

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

**C.P. No.S-1331 of 2011**

Date of hearing : 02.05.2013.  
Date of judgment : .05.2013.  
Petitioner through : Mr. Yousuf Iqbal, Advocate.  
Respondent No.1 through : Mr. Mahmood Ahmed Khan, Advocate.

**JUDGMENT**

**IRFAN SAADAT KHAN, J:** This Constitutional Petition has been filed with the following prayers:

- (i) *It is therefore respectfully prayed on behalf of the petitioners that this Honourable Court may be pleased to call R&P of the Rent Case No.306/2008 for the court of Senior Civil Judge and Rent Controller III, East at Karachi, and to issue writ declaring the order dated 30.03.2010 passed by the learned Rent Controller No.III (East) Karachi in Rent Case No.306/2008 and judgment dated 8.10.2011 passed by learned A.D.J. IIIrd (East) at Karachi in FRA No.242/2010 are not proper and thereby set aside the impugned order and judgment above mentioned and dismiss the Rent Case.*
- (ii) *To grant any other relief or relieves to the petitioners may be entitled or which may be warranted in the circumstances of the case.*
- (iii) *Cost of the petition”.*

2. Briefly stated the facts of the case are that the father of the petitioner took on rent a shop bearing No.2(471/2) on plot No.471/C, Allama Iqbal Road, Block No.2, P.E.C.H.S., Karachi on pagri basis on 01.12.1993 by paying the pagri amount of Rs.3,50,000/-. The rent of the said shop was initially fixed at Rs.600/- per month including all taxes such as water, sewerage, KMC, betterment, maintenance etc. The owner of the said shop then transferred the receipt in the name of the father of the present petitioner. In 1997 the rent agreed between the two parties was enhanced to Rs.660/- per month, however the other conditions remained the same. In 2001 the rent was enhanced to Rs.1500/- per month. After the death of the landlord in 1999 the respondent No.1 had been collecting the rent in this regard. In 2007 the respondent No.1 required from the present petitioner to

vacate the said shop as the same was required for personal bonafide use. However, when the petitioner refused to vacate the same, Rent Case bearing No.306/2008 was filed. The matter proceeded before the Rent Controller who, vide his order dated 30.03.2010, decided the same in favour of the respondent No.1 by observing that the respondent No.1 has been successful in making out a case for personal bonafide use and thereafter instructed the petitioner to vacate the premises within a period of 60 days from the date of the order. Being aggrieved with the said order an appeal thereafter was filed before the Additional District Judge, Karachi East in First Rent Appeal No.242/2010 and the learned Judge also vide her order dated 08.10.2011 affirmed the order of the Rent Controller. It is against this order that the present petition has been filed.

3. Mr. Yousuf Iqbal, Advocate has appeared on behalf of the petitioner and submitted that the order passed by the Rent Controller was that of 30.03.2010 and an application for obtaining certified copy was filed on 31.03.2010 whereas the copy of the same has been supplied to the petitioner as late as on 28.05.2010. Hence, according to him, the said order is a nullity in the eyes of law in view of Order XX Rule 3 of the Civil Procedure Code (C.P.C). He thereafter submitted that the order passed by the two authorities below are a result of misreading and non-reading of the evidence as they have firstly not considered the facts of the case in a proper manner and secondly the findings recorded have no bearing, whatsoever, with the facts obtaining in this case. While elaborating his viewpoint the learned counsel stated that the Rent Controller has not said a single word about the cross examination while passing the order and has also ignored the evidence of the witnesses and has totally ignored the fact that the petitioner has purchased the property on pagri basis from the late father of the respondent No.1. He further submitted that the two fora below have not considered the facts that there are other shops also available with the petitioner hence there was no justification for pressing the petitioner to vacate the same. Learned counsel stated that the stance taken by the respondent No.1 that they want to open a Day Care Centre for children is also wholly misconceived as no prior permission to open such Centre had been obtained from the concerned authorities. He further stated

that the character certificate furnished by the respondent No.1 in respect of his averment is also not correct since the said certificate, according to him, is fake. He further submitted that the decisions of the Courts relied upon by the two Courts below are also misplaced since the said judgments are not only distinguishable but are also not on all fours with the facts of the case. In support of his above averments the learned counsel has placed relied upon the decisions reported as Messrs Suhail Printing Press Vs. Syed Aley Eba Zaidi (2005 SCMR 882) and Mst. Zohra Begum & others Vs. Muhammad Ismail (2007 SCJ 833).

