

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Salahuddin Panhwar

C.P. No.S- 373 of 2008

Muhammad Iqbal
Versus
Muhammad Sarwar & others

Dates of Hearing: 17.02.2020 and 19.2.2020

Date of announcement 11.03.2020.

Petitioner: Through M/s. Muhammad Haseeb Jamali & Hidayatullah Mangrio Advocates

Respondent Nos.1 & 2: Through Mr. Shahzad Afzal Advocate.

Respondent Nos.3 & 4: Through Ms. Leela @ Kalpana, Addl. A.G.

J U D G M E N T

SALAHUDDIN PANHWAR, J.- This petition is filed by the tenant against the concurrent findings of two Courts below in respect of an application under section 15 of the Sindh Rented Premises Ordinance, 1979. The ejectment of the petitioner was sought on the grounds of default, personal bonafide need as well as subletting. The trial Court after effecting service allowed the parties to lead evidence. The respective affidavit-in-evidences along with the relevant documents were filed and the witnesses were subjected to cross examination. The trial Court framed the following issues:-

1. Whether the Opponents have committed default in payment of monthly rent?
2. Whether the Opponent No.1 has sublet the rented premises to Opponent No.2?
3. Whether the applicant is required the rented premises for his personal bona fide need for his son?

4. What should the order be?

2. The trial Court allowed the ejectment on both the grounds whereas the ground of subletting was given up by the petitioner. The appellate Court also dismissed the appeal of the petitioner and maintained the order of the trial Court.

3. Precisely the facts of the case are that the respondent No.1 filed a Rent Case bearing No.272/2005 being owner of Shops at ground floor in a building constructed on Plot No.R-61, Block-6, Imran Ahmed Road, PECHS, Karachi against petitioner/tenant of Shop No.1. It is claimed that the respondent No.1 and petitioner entered into a Tenancy Agreement dated 05.1.2000 for the subject shop @ of Rs.9,000/- as monthly rent, which agreement was renewed on 01.6.2003 with a rate of rent of Rs.11,000/- per month. It is the case of the respondent No.1 that petitioner has failed to pay the rent for the subject shop w.e.f November, 2004 and that the shop is also required for personal bona fide need as his son is jobless who wanted to establish his own business. It is claimed by the petitioner that since the respondent No.1 had not been issuing rent receipts after April, 2005 and forced him to vacate the shop hence the petitioner had filed a suit bearing No.447/2005 against the respondent No.1 for permanent injunction as well as started depositing rent in MRC No.125/2005.

4. The learned Counsel for the petitioner argued that the relationship of landlord and tenant is not denied. The ejectment application was filed on the ground of subletting, default and personal bona fide need but the ground of subletting was not pressed by the respondent No.1. Learned Counsel further argued that respondent No.1 has stated in ejectment application that the petitioner tampered the agreement to the extent of amount of Rs.300,000/- to Rs.5,00,000/- which is not possible as the

original rent agreement is always kept with the landlord and not with the tenant, and in case it is assumed that it was tampered then there is nothing on record to show that the respondent NO.1/landlord has taken any action; that tenancy agreement dated 01.6.2003 was executed between the parties was produced annexure-B by the respondent No.1/landlord but he has not filed the rent receipts or counter foil issued to other tenants, however the learned trial Court in the impugned order did not discuss the same; that the tenant deposited rent in Court and there is no default on his part; that the witnesses of landlord admitted that landlord is running a milk business and his son used to sit in that milk shop; that there are other shops owned by the respondent No.1 as well out of which few are lying vacant hence the need of subject shop for his son is mala fide. He has relied upon the cases reported as 2001 MLD 1817 Karachi, 1992 SCMR 1303 @ 1305, 1983 CLC 468 @ 469, 2013 CLC 6 @ 16, 2018 CLCC 97 relevant paras No.5 & 6, 2001 SCMR 1888 @ 1894, 1989 CLC 34 @ 39, 2008 CLC 1499 @ 1502, 2008 CLC 1598 @ 1601, PLD 2011 SC 331 @ 339, 2008 SCMR 398 @ 402, 2019 YLR 2500 @ para-21, 2006 SCMR 152 @158, 2010 CLC 365 @, 2002 CLC 1391 @ 1395, 1983 CLC 468 @ 470, 1987 SCMR 2051 @ 2052, 1998 CLC 410 @ 415, PLD 1985 Khi 624 @ 627, 1985 CLC 2302 @ 2304, 1989 CLC 1048 @ 1053, 2001 SCMR 1888 @ 1893, 1894 and 1993 MLD 2083.

