

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI

C.P No.S-1411 of 2019

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Date                                  Order with signature of Judge  
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Hearing/Priority Case

1. For Orders on Office Objection as at 'A'
2. For Hearing of CMA No.6592/2019.
3. For Hearing of Main Case.

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16<sup>th</sup> September, 2020.

Mr. Muhammad Ali Khaskheli advocate for the petitioner  
Mr. Zahooruddin Mehsood advocate for respondent No.1.  
.....

Heard learned counsel for the respective parties. At this juncture it would be conducive to refer relevant para of impugned judgment recorded by the learned trial court:

***"This is matter of record the advocate for opponent conducted cross-examination but failed to shake the credit of the applicant side and opponent side also failed to bring any favourable material in the favor of opponent through cross-examination. One thing is very important that neither in written statement nor in affidavit-in-evidence. Opponent has deny the fact that the shops are not required to applicant for personal bonafide need.***

***Heard the arguments advanced before me and have perused the record.***

***This is well settled law that if applicant stepped into witness box and deposed that the premises is required for personal bonafide need and request for eviction of opponent from demised premises then burden/onus shifts to opponent to produce strong evidence in rebuttal of applicant evidence.***

***It was held in 1989 CLC 49 (Sheikh Muhammad Ibrahim Lhli Vs. Additional District Judge) that "Assertion of landlord that he had no intention to raise rent supported by two witnesses. Contention of tenant that landlord was to raise rent presumptuous and based on hearsay.....Landlord's requirement of shop for personal need for starting business supported by evidence.....Conclusion arrived at by court***

***below that landlord needed shop bonafide not violative of any principle of law nor vitiated by any fallacious approach".***

***Now I come towards the contention of personal bonafide need of the applicant side.***

***It was held in 1983 CLC 1418 (Ghulam Ali & Others Vs. Muhammad Shaif & 02 others) that "It is now well established that the assertions on oath by the landlord that he requires the premises for his own use should be accepted as bonafide if such assertion is consistent with his averments in application and not shaken in cross-examination".***

***Now question before me is that what is good faith.***

***It was held in PLD 1978 Karachi 188 (Mushtaq Ahmed Vs. Mumtaz Zohra Rizvi) that the term good faith has not been defined in Section 2(27) of West Pakistan General Clauses Act 1956 as follows:***

***"A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not.....***

***In the light of supra definition of good faith I am failed to find any dishonesty on the part of the applicant side.***

***Applicant has fully supported to his case and applicant has deposed on oath that the shops are required for personal bonafide need for his two brothers who are jobless.***

***On the other hand opponent side has badly failed to deny the assertion of applicant side in his affidavit-in-evidence that the shops are not required for personal bonafide need. This fact is going against the opponent side.***

***In such circumstances, applicant side is succeeded to prove that the shops are required for personal bonafide need in good faith'.***

That judgment was challenged before the learned appellate court and the learned appellate court also decided the same in favor of landlord. Needless to mention that this is writ petition and in rent jurisdiction the petitioner is bound to demonstrate the illegality and irregularity committed by both courts below. Further it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence, hence, instant petition is dismissed along with pending applications.

At this juncture learned counsel for the petitioner (tenant) contends that he is ready to vacate the subject matter premises if sufficient time may be granted to him and he seeks six months though learned counsel for respondent No.1 disputed on this propositions and contends that two months' time may be granted. However, in the interest of justice, when admittedly on merits petitioner has no case, six months' time is granted to vacate the premises with directions that he shall evict the demised premises and ensure that possession is handed over to respondent No.1 (landlord), as well he shall pay rent and all utility bills alongwith arrears of that premises. In case of failure to pay all the dues/arrears or to hand over the vacant possession of the premises within the stipulated period, executing court would be competent to vacate the same and hand over the possession to the landlord without issuing notice to the petitioner.

Petition stands disposed of in above terms alongwith listed applications.

M.Zeeshan

J U D G E