4. Mr. Mahmood Ahmed Khan, Advocate, on the other hand, has appeared on behalf of the respondent No.1 and, at the very outset, submitted that the proceedings in the instant case are rent proceedings and since the Rent Controller is not a Civil Court hence the provisions of C.P.C. are not applicable to the rent proceedings therefore provisions of Order XX Rule 3 of C.P.C. are not applicable. He further submitted that three shops were let out by the respondent No.1, one shop is stated to be vacant, whereas one tenant has in an unequivocal terms given an assurance to the respondent No.1 to vacate the said premises as and when required hence it could not be said that the subject shop is either not required by the respondent No.1 or that the matter of the other two shops is also under litigation. He further submitted that the orders passed by the two Courts below are quite exhaustive as both the Courts below, after thrashing out the matter in detail, have decided the issue in favour of the respondent No.1 by specifically observing that a case of personal bonafide use has been made out. He submitted that the subject place was required by the respondent No.1's wife to open a Day Care Centre since she has sufficient experience of the said field. He further submitted that so far as obtaining of permission from the concerned quarters is concerned that is a formal requirement which could be obtained at any point of time. He further submitted that the decisions relied upon by the learned counsel for the petitioner are distinguishable since C.P.C. is not applicable to rent proceedings, hence, those judgments are of no help to the petitioner. He, therefore, submitted that the instant petition is not maintainable and since concurrent findings are in

his favour and the petitioner has failed to point out any misreading and non-reading of the evidences, the present petition is liable to be dismissed.

5. I have heard both the learned counsel at considerable length and have perused the record, law and the decisions relied upon.

6. From the pleadings of the parties only two points emerge for consideration by this Court i.e. 1) Whether Order XX Rule 3 of C.P.C. is applicable to the present case and 2) Whether the respondent No.1 was successful in bringing home the case that the said shop was required for personal bonafide use.

7. So far as questions No.1 is concerned it is seen that on 30.03.2010 order was passed by the Rent Controller, the petitioner applied for its copy on the very next date i.e. 31.03.2010, whereas the copy was supplied to him on 28.05.2010. I specifically asked a question from the learned counsel that whether there is any difference in the order/judgment announced in open Court on 30.03.2010 and the copy of the order, which was supplied to him on 28.05.2010 to which the learned counsel frankly conceded that there is no difference and the order/judgment is the same as was announced on 30.03.2010. In my view the point raised by the petitioner is too technical as when he had admitted that there is no difference in the order/judgment announced and the copy of the order provided to him, no question of any interference is made out.

8. Order XX Rule 3 states that the judgment announced in the open Court and signed shall not be altered or added. This is not the situation in the present case since the learned counsel has frankly conceded that the decision announced and the decision received subsequently had been the same. Learned counsel was also asked that whether the provisions of C.P.C. are applicable to the rent proceedings to which no plausible reply was furnished. I was able to lay my hands on a decision given in the case of Mian Muhammad Shahbaz Sharif Vs. Election Commission of Pakistan, Islamabad, reported as P L D 2003 Lahore 646, wherein the Full Bench of the Lahore High Court observed as under:

*“29. Learned counsel for the petitioners with emphasis and eloquence tried to persuade us to hold that the decision rendered by the Tribunal*

*stands vitiated for non-compliance of the provisions of Rule 3 of Order XX of the Code of Civil Procedure. His grievance is two-fold, firstly that the decision was pronounced by the reader and secondly the judgment had not been signed till 13th of September, 2002. The submissions have no merit. In fact the decision of the Tribunal was only conveyed by the Reader. This is normal practice that the result of the cases decided on the same day in chambers is conveyed to the reader for information of the parties. So far as the second limb of his submission is concerned, the date of the decision as 12-9-2002 has to be accepted in view of the undisputed fact that the Tribunal had announced the decision on 12-9-2002 as reported by the National Press. Further, sending of the files to the office of the Court is a ministerial act and it cannot be determinative of the date of signing the judgment”.*

Hence so far as first issue is concerned it is decided against the petitioner.

9. Apropos the issue of personal bonafide need is concerned, it is observed that the wife of the respondent No.1 required the lower portion of the said premises, wherein three shops are located, for opening a Day Care Centre. The Rent Controller has observed that the petitioner, who was opponent in Rent Case, has not specifically denied the fact that the premises in question is not required by the respondent No.1 for his own use and has also observed that in this regard no malice has been found on his part and the pleadings of the respondent No.1 which had remained consistent. It is also an undeniable fact that the property of the respondent No.1 is his only property hence there could be no question of having any alternative place for opening the said Day Care Centre. It is also an undeniable fact that out of three shops one shop is vacant and so far as the other two shops are concerned the other tenant had categorically given an assurance to the respondent No.1 to vacate the said shop as and when required by him. Whereas the third shop is in occupation of the present petitioner and for opening a Day Care Centre the whole place is required and only on the premise that due permission from the concerned quarter since has not been obtained hence no personal bonafide use has been established, in my view, is not correct.

10. It is also a well settled principle of law that while dealing with the cases of personal bonafide use it is for the tenant to prove that the said place is not required by the landlord for his or her personal bonafide use, which in the present

case, I am afraid, has not been established by the petitioner. It is also a well settled proposition of law that it is the prerogative of the landlord to choose among a number of places which suits him or her best and no bar could be placed in this behalf upon him. The only criterion, which has to be fulfilled by the landlord, so far as the cases of personal bonafide use are concerned, is to establish that such place is genuinely required by the said landlord in good faith and such good faith has to be established from the facts obtaining in a particular case. The order passed by the Rent Controller would reveal that while allowing the said case he has relied upon a number of decisions given by the Superior Courts, which learned counsel for the petitioner has failed to either dislodge or distinguish. The appellate Court also, while dismissing the appeal, has categorically observed that it is the discretion of the landlord to choose a place which suits him best. Before me also the learned counsel for the petitioner has failed to adduce a single reason with regard to the fact that the said place was not required for the personal bonafide use by the respondent No.1. Perusal of clause (vii) of subsection (2) of Section 15 of Sindh Rented Premises Ordinance, 1979, clearly stipulates that application to the Controller could be given in the case where landlord requires the premises in good faith for his occupation or use or for the occupation or use of his spouse or any of his children.

