

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-160 of 2012

Muhammad Younus ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No.7
Rent Case No.966/2005
Rent Controller's Order dated 24.3.2011
FRA No.152/2011
Additional District Judge Order dated 01.2.2012

C.P. No.S-318 of 2012

Abdullah ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No.4 (incorrectly written as "10")
facing Altaf Hussain Road
Rent Case No. 952/2005
Rent Controller's Order dated 31.1.2011
FRA No.75/2011
Additional District Judge Order dated 01.2.2012

C.P. No.S-319 of 2012

Muhammad Rafiq ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No.4-B facing Altaf Hussain Road
Rent Case No.954/2005
Rent Controller's Order dated 31.1.2011
FRA No.76/2011
Additional District Judge Order dated 01.2.2012

C.P. No.S-320 of 2012

Abdul Aziz ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No. 10 facing Altaf Hussain Road
Rent Case No.955/2005
Rent Controller's Order dated 31.1.2011
FRA No.77/2011
Additional District Judge Order dated 01.2.2012

C.P. No.S-321 of 2012

Nasir Mahmood Malik ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No.4A facing Altaf Hussain Road
Rent Case No.956/2005
Rent Controller's Order dated 31.1.2011
FRA No.78/2011
Additional District Judge Order dated 01.2.2012

C.P. No.S-399 of 2012

Mukarrab Khan Niazi ----- Petitioner

Versus

M/s. Valika Properties Pvt. Ltd. ----- Respondent

Shop No.8 facing Altaf Hussain Road
Rent Case No.951/2005
Rent Controller's Order dated 24.3.2011
FRA No.137/2011
Additional District Judge Order dated 01.2.2012

Date of Hearing: 05.12.2017

Petitioners in CP Nos. S- 318, 319 and 321 of 2012: Through Mian Mushtaq Ahmed Advocate

Petitioner in CP No. S-399/2012: Through Mr. Atique-ur-Rahman Khan Advocate

Petitioner in CP No. S-160/2012: Through Mr. Usman Tufail Shaikh Advocate

Respondents in CP Nos.160, 319, 321 & 399: Through Muhammad Haseeb Jamali Advocate

Respondent in C.P. No.S-318/2012: Through Umair Qazi Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: This bunch of petitions involved common question of law. Though the respondent i.e. M/s Valika Properties (Pvt.) Limited filed independent ejectment applications against individual tenants of their respective tenements but since the ejectment applications which were disposed of involved common question of law arising out of common facts, therefore, I intend to dispose of this bunch of petitions by a common order.

The details of ejectment applications filed by the respondent against different tenants of their individual tenements are as under:

S.NO.	Rent Case No.	Tenant Name	Tenement No.
1.	951/2005	Muqarab Khan Niazi	Shop No.8
2.	952/2005	Abdullah	Shop No.4 (incorrectly written as "10")
3.	954/2005	Muhammad Rafi	Shop No.4-B
4.	955/2005	Abdul Aziz	Shop No.10
5.	956/2005	Naisr mehmoood Malik	Shop No. 4-A
6.	966/2005	Muhammad Younus	Shop No.7

The respondent M/s. Valika Properties Pvt. Limited sought ejectment of these tenants on the ground of personal requirement. In the ejectment applications the respondent/landlord pleaded that:

(a) That the applicant is a private limited company and owns the subject building facing Altaf Hussain Raod, Blesses Street consisting of Ground + upper 4 Floors.

(b) Valika Chambers, the subject building is a very old building constructed in the year 1934 and the then directors of the respondent let it out to various tenants.

- (c) The Directors of the respondent had no keen interest in the affairs of building as at the relevant time they were having heavy & huge industries which were subsequently nationalized.
- (d) Consequently on this nasty situation, the respondent sought eviction of various tenements on the ground of default in payment of monthly rent.
- (e) The tenants namely Ali Asghar Choudhry, Abdul Latif, Muhammad Arif, Yasin Carpets, Haseen Corporation, Lion Overseas, Abdul Wahab Polani , Yahya Polani, Mustafa Shaikh, Muhammad Ismail, Ayub Lambat, Abdul Wajid Khan and Afaq vacated the tenements followed by vacation of M/s. Plastiko Industries and Rafi Corporation.
- (f) Under these financial constraints it was pleaded that the respondent with a considered view decided it essential to start some small scale industry within the ground portion occupied by very very old tenants "Plastic Industries" and "Rafi Corporation, which premises was handed over to them which measures approximately 1000 square yards out of the total area of 1245 square yards of the plot.
- (g) They further pleaded that they were still handicapped, hence required further shops on two sides of the building as eight shops facing Altaf Hussain Road and one shop facing Blesses Street were with tenants.
- (h) It was pleaded that since the entry towards the portion which was occupied by Plastiko Industries and Rafi Corporation was from the rear side, the respondent required some more accommodation by acquiring shops from two sides as mentioned above.

