IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-350/2017

Petitioner : Amanullah Khan Leghari,

Respondents : Adib Shaikh Ahmed and another.

C.P. NO.S-738/2017

Petitioner : Amanullah Khan Leghari,

Respondents : Adib Shaikh Ahmed and another.

Mr. Rajander Kumar Chhabria advocate for petitioner.
Mr. Muhammad Saleem Mangrio advocate for respondent No.1.

Date of hearing : 28.09.2018.

Date of announcement: 17.01.2019.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Petitioner has filed CP Nos.S-350 and 738 of 2017 assailing orders dated 17.02.2017 and 28.02.2017 respectively, passed by appellate Court in FRA No.160/2011 filed by appellant (petitioner herein); by order first mentioned appellate Court dismissed appellant's application u/s 21(3) S.R.P.O. 1979 in limine and by subsequent order appeal was dismissed.

2. Case of the petitioner is that he had entered into agreement of lease with previous owner of building in which demised shop was situated and such lease was in respect of demised shop and paid *pagri* amount of Rs.22,000/-; respondent filed ejectment application No.76/1991 on the ground of personal need for use of his wife for setting up clinic/maternity home and restaurant and that petitioner has impaired the value of the

premises; that ejectment application was allowed by order dated 28.08.1995 only on the ground of personal bonafide need; that respondent had also filed another rent case against another tenant of a shop on same building on same grounds, that was also allowed; petitioner and other tenant filed separate FRAs No.423/1995 (re-numbered as 160/2011) and 44/1997 respectively; during pendency of appeal No.44/1997 tenant/appellant in that appeal got some documentary evidence which revealed that respondent had got the order from trial court by concealing actual facts about his other properties/businesses and misrepresented about qualification of his wife or atleast failed to prove that she is MBBS hence appellate court allowed the appeal of that tenant and dismissed the rent case filed by respondent holding that respondent failed to prove his case for personal bonafide need however respondent got that premises from that tenant vacated through out of court settlement; that after coming to know about evidence produced by other tenant in FRA No.44/1997, petitioner filed two applications viz. application u/s 151 CPC to bring on record above facts/documents as well application u/s 21(3) SRPO 1979 which was dismissed in limine challenged by petitioner in above captioned CP No.350/2017; later, by order dated 28.02.2017 main appeal filed by petitioner was also dismissed that is challenged here in CP No.738/2017.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for petitioner contends that respondent filed eviction application before the Rent Controller on the ground of personal need to establish maternity home for his wife who, at that time was a medical student; it was pleaded that respondent had no other property except the demised premises; hence at appellate stage by application (CMA

No.859/1999) petitioner sought to bring on record that respondent No.1 has three other properties however that application was dismissed without applying judicial mind; that the appellate court has also failed to consider that while passing impugned order, learned Rent Controller has relied upon a photocopy of certificate issued by Sindh Medical College however author of said document was not examined hence said document did not fulfill the requirement of law as to prove its credibility; that landlord rented out entire building to three different tenants including appellant and he filed three rent cases against all the three tenants for eviction for establishing maternity home on the ground and first floor and restaurant on the ground floor, that respondent has got vacated the premises from the tenant of ground floor but he has not established restaurant in the said premises therefore respondent's non-establishing restaurant on the ground floor shows that he will not establish maternity home also. He has relied upon 1996 MLD Karachi 1715, 1998 MLD 1592 (Lahore), 2006 SCMR 152, 2018 SCMR 581, 2010 SCMR 1825, 1996 MLD 1715 , 2004 CLC 697, 2012 YLR 74 and 2001 CLC 1695.

5. Learned counsel for respondent No.1 contends that while filing FRA in the year 2011 appellant has not taken all above grounds in that appeal; that respondent had filed the rent case in the year 1991 and at that time no other property suitable for the establishment of maternity home and the restaurant was available with him : that the respondent purchased the other properties after his evidence before the Court, otherwise those properties would not serve the pose of the respondent for many reasons; that the establishment or non-establishment of restaurant on the other premises has no concern with the eviction of demised premises and appellant has no authority to question whether the landlord after obtaining the Possession of adjacent premises, has established restaurant thereon or not; that the

appellant has approached this Court on the basis of mere apprehension that the landlord will not establish the maternity home on the demised premises after getting its eviction hence petition is liable to be dismissed. Reliance was placed on PLD 1976 Lahore 99 and 2000 SCMR 1937.