11. I was able to lay my hands on a decision given in the case of Mst. Akhtari Begum Vs. Muhammad Qasim (2000 SCMR 1937) wherein the landlady required the premises to set up her business in the premises and the High Court disallowed her claim by finding that the same was not bonafide. However, the Hon'ble Supreme Court set aside the judgment of the High Court and observed that:

*“Even otherwise, the suitability of premises for personal requirement is to be judged by the landlady herself and she could not be compelled to accept any other premises if she preferred her choice for one of the shops. Mr. Abdur Rahim Kazi the learned counsel for the respondent has relied on the case of Muhammad Rifatullah Alvi v. Imran Ansari (PLD 1990 SC 369) and Qamaruddin v.- Hakim Mahmood Khan (1988,SCMR 819) to support his contention that the landlady, in the circumstances, was not entitled to get possession of the premises occupied by the respondent. The cases cited by the learned counsel for the respondent are distinguishable on facts and are of no assistance to the respondent in the above case”.*

At the other place the Hon'ble Apex Court observed that:

*“5. We, accordingly, allow the above appeal, set aside the judgment and decree of the learned Judge in Chambers and grant application filed by the appellant against the respondent on the ground of personal and bona fide requirement of her son. In the circumstances of the case, there will, however, be no order as to costs. The respondent is allowed six months' time from today to vacate the premises, subject to the condition that during this period he will continue to deposit the rent regularly with the Rent Controller and in case he failed to deposit the rent as directed by the Rent Controller or vacate the premises after expiry of six months, he will be evicted therefrom without any further notice”.*

12. In another judgment given by the Hon'ble Apex Court in the case of Shakeel Ahmed Vs. Muhammad Tariq Farogh (2010 SCMR 1925) the landlord was doing the business of clearing and forwarding, then he decided to change his business to hardware business and needed the place for such purpose. The Hon'ble Apex Court while disposing of the matter observed that:

*“There is no denial of the fact that at the time of commencement of ejectment proceedings before the Court of Rent Controller on 10-11-2000, the clearing and forwarding license of the appellants was under suspension and they have moved the concerned authority for its restoration. In case the appellant No.1 has decided to change his business from clearing and forwarding' to hardware business and he needs the possession of rented shop from respondent No.1 for this purpose, mere fact that during the pendency of rent case his license for clearing and forwarding was restored, will not come in way from pressing his claim of personal need as bona fide. 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”.*

13. In another judgment given by the Hon'ble Supreme Court in the case of Mst. Shirin Bai Vs. Famous Art Printers (Pvt.) Ltd. and others (2006 SCMR 117) the Hon'ble Supreme Court observed as under:

*“Sufficiency or insufficiency of accommodation available with a landlord is a matter of individual taste and discretion with which neither Controller nor the Appellate Authority would ordinarily interfere. All that Controller has to see or the Appellate Authority has to examine is whether the landlord requires the premises in "good faith" for his own occupation or use or for occupation or use of his spouse or any of his children. Expression "require the premises in good faith" cannot be confined to precise, identical and invariable definition nor any hard and fast rule can be propounded as to encompass all possible eventualities which could arise due to particular facts and circumstances of a case. Bona fide requirement cannot be turned down simply on assumption of tenant that proposed business could not be carried out profitably in the tenanted premises”.*

The Hon'ble Supreme Court in the decision quoted supra also observed as under:

*“Once a landlord has elected to live in his own house or start a business in the premises earlier let out on rent, his demand for eviction of the tenant would be presumed to be bona fide and founded on "good faith" unless mala fide is alleged and proved by the tenant. Suitability of requirement of landlord to commence a lawful business in the premises in dispute can by no stretch of imagination be said to be mere desire rather than bona fide need. In law a landlord is required to discharge his onus and to satisfy the conscience of the Controller that his requirement is based on "good faith" and is bona fide. Once a landlord is able to satisfy the Controller about the truth and genuineness of his requirement, the latter is left with no discretion but to order ejectment of a tenant irrespective of the fact that it would result in uprooting its long standing trade or business”.*

14. In the light of the decisions given by the Hon'ble Apex Court mentioned above and in the light of the facts recorded above, I have come to the conclusion that the respondent No.1 was able to bring home the personal bonafide use and the concurrent findings given by the two Courts below are not found to be either suffering from any misreading or non-reading of the evidence. This Constitution Petition, therefore, is found to be devoid of any merit and is hereby dismissed alongwith the pending application.

15. So far as pagri is concerned, it has to be paid by the landlord/respondent No.1 to the tenant/petitioner at the time of handing over the vacant possession of the said shop.

JUDGE