Almost on the same set of facts different applications against different tenements were filed and on service of application upon tenant/petitioner the rent cases were contested by the tenants.

Mr. Qamarudin Valika/landlord's director examined himself on behalf of respondent M/s. Valika Properties Pvt. Limited and he was subjected to cross examination. In Rent Case No, 951/2005 he was cross examined by Mr. Masood Khan Ghouri whereas in Rent Cases No.952, 954, 955 and 956 of 2005 he was cross examined by a Counsel namely Mr. Mohsin Shahwani. The cross examination conducted in a case was adopted in others by Mr. Mohsin Shehwani except some portion.

Both the Courts below allowed the ejectment applications on the ground of personal requirement. The Rent Controller had shifted burden as to the authority of Qamaruddin Valika to file ejectment applications upon tenant, though the minutes of meeting were neither filed along with ejectment applications nor with the evidence.

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

Since disposal of these rent petitions is dependent upon common facts, documents and evidences therefore, they are being disposed of by common order/judgment.

The first preliminary objection was in respect of an advocate namely Mr. Mohsin Shahwani (Counsel for tenant) who appeared in some of the cases i.e. RC No. 951, 952, 954, 955, 956 and 966 of 2005 and cross examined the respondent's witnesses. He adopted the cross examination of Rent Case No.966/2005 except some portion. For Mr. Shahwani, it is stated that he was never appointed by the petitioner and as such he could not have adopted the cross examination. In this regard respondent's Counsel has placed on record the website research of M/s. Ali Mumtaz Shaikh & Company with advance copy to the petitioner's

Counsel showing association of Mr. Mohsin Shahwani with M/s. Ali Mumtaz Shaikh & Company which was engaged. The website research of M/s. Ali Mumtaz Shaikh, Barristers at law provides that Mr. Shahwani was one of their associate. Moreover, no complaint was preferred by the petitioner against the advocate before any Bar Council raising such grievance against him or against the company engaged by petitioners. This is second round of litigation and in the first round, the only objection to the cross examination was that the cross examination in one case of petitioner was adopted in cases of all other petitioners which ground is other than the ground now being raised that the Counsel had no authority even to appear. It is waiver and acquiescence as envisaged under Articles 113 and 114 of the Qanoon-e-Shahdat. The objections filed by the Counsel for the petitioner on the Commissioner's report under Order 26 Rule 10(3) CPC in the rent cases and also a statement dated 05.12.2017 is also silent as regards the power of advocate to appear and proceed, and the contention was declined by way of dismissal of appeal and CP No.S-141/10. The objection at this stage in the second round hence not tenable. This clarification then allows me to take up the case on its merits.

The respondent M/s. Valika Properties Pvt. Ltd. as is evident from the pleadings that it required the premises as it desired to start small scale industrial unit within the ground portion which was once occupied by M/s. Plastiko Industries and Rafi Corporation which premises was handed over to respondent measuring approximately 1000 square yards. In the subject application this premises was not found to be sufficient and hence they are now desirous to evict the tenants of subject shops facing Altaf Hussain Road and one shop facing Blesses Street. The applicant/respondent also showed number of tenants who were occupying the respective premises in the building consisting of ground + 4 storyes and the entire building except these eight tenants were got vacated. Admittedly this is a commercial premises and bona

fide of the landlord is to be seen on the touch stone/parameters laid down by the Hon'ble Supreme Court in number of cases, some of them are as under:

1. Allies Book Corporation vs. Sultan Ahmed & others reported in 2006 SCMR 152
2. Muhammad Hafeez & another v. District Judge, Karachi East & another reported in 2008 SCMR 398
3. Javed Khalique v. Muhammad Irfan reported in 2008 SCMR 28
4. Iqbal Book Depot & others v. Khatib Ahmed & others reported in SBLR 2001 SC 139