6. At the outset, I would attend the plea regarding consideration of the subsequent *events.* To this, I would say that *normally* the decision in a *lis* is made on basis of pleadings and evidences brought on record by respective parties in proof or disproof of their respective *claims.* This has been the reason that **'pleadings'** have been given much weight in *law* and even it has been so observed / held in the case of *Hyder Ali Bhimji v. VITH Add. District Judge, Karachi & Ors.* (2012 SCMR 254) that:

> "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."

The logic behind above settled legal position is nothing but that every claim or dispute must be brought into notice of *rival* so as to have meaning of **'fair-trial'** satisfied. I would insist that if parties are not bound to their pleadings the concept of **'fair-trial'** shall fail; and if subsequent *events* are allowed to become a part of the proceedings there shall come no end to a *lis.* This, if is allowed, shall render a *judgment* of no legal effect which, *otherwise,* means a *'final determination of rights and obligations of parties came before a court of law'.*

In the case of ***MFMY Industries Ltd. v. Federation of Pakistan*** (2015 SCMR 1550), it is held as:-

> "5. Termination of a *lis* undoubtedly is through a verdict of a court which is a **decision** disposing of a matter in dispute before it (the Court) and in legal parlance, it is called a **JUDGMENT' .** It is invariably known that a Judge finally

> speaks through his judgment. According to Black's Law Dictionary, a judgment has been defined to mean ***'A court's final determination of the rights and obligations of the parties in a case'*** ...."

With much regard and respect to view of the honourable Apex Court, I would say that case of *State Life Insurance Corporation v. M/s British Head and Footwear Stores & Ors (*2018 SCMR 581), is not applicable because in that case issue was with regard to ***'fixation of fair rent'*** which has got its own *peculiar* grounds and delay in conclusion of such like *lis* does matter over **'fair-rent'.** Needless to add that grounds of *ejectment* are entirely different from that of fixation of **fair-rent'** hence referred case, with much respect, is not applicable to a case of ***ejectment.*** The legal position shall stand clear and evident from a direct referral to operative part of the case of *State Life Insurance Corporation* supra which reads as:-

> "In the instant case too the landlord has applied for fixation of fair rent **in the year 1992** and such application remained pending with the Rent Controller for almost 13 years and thereafter, before the High Court for **almost 10 years** and therefore in our opinion the increase of 25% after every three years allowed by the High Court after taking into consideration subsequent events and prevailing circumstances and to avoid multiplicity of the litigation and for doing complete justice between the parties do not call for any interference. Consequently, the fair rent of Rs.22/- per sq.ft for ground floor and Rs.18/- per sq.ft for mezzanine floor would be charged and would remain operative for the first three years i.e from February, 1992 to January, 1995 and thereafter, would be deemed to have been increased by 25% in the like manner after every three years till the date of this order."

7. Now, I would proceed to take the plea regarding placement of the order passed in another rent appeal as well to consider effects thereof in instant matter. To this, it would suffice to say that since such order was / is not challenged (subjudice) before this Court hence *legally* same cannot be discussed in instant petition whereby separate and independent concurrent findings have been challenged. Here, it may also be added that since it is by

now well-established principle of law that the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, therefore, I am of the clear view that present petitioner legally cannot take the benefit of decision, arrived in another *independent* proceedings, initiated by respondent for other premises. Reference is made to the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* (2010 SCMR 1925) wherein it is held as:-

> "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**."

Here, it is also worth to add that since legally the findings of the appellate Court in rent matters is of *finality* therefore, a referral thereof is made hereunder:-

> "Learned counsel for the appellant insists upon bringing additional evidence on record in respect of other tenements which the respondent has got vacated from other tenants but he has not established maternity home and the restaurant for which it was required by him. In my humble view vacation, occupation and establishment over the other tenements is entire issue between the respondent/landlord and the respective tenants. Appellant has no concern whether the respondent after getting vacation of the other tenements from its tenants has utilized the demised premises for the same purpose for which it was sought, In case the landlord has not established maternity home and the restaurant over the other tenements, respective tenants only can take benefit of this issue. Appellant contends that the respondent has no intention to establish maternity home as well as restaurant over the entire premises and after getting the demises premises vacated from the appellant, respondent has utilized the same for the purpose other than the purpose, he has pleaded, It is well settled principle that law provides remedy for such circumstances and the respondent cannot be prejudiced on the basis of mere apprehension of the appellant that the respondent would not utilize the premises for purpose pleaded in the application.