5. In rebuttal learned Counsel for the respondent No.1 submitted that there is admitted default in payment of rent by the petitioner. He further argued that though the petitioner claimed to have deposited the rent through MRC, however he had failed to comply with the mandatory requirements for depositing the rent in MRC as provided under the law. He has also argued that the fact of personal need has been established by the respondent NO.1 through his evidence which was not shaken. He has relied upon cases reported in SBLR 2004 Sindh 117 "B", 1997 CLC 216,

2001 SCMR 1140 (c), 2005 CLC 787 relevant pages 789, 790 and 792, 1999 SCMR 28(b), 2000 MLD 382 (a), 2002 SCMR 241, 1993 CLC 250.

6. I have heard the learned Counsels, perused the material available before and gone through the impugned orders.

7. At the outset, legally established principle with regard to scope of *constitutional jurisdiction* of this Court in rent matter(s) need to be reiterated which makes it quite clear and obvious that this Court, *normally*, does not operate as a Court of appeal therefore mere possibility of another conclusion can't be a ground to invoke Constitutional jurisdiction of this Court which, in rent matters, could only disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. Reference may be made to the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925

8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

8. In another case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214

“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.

Thus, the responsibility lies upon the challenger (*petitioner*) to, *prima facie*, show that orders of two competent forums committed some glaring illegality in forming their conclusion either with reference to record or by making *wrong* interpretations.

9. There have been raised numbers of contentions wherein main plea is that of an *attack* on ground of personal *bona fide* need as the respondent / landlord also owns other shops which are lying vacant and that his son sits with respondent / landlord at his own milk-shop.

10. To this, it would suffice to refer relevant portion (s) from the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925 wherein two *principle* (s) stood clear i.e:-

- i) the selection of business is the sole prerogative of the landlord hence availability of other shop (s) would not be of any restrictions on seeking ejection of a particular shop;
- ii) the proof of *bona fide* personal need stands discharged the moment landlord 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;

11. Guidance is taken from the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* (*supra*) I would not hesitate for a single moment that provision of section 15(2)(vii) of the Ordinance, *itself*, allows the landlord to seek eviction even for personal use of '*spouse*' or '*children*' even. The same reads as:-

“vii) the land requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children;

Therefore, sitting of son with landlord would never be sufficient to prejudice the right to seek eviction for settling *children* which, otherwise, has been provided by the law *itself*. I would add a little that sitting of a son (adult one) with father would rather support plea of such *bona fide* personal need for son. Perusal of record shows that the landlord did state such ground on *oath* and despite cross-examination the plea was, rightly concluded by lower courts, as '**not shattered**'.

12. As regard the plea of findings on point of default, the learned appellate Court also appreciated the facts with comparison to legal position *properly*. Relevant portion reads as:-

"The next point agitated by the respondent No.1 was default in payment of rent with effect from November, 2004. Though the petitioner stated to have been depositing monthly rent for the subject shop w.e.f May 2005 in MRC No.125/2005, however he failed to show any document to establish that **prior to depositing the rent in MRC the respondent No.1 has refused to receive the rent and thereafter same was sent to him through money order which too was refused.**

In terms of section 10(3) of Sindh Rented Premises Ordinance, 1979 the tenant is allowed to deposit the rent in Court either on account of refusal or avoidance of the landlord/respondent to receive the rent. However, the burden of such refusal is always upon tenant/petitioner to discharge, which the petitioner failed to show. In an identical case reported as 2007 SCMR 1140 (relevant page 1142) the Hon'ble Supreme Court observed as under:-

"Default in payment of rent-Where landlord refused to accept rent, it was mandatory for the tenant first to remit the rent through postal money order and if that was not done, deposit the rent in the Court would not absolve the tenant from being a default for the relevant period."

It seems that the petitioner has failed to show that he has deposited rent after fulfilling mandatory requirements as provided by law. Moreover he failed to shake the evidence brought on record in this regard whereas the evidence of respondent No.1 and his witnesses are consistent"

13. *Prima facie*, things regarding payment of rent have been directed to be done in a particular manner and fashion hence deviation can't be allowed because this may allow the *tenant* to earn a premium of his own wrong. Here, it is worth to add that mechanism, provided by law itself, is meant to keep things in order regarding *timely* payment of the rent.

Reference is made to case of Muhammad Amin Lasaia v. M/s Ilyas Marine & Associates & Ors PLD 2015 SC 33 wherein it is held as:-

“8. .. The burden of establishing the timely payment of rent lay upon the tenant which he failed to discharge...

14. In another case of Muhammad Amin Lasaia v. M/s Ilyas Marine & Associates & Ors PLD 2015 SC 33 it is observed as:-

8. .. **The burden of establishing the timely payment of rent lay upon the tenant** which he failed to discharge. ...

In consequence to what has been discussed above with reference to settled principles of law as well available material, I am of the clear view that adjudication made by both courts below are reasonable, hence, *writ of certiorari* under these circumstances cannot be exercised in favour of petitioner, hence, captioned petition is dismissed alongwith pending applications.

JUDGE