

THE HIGH COURT OF SINDH AT KARACHI

**C.P.No.S- 443 of 2022**

Petitioner : Muhammad Sami @ Shabrati through  
Choudhry Muhammad Iqbal advocate

Respondent No.3-16 : Mst. Zaib-un-Nisa and others through  
M/s. Abdul Ghaffar Kalwar & Irshad  
Ahmed Shaikh advocates.

Date of hearing : 18.11.2022

Date of judgment : 30 .11.2022

**J U D G M E N T**

**Salahuddin Panhwar, J:** Through the instant petition, the petitioner has impugned judgment dated 21.11.2021 passed by learned Model Civil Appellate Court/District Judge Malir in FRA No. 62/2021 and order dated 17.07.2021 passed by learned I-Rent Controller Malir, Karachi passed in Rent Case No.17/2013, whereby the petitioner was directed to vacate the demised shops.

2. It is second round of litigation. In the first round the respondent No. 3 to 16 filed Rent Case against petitioner and respondent No.17 in respect of shop No. 3 to 5 situated at M.Ahmed Market Quaidabad, Landhi, Karachi under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned I-Rent Controller, Malir, Karachi. The case was proceeded and ultimately vide order dated 21.12.2016, rent case was allowed, which order was also maintained by Appellate Court, however, petitioner filed C.P.No.S-904/2017 before this Court, which was allowed vide order dated 13.03.2018 and the matter was remanded to learned Rent Controller to record evidence. After remand, the matter was contested and vide order dated 17.07.2021, learned Rent Controller allowed the rent case on the grounds of personal bonafide need and willful default in payment of rent. On appeal, the Appellate court dismissed the Rent Appeal with direction to the petitioner to vacate the premises and handover its peaceful possession of the respondents/applicants.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned judgment/ order without taking into consideration the material brought before them; that actually the demised premises were obtained on Pagri/good will and thus right of the petitioner cannot be denied, but such plea was not taken into

consideration; no default has been committed by the petitioner in payment of monthly rent; that plea of personal need has only been raised to get the petitioner evicted from the demised shops. Lastly, it is argued that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned judgment/order, hence he prayed for setting aside the judgment/order of the Rent Controller/ Appellate Court.

4. On the other hand learned counsel for the respondent No.3 to 16 while supporting the impugned judgment contended that the learned Rent Controller and learned Appellate Court passed well-reasoned judgment/order, which is based on cogent findings and do not require any interference by this Court.

5. Heard and perused the record.

6. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and 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. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

“14. Applicants have all along taken plea that Maqsood and Maqbool both sons of Wali Muhammad (original owner) who are unemployed require the same shops for starting their business. Moreover, the applicant and Maqsood and Maqbool filed affidavit in evidence and appeared in witness box, and remained unshaken on point of personal requirements. Article 23 of the Constitution provides that every citizen shall have the right to acquire, hold and dispose of the property. Hence, the landlord has the absolute right to deal with his property in the manner best suitable to him. The tenant or anyone on his behalf cannot dictate the owner/landlord or decide what is best for the landlord. I relay on case of Abdul Hafeez v. Muhammad Yousuf & Others (2020 MLD 7) where the Honorable Sindh High Court has given following observations:

*“Since prima facie the question of personal bona fide need is involved therefore, I find it in all fairness to refer the relevant provision of Sindh Rented Premises which is Section 15(vii) of the Ordinance which reads as:-*

*"the landlord 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."*

*"The words "occupation" and "use", since not been defined by the Ordinance, hence their ordinary meaning would be taken. Since the terms have deliberately been used independently therefore, prima facie former appears to be relating to a case where eviction is being sought to 'occupy' while the later i.e. 'use' appears to deal with cases where eviction is being sought for using the premises for purpose business/ earning purpose, as was being used by tenant. At this point, I would insist that the criterion for establishing a case of eviction on count of 'requirement of premises for his own occupation' would be much lighter from that of 'requirement of premises for his own use' because the landlord has the absolute right to acquire and deal with the property in the manner best suited to him and tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is otherwise guaranteed by Article 23 of the Constitution. Reference may well be made to the case of Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui 2000 SCMR 1613 wherein it is held as:-*

*"4. ... It is well-settled that the landlord has the absolute right to acquire and deal with his property in the manner best suited to him and a tenant has no right to disentitle the landlord of his valuable right to acquire, deal and possess his property which right is again guaranteed by Article 23 of the Constitution."*

*I would further say that in such like cases the landlord would only require to establish that requirement is reasonable and does not appear to be mala fide one. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such occupation. This would carry presumption of truth hence strong evidence would be required from tenant to rebut it."*

15. While discussing the same point the learned Rent Controller had referred to the evidence of both the side and also relied on case law. Hence, the finding of learned trial Court on this point does not require any interference.