> With all respect to the observations held in the cited case laws, I am of the humble view that same are not helpful for the appellant being distinguishable from the facts and circumstances of the case of appellant. Learned counsel for the appellant insists upon bringing additional evidence on record in respect of other tenements which the respondent has got vacated from other tenants but he has not established maternity home and the restaurant for which it was required by him. In my humble view vacation, occupation and establishment over the other tenements is entire issue between the respondent/landlord and the respective tenants. Appellant has no concern whether the respondent after getting vacation of the other tenements from its tenants has utilized the demised premises for the same purpose for which it was sought, In case the landlord has not established maternity home and the restaurant over the other tenements, respective tenants only can take benefit of this issue. Appellant contends that the respondent has no intention to establish maternity home as well as restaurant over the entire premises and after getting the demises premises vacated from the appellant, respondent has utilized the same for the purpose other than the purpose, he has pleaded. It is well settled principle that law provides remedy for such circumstances and the respondent cannot be prejudiced on the basis of mere apprehension of the appellant that the respondent would not utilize the premises for purpose pleaded in the application. With all respect to the observations held in the cited case laws, I am of the humble view that same are not helpful for the appellant being distinguishable from the facts and circumstances of the case of appellant."

Thus, I am of the clear view that findings of the learned appellate court on such point was / is well justified.

8. I would further add that since, there are *concurrent* findings of *two* Courts below on point of *personal bona fide need* hence to succeed in the petition, existence of *mere* possibility of another *conclusion* on reappraisal of evidence is not sufficient but the petitioner must establish some *patent* illegality resulting into miscarriage of justice. Reliance in this regard can safely be placed on the case of *Farhat Jabeen v. Muhammad Safdar and others* (2011 SCMR 1073) wherein the august Supreme Court of Pakistan has declared as under:---

> *"Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only*

> *considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case.*"

Here, I would further add that the *scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence for if the finding is based on no evidence which may cause miscarriage of justice* hence mere apprehension or referring to those facts / documents, never became part of proceedings, shall be of no help for the petitioner. Reference is made to the case of *Shajar Islam v. Muhammad Siddique and 2 others* (PLD 2007 SC 45) wherein the Hon'ble Supreme Court has laid the law to the following effect:---

> "*The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous.* **The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence for if the finding is based on no evidence which may cause miscarriage of justice** *but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.*"

It is also a matter of record that respondent / landlord specifically came on ***oath*** while stating *personal bona fide need* and such claim legally is sufficient to be taken as correct. Reference is made to the case of *Shakeel Ahmed & another* supra wherein it is observed as:-

> "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-inn-evidence as prescribed by law, if it remains un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is need to fortify this view ……..."

Further, mere plea of the petitioner / tenant that the respondent / landlord shall not use the premises for the purpose, pleaded as "*personal bonafide need*" cannot be appreciated at time of deciding an ***ejectment proceedings*** because it purely relates to a *future action* hence no where finds place in grounds for *defence,* available to a tenant in such case.

9. Be that as it may, I would further add that legally established position with regard to prerogative of landlord is *itself* indicative of the fact that mere holding number of premises is not a *valid* defence nor choosing a particular premises out of such available premises can be questioned as *mala fide.* If at later stage the ground of *personal bona fide* need is found to be *mala fide* the law itself provides a remedy i.e section 15-A of Ordinance, which reads as:-

> "**S.15-A.** ***Penalty for use of premises other than personal use.*** Where the landlord who has obtained the possession of a building under section 14 or premises under clause (vii) of section 15, re-lets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within one year of such possession:-
>
> (i) he shall be punishable with fine which shall not exceed one years' rent of the building or the premises, as the case may be payable immediately before the possession was so obtained.
>
> (ii) the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building or the premises, as the case may be, and the Controller shall make an order accordingly;

The referral to above provision is sufficient to satisfy the *claimed* apprehension of the petitioner that premises shall not be used for the pleaded *personal bona fide* need. Thus, I shall conclude that such *plea* is entirely misconceived and of no legal consequences. However, this shall not prejudice the rights of a tenant which the law (section 15-A) itself creates.

10. In view of what has been discussed above, I am of the clear view that both the courts below have committed no illegality in reaching to such *conclusion.* There is no case of misreading or non-reading of the evidence, so also no illegality or irregularity has been pointed out by the learned counsel for the petitioner. The two Courts below have exercised the jurisdiction properly vested in them by law.

11. As regard the petition, filed challenging order passed on application under section 21(3) of Ordinance, it would suffice that failure in establishing a case of *mis-reading and non-reading* in main petition as well attempt to bring those documents not referred in pleadings are sufficient reasons for dismissal of such petition.

In consequence thereof, both the petitions, in hand, are dismissed while leaving the parties to bear their own costs.

J U D G E

Imran/PA.