The Counsel has further relied upon the fact that the memorandum and articles of association was never filed by the company/landlord to demonstrate the "object" of the company for which it was created despite question raised. However it being a public document was obtained and filed for assistance of this Court and is available at page 211 as annexure P-16 of C.P. No. S-319/2012 and with the assistance of both the Counsels, I have perused the memorandum and articles of association. Prima facie Initial/preliminary burden was upon respondents who in all fairness desired to commence an industrial unit on small scale and that space of 1000 square yards was not found to be sufficient where admittedly renowned entities (according to respondent) were housed and were conducting their business i.e. M/s. Plastiko Industries and Rafi Corporation. During all the period, the portion of the ground floor which was acquired from M/s. Plastiko Industries and Rafi Corporation, no progress was shown to reach a mindset that area was/is not enough. They have not attempted to show that they have made any effort to start a small scale industrial unit. Whatever it may have in their defence as against this contention, they have come up with the explanation that firstly the area was not sufficient and secondly it has no frontage. I have now faced additional situation where I have to ascertain that for any industrial unit frontage is essential. As far as frontage is concerned, the evidence shows that for

the ground floor of the subject building, the main entry is from rear side and the question of having frontage is not the prime requirement of an industrial unit as they are not supposed to market their product by having showroom on main road. Moreover it was never the case of respondent that to market their product they need frontage. It is nowhere pleaded either in the application or affidavit-in-evidence. The industrial unit's requirement is other than the requirement of a shop or showroom or display centre for which a frontage and /or elevation of building may be required. Their further plea that they were handicapped on account of existence of shops on main Altaf Hussain Road also does not inspire confidence as the entire ground floor having an area of 1000 square yards has its main entrance from rear side which is in fact a main entrance for the ground floor as admitted in the evidence by respondent. In Rent Case No.951/2006 Mr. Qamaruddin Valika during cross examination to Mr. Masood Khan Ghouri stated that an area of 1000 square yards is not sufficient for establishing an industry as it does not have frontage. In Rent Case No.966 of 2005 the applicant/respondent to a question in his cross examination, available at page 225 of CP No.S-160 of 2012 has categorically stated as under:-

“It is correct that in the front side of the building there are shops Altaf Hussain Road and on the rear side there is a main gate as entrance of vehicles and there are two shops adjacent to the gate.”

In the case of Iqbal Book Depot referred above, the Hon'ble Supreme Court while deciding the case of personal requirement observed as under:

“-----We are conscious of the fact that mere wish, convenience, whim or fancy of landlord, held, would not be enough to show the landlord 'requires premises in good faith'. Landlord must prove requirement of premises for reasonable needs and that he was not seeking eviction on pretext of requiring additional accommodation with oblique motive of realizing some extraneous purposes.--“

Similarly in the case of Allies Book Corporation (Supra) the Hon’ble Supreme Court held 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 Of the 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 SMCR 1366 and Ghulam Hiader 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.

14. These were very material facts in establishing the good faith and bona fides of the respondents for their bona fide personal requirement for occupation and use of the demised shops and by suppressing/concealing them they had completely demolished their case that the demised shops are required by them for bona fide personal occupation and use.

15.

16. The contentions advanced by Mr. Mushtaq Ahmed are without any substance. From perusal of the material on record it may be observed that non-reading and/or misreading of the fresh evidence by the Rent Controller and the appellate Court did not in any manner adversely effect the case of the respondents resulting in causing them prejudice or legal injury. The case of the respondents would not have been advanced or improved on reading of fresh evidence in view of omission of the respondents to provide plausible, satisfactory, and sufficient explanation for not occupying Shop No.6, which had fallen vacant and rented out as well as some other shops which had also fallen vacant during pendency of the proceedings and rented out as per admission of respondent Sultan Ahmed in his cross-examination. The findings of the two Courts below even on this score did not suffer from any legal defect or infirmity.”

In the case of Mrs. Shahnoor 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.”

I am of the view that initially ground floor portion (1000 sq. yards) was acquired for a small scale industrial unit which was subsequently found insufficient. If at all any additional space to supplement the existing space is required there is no explanation provided as to why the entire 1st floor or the floors thereabove cannot be utilized as it is only required to supplement the existing space of 1000 square yards of ground floor. Prerogative was once left to the respondent's desire and whims when ground floor was acquired. Now in order to acquire more space some confidence inspiring evidence was required and prerogative, choice and whims should not be the only tool left to judge the bona fide of a landlord at the second attempt when he failed to explain the insufficiency of earlier portion acquired in presence of entire vacant building i.e. four upper floors. No attempt was made to show that company made any attempt and made any progress and because of insufficiency the progress hampered.

Now admittedly this property is not an industrial plot which is admitted in evidence. The respondent is unable to show as to how and under what authority such premises can be utilized for an industrial purpose. Even the area where the building is situated is admittedly commercial having residential flats/offices on upper floors. It is nowhere shown by the respondent that they have even attempted to have it converted into an industrial plot. Although such process could have been initiated once the possession is obtained but it gets murky when

cumulatively pleadings and evidence is read and cumulative effect provides a right answer.