16. Next point of contentions between the parties is default in payment of monthly rent. While discussing the same point the learned Rent Controller had given following observations:-

*"In discharge of burden to prove, opponent stood in the witness box but he out-rightly & categorically denied relationship of landlord & tenant, but in para-7 of his written statement filed on 30-11-2013, opponent had claimed that he had paid rent for the month of July-2013 and on refusal of rent for the month of August-2013, he sent the same through money order No. 2756 dated 28-08-2013 and again on refusal to receive money order, he had deposited rent with the Rent Controller in MRC No.7 of 2013. It is matter of record that Opponent has changed his version in second round of proceedings after remand of matter by Hon'ble High Court of Sindh and denied relationship of landlord & tenant. If somersault of the opponent is presumed true for a while, then question arise why he started depositing rent with*

*the Rent Controller in M.R.C. No. 7 of 2013 voluntarily without any direction of the Rent Controller under Section 16(1) of the Sindh Rented Premises Ordinance, 1979. The divergent versions and conflicting statements makes testimony of the opponent as unreliable, not confidence inspiring and unconvincing. Perusal reveals that though photocopies of Money Order coupon No. 2756 is annexed with amended written statement but same have not been produced in evidence in original which fact is admitted by opponent in cross examination, rather, in cross examination opponent conceded that he had not paid rent to the Manzoor since July-2013, therefore, default in payment of rent is stood proved by own admission of the opponent. It would be pertinent to mention that though money order coupons were annexed with amended written statement but opponent's application for permission to produce original coupons was dismissed and F.R.A. preferred also met the same fate, therefore, photocopies of coupon available on record cannot be considered in evidence."*

17. Again the same discussion and observations are based on record and evidence and do not call for any modification. So, the discussion and findings of the learned Rent Controller do not suffer from any illegality, irregularity or misreading of record. The present point is accordingly replied in negative."

7. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:

"24. In this regard, perusal reveals that applicants inter alia, sought eviction/ejectment of opponent from demised shops for personal use of Maqsood Ahmed son of late Wali Muammad and Maqbool Ahmed son of late Wali Muhammad who are arrayed as applicants No. 2 & 13 respectively. Consequently, it is an application by co-sharer/co-owner within the definition of Section 2(g) of the Sindh Rented Premises Ordinance, 1979, which is reproduced per verbatim as under:-

**["personal use" means the use of the premises by the owner, his wife (or husband), sons or daughters"]**

25. Now I will advert to the question of bonafide need in good-faith of the demised shops to accommodate Applicant No. 12 & 13, who are proved to be co-owners/co-sharers of the demised shop by way of succession & inheritance. In this regard, Section 15(2) (vi) of the Sindh Rented Premises Ordinance, 1979, reads as under:-

**["The Landlord requires premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children].**

26. In order to substantiate plea qua need of demised shop in good faith for applicants own use, applicants entered in witness box through their duly constituted attorney namely Manzoor Ahmed son of late Wali Muhammad (who is also one of the legal heir/co-sharer) as well as applicants Maqsood Ahmed and

Maqbool Ahmed. The attorney in para-8 of the affidavit-in-evidence deposed that demised shops are needed by applicants for use of un-employed Maqsood Ahmed (Applicant No.12) and Maqbool Ahmed (Applicant No.13) and in cross examination attorney Manzoor Ahmed remained resolute that Maqbool Ahmed is working at a Shop bearing No.18 Salman Tower but it is not his own shop rather working at the shop of one Mansoor Ahmed and further denied that Maqsood Ahmed had a shop at House No.C-15, Street No.3, near Meezan Bank National Highway Kazafi Town Quaidabad Karachi. The applicant Maqsood Ahmed, in his cross examination candidly denied having/running a Shop of Generator in Salman Tower, whereas, applicant Maqbool Ahmed only affirmed that he is employed at a shop at Salman Tower. From the testimonies of the applicant, it is established that applicant Maqsood Ahmed and Maqbool Ahmed, for whose personal use the demised shops are being needed/required, are not running/having their own businesses as attributed/alleged by opponent and employment with other does not bars an applicant/owner from seeking eviction of a tenant from premises, where, applicants intends to establish their own business. The precedents set by Hon'ble Apex Courts also supports the plea of applicant, as under the established canons of law, a landlord in eviction matter is only required to establish that his requirement was reasonable and same did not appear to be malafide and initial burden stood discharged when landlord stepped into the witness box reiterating on oath the reasonableness for such occupation. Perusal reveals that opponent could not rebut the oral statement on oath of the applicants, therefore, applicants have established need of the demised shops for their personal use in good faith. The Hon'ble Supreme Court of Pakistan in case of **M.K. Muhammad and another versus Muhammad Abu Bakar (1993 SCMR 200)** has maintained the ground of personal bonafide use when evidence of landlord remained unrebutted. In this regard, I also have strengthen by view from the dictum laid down by Hon'ble High Court of Sindh in case of **Abdul Hafeez versus Mohammad Yousuf and others (2020 MLD 7 Sindh)**.....

