Mr. Shamsuddin Memon, Advocate for respondent No.1.

Petitioner is tenant in respect of Shop No.1, C.S.No.D/2219 Resham Bazar, Hyderabad and respondent No.1 is the landlord. He filed a Rent Application No.244 of 2012 for ejectment against the petitioner on the ground of personal bonafide need. The petitioner filed objections to the Rent Application raising among others the ground of Pagri and that as per agreement dated 27.07.2000 the respondent No.1 was precluded from filing ejectment application on the ground of personal bonafide need. This Rent Application was dismissed by learned Rent Controller vide order dated 25.02.2014 holding that in view of clause 5 of the agreement, the respondent was not competent to maintain ejectment application on the ground of personal bonafide need. In the said order learned Rent Controller also rejected the plea of petitioner that he had paid Pagri amount of Rs.25,00,000/-. Both the parties felt aggrieved by the said order. The petitioner filed F.R.A No.35/2014 against the findings in respect of his plea of Pagri/Goodwill, whereas, respondent filed F.R.A No.32/2014 both the FRAs have been decided by the impugned judgment dated 30.05.2014. In the impugned judgment the learned Appellate Court has allowed the FRA filed by respondent for ejectment on the ground of personal bonafide need and has given 120 days' time to the petitioner to vacate the subject shop and the FRA filed by the petitioner has been dismissed. Being aggrieved by the said findings, the petitioner has filed this petition calling into question the findings of the learned Appellate Court.

Learned counsel for petitioner has argued that the findings of the Appellate Court are not based on material available on record, he has mis-appreciated the evidence that he has mis-appreciated and misunderstood the clause 5 of the agreement dated 27.07.2000 whereby respondent has been stopped from filing ejectment application on

personal bonafide need against petitioner; that respondent has failed to establish goodfaith which is sin qua non for filing the ejectment application for personal boanafide need; that the application for ejectment is based on mala fide and the ground of petitioner regarding Pagri has been not properly attended to. Learned Counsel further contended that although the petitioner has not been able to prove the ground of Pagri as decided by the courts below but the rent agreement shows such fact. In support of his arguments learned counsel has relied upon the case law reported in 1998 CLC 349, PLD 1986 Karachi 16, 1999 MLD 2989 and PLD 2001 Quetta 40.

On the other hand learned Counsel for respondent has submitted that the agreement in which such clause was provided was signed by the respondent without reading it on the basis of good faith as the petitioner was his old tenant and in the previous Rent Application no such clause was available; that the respondent is uneducated man and does not know reading and writing in English. He has further contended that even otherwise this clause would not erect a bar in front of respondent to file ejectment application which is otherwise available in law. Learned Counsel further submits that no Pagri amount was paid by the petitioner and no such fact has been mentioned in any of the agreements. In the evidence he has also failed to prove and there are concurrent findings against the petitioner. He has relied upon the case law reported in PLD 1998 SC 190, MLD 1997 Page 3232, 1985 CLC 1997, 1997 MLD 2725, 1988 SCMR 819 and 1989 SCMR 1366.

I have considered the submissions of the parties and have perused the material available on record including the case law relied at bar. The Rent Application was filed on the ground of personal bonafide need. The emphasis of learned Counsel for the petitioner is that since in the agreement it is provided that landlord shall not file any ejectment proceedings against the tenant on the ground of personal use, the respondent would be stopped / precluded from filing such ejectment application. I am of the view that such clause would not be considered as an estoppel for the respondent to file an ejectment application on the said ground. The reason would be that if any condition which is mentioned in the rent agreement and agreed by the parties is against the right provided to either party in law would not be considered having a binding force on one hand or to operate as estoppel against either party. The law provides a right to the landlord to file ejectment application on the grounds among others personal bonafide use/need and despite any clause in the rent agreement limiting the right of landlord to file application on the said

ground would not be having an overriding effect over the provisions of law. This is the one aspect of the case. In the evidence, the respondent was put these questions in his cross examination. He has explained that he does not know writing or reading English and when the agreement was brought before him he without reading it signed. These assertions of the respondent do not appear to have been challenged. But, be that as it may, it has been held by the Honourable Supreme Court that for a landlord to establish the ground of personal bonafide use, it would be sufficient for him to appear in the witness box and support such plea and if this plea is not rebutted properly, the ground would be deemed to have been proved. Learned Appellate Court while discussing this issue in Paras-14, 15 and 16 of the impugned judgment, has exhaustively dealt with the said facts and while referring to the certain case law has concluded that the terms of tenancy agreement would be binding when they are not in conflict with the provisions of the land law. It has also been further held that the evidence of the respondent that he is jobless and no other shop is lying vacant has not been rebutted by the petitioner and his ground of personal bonafide need has been proved. Learned Appellate Court has also held that in respect of ground of personal bonafide need only a single suggestion in the cross examination has been made that the respondent does not need the rented shop because he has many other shops in the same locality which he has denied and no proof has been filed showing that the respondent has other shops in the locality. Notwithstanding the above it would be relevant to observe here that even in presence of many options to the landlord, it is always his right to opt for any shop which is convenient and useful for his personal bonafide need. The tenant has no right to raise objection in this connection.

Insofar as the ground of payment of Pagri to the tune of Rs.25,00,000/- is concerned, both the courts below have decided against the petitioner. There are concurrent findings against him and nothing has been brought on record to show that those concurrent findings are illegal or against the material available on record. It is a matter of record that no documents or oral evidence has been produced by the petitioner to prove that he has paid Rs.25,00,000/- as goodwill to respondents at the time of execution of Rent Agreement. More so just on the assertions of payment of Pagri by the tenant, the ejection application of the landlord cannot be rejected. If the petitioner who is tenant has any proof in respect of his payment of Pagri to the respondent, he by availing a property in accordance with law would prove the same but on the basis of his such

plea he cannot seek protection of law from ejection on the ground which is available to the respondent for filing ejection application.

In view of my above discussion, I am of the view that this Constitutional Petition which has very limited scope i.e. the petitioner has to show the illegality or irregularity flouted on the record is devoid of merits, hence, it is dismissed. The petitioner shall vacate the suit shop within a period of 30 days hereof without any further notice.

This petition is dismissed in the above terms alongwith listed application.

JUDGE