Now the main point which requires consideration is the very object of the company for which it was formed. The memorandum of association available as annexure P-18 at page 219 of C.P. No.S-318 of 2012 shows as under:-

“ (III) The objects for which the company is established are:-

- (1) To acquire the immovable properties belonging to Messrs Fakhruddin Valibhai, Najmuddin Valibhai, Saifuddin Valibhai and Nuruddin Valibhai and others of Karachi and with a view thereto to enter into the agreement mentioned in Clause-4 of the Articles of Association of the Company and to carry the same into effect with or without modification.*
- (2) To acquire by purchase, amalgamation, grant, concession, lease, license, barter or otherwise, either absolutely or conditionally and either solely or jointly with other any houses, lands, farms, forest rights, timber estates, quarries, water rights, water-works, wayleaves, and others works, privileges, rights and herditaments and any tract of tracts of country in Pakistan or elsewhere, together with such rights as may be agreed upon and granted by Government or the rulers of the owners thereof, and to expand such sums of money as may be deemed requisite and advisable in the exploration, survey, development and working thereof and to obtain rights over, be interested in, build, alter, construct, maintain and regulate any roads, trainways, railways, canals, waterways, rivers, wharfs, docks, harbor works and harbours, by acquiring such properties outright or by acquiring the rights of others into and over them. And generally to acquire in Pakistan or elsewhere by purchase, lease or otherwise, for the purpose of the Company and real or personal immovable or movable property, rights, or privileges, including any land, buildings, rights of way, easements, licenses, concessions and privileges, patents, patent rights, trade marks, machinery, rolling stock, plant, utensils, accessories and stock-in-trade.*
- (3) To develop and turn to account any hill, land, house or other property acquired by or in which the Company is interested and in particular by preparing building sites, and by constructing, , reconstructing, altering,*

improving, decorating, furnishing and maintaining, offices, flats, houses, factories, warehouses, shops, wharves, building works and conveniences of all kinds and by consolidating, or connecting or sub-dividing properties and by leasing and disposing of the same, but so that no profit arising on the sale of any property, shares, stocks, debentures or other investments shall be carried to a Capital Reserve Funds or otherwise dealt with for capital purposes only.---"

Company is bound by articles and cannot act contrary to Articles of Association and in violation thereof. Rights and obligations of a company governed by articles cannot be reduced or enlarged.

A memorandum is a covenant between the company and its members and the company cannot engage itself in any business which is not mentioned in the memorandum and with regard to the other matters it is the Articles of Association which determines the right and liabilities of the contracting parties, namely the company and its members as such. Clear and unambiguous words of the articles cannot be given an extended meaning merely because resolution has extended its object. Resolution is subordinate to memorandum and articles of Association describing object of company.

In the instant case the objects of the company may include acquisition of properties mentioned in Para (1) of memorandum but for its leasing and disposal so that profit may be carried to capital reserve funds as mentioned in Para (3) of memorandum. It may also include collection of rent and income, to advance, to require shares and securities, to dispose of shares & securities, to hold names of others, to purchase, lease, exchange lands and buildings, to construct tramways etc., to carry on business or dealing in farm and garden & produces and to carry on business farming etc.

Thus the object of the company is to acquire properties either by way of purchase or lease for above object. How and in what manner this

property was acquired was not challenged and since petitioners were inducted by respondent itself, it becomes a secondary question. The object of acquiring by way of purchase or lease and turn to account such properties may include a hill, land, houses or other properties acquired by or in which company is interested and in particular by preparing building sites, and by constructing, reconstructing, altering, improving, decorating, furnishing and maintaining offices, flats, houses, factories, warehouses, shops, wharves buildings works, conveniences of all kinds and by consolidating or connecting or subdividing properties and by leasing or disposing of the same so that profit arising on the sale of any property, shares, stocks, debentures or other investment shall be carried to a capital reserve funds or otherwise dealt with for capital purposes only.

The memorandum and articles of association is silent as to running of a factory as its object. I do not find the aim and object of the company which could enable the respondent to evict a tenant for the purpose of establishing industrial unit "for its own". It is nowhere the case of the respondent/landlord that they would develop an industrial unit for leasing it out further for the benefit and object for which company was created but it is pleaded that the company itself is desirous of running an industrial unit on its own which is perhaps not the object of the company for which it was created.

Thus the cumulative effect of above discussion has taken me to a point when bona fide becomes a missing ingredient which is the only tool to evict a tenant on the ground of personal requirement.

Hence the petitions are allowed and the impugned orders passed by the Courts below are set aside, resultantly the ejectment applications are dismissed.

Dated:

Judge