**30.** Sequel of the above, I am of the considered view that applicants have established their locus standi to seek eviction of opponent from demised shops and their bonafide personal need within the definition of Section 2(g) of the Sindh Rented Premises Ordinance, 1979 read with Section 15(2) (vii) of the Sindh Rented Premises Ordinance, 1979, as such, Issue No. 2 is determined as **"In Affirmative."**

#### Issue No.4.

...**32.** Heard & perused. Perusal reveals that applicant in para-8 of the application and corresponding para-8 of affidavit-in-evidence averred & deposed that applicant approached opponent for vacating the demised shops on ground of personal use of his two brothers Maqsood and Maqbool but opponent flatly refused to vacate the demised sup but deliberately & intentionally made default in payment of rent and has failed to paid the rent for the month of July & August-2013. Since, applicant entered in the witness box and reiterated the default in payment of rent from the months of July & August-2013, therefore, initial burden to

prove default stood discharged and burden shifted to the opponent to prove that he had tendered the rent to the applicant but applicants refused to receive the rent with affirmative & convincing evidence. There is no dearth of case law of the Hon'ble Apex Courts relating to shifting of burden on tenant/opponent on the basis of statement on oath of the landlord/applicants. Reliance case be placed on case of **Khalid versus VII Additional District Judge, Karachi and 2 others (2015 CLC 570 Sindh)** Reliance in this regard is also placed on case of **Mst. Sakina through Attorney versus Mst. Yasmin Taj and 2 others (2012 MLD 1081 Karachi)**, wherein, Hon'ble High Court of Sindh held as under:-

**"S. 15---Ejectment of tenant on ground of default in payment of rent--- Practice and procedure---Initial burden was upon the landlord to discharge that default was committed by the tenant and all that was required of a landlord was to state on oath that rent was not received from the tenant for a given period of time whereafter the burden shifted, under law, upon the tenant, who in his turn had to prove affirmatively, that the payment of rent was made and had to dislodge the claim of default, raised by the landlord, by producing affirmative and convincing evidence."**

33. In discharge of burden to prove, opponent stood in the witness box but he out-rightly & categorically denied relationship of landlord & tenant, but in para-7 of his written statement filed on 30-11-2013, opponent had claimed that he had paid rent for the month of July-2013 and on refusal of rent for the month of August-2013, he sent the same through money order No. 2756 dated 28-08-2013 and again on refusal to receive money order, he had deposited rent with the Rent Controller in MRC No.7 of 2013. It is matter of record that Opponent has changed his version in second round of proceedings after remand of matter by Hon'ble High Court of Sindh and denied relationship of landlord & tenant. If somersault of the opponent is presumed true for a while, then question arise why he started depositing rent with the Rent Controller in M.R.C. No. 7 of 2013 voluntarily without any direction of the Rent Controller under Section 16(1) of the Sindh Rented Premises Ordinance, 1979. The divergent versions and conflicting statements makes testimony of the opponent as unreliable, not confidence inspiring and unconvincing. Perusal reveals that though photocopies of Money Order coupon No. 2756 is annexed with amended written statement but same have not been produced in evidence in original which fact is admitted by opponent in cross examination, rather, in cross examination opponent conceded that he had not paid rent to the Manzoor since July-2013, therefore, default in payment of rent is stood proved by own admission of the opponent. It would be pertinent to mention that though money order coupons were annexed with amended written statement but opponent's application for permission to produce original coupons was dismissed and F.R.A. preferred also met the same fate, therefore, photocopies of coupon available on record cannot be considered in evidence.

34. Scanning of pleadings & evidence reveals that there is no written tenancy agreement to believe that a specific date was

fixed for payment of monthly rent within the purview of Section 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979, therefore, in absence of any agreement rent was required to be paid within 60 days, after the rent has become due for payment. Perusal reveals that on alleged refusal from receiving rent, opponent was required to send rent through money order or deposit the same with Rent Controller under Section 10 of the Sindh Rented Premises Ordinance, 1979 and tendering of rent through money order prior to depositing the same with Rent Controller is not a prerequisite as has been laid down by Hon'ble High Court of Sindh in case of **Rajaldas Gianchand Versus 1<sup>st</sup> Additional District Judge Karachi South reported as 2018 CLCN 97 Karachi**. In this regard, a report is called from the Court of 2<sup>nd</sup> Rent Controller Malir where the opponent has been depositing rent in M.R.C. No. 7 of 2013, which shows that M.R. C. was filed on 25-09-2013, after 87 days of the rent for the month of July-2013 become due, therefore, payment of rent through Rent Controller after 87 days of rent due tantamounts to default in payment of rent in the light of settled proposition of law that once default is committed, it cannot be wiped out by subsequent payments as has been held by Honble High Court of Sindh in case of **Nizar Noor versus Ameer Ali reported as 2020 CLC 254 Karachi.....**

35. In view of the discussion, reasons, law & citation referred above I am of the considered view that applicants have proved the default in payment of rent for the month of July-2013, as such, Issue No. 4 is determined as **"In Affirmative"**.

#### **Issue No.5**

37. I have perused the evidence & considered the arguments advanced by the learned Advocate for the parties. Perusal reveals that applicant alleged that opponent had sub-let the demised shops to Opponent No.2 @ Rs.18,000/-, which assertion & testimony of the applicant of the applicant has been denied by opponent No.1 in amended written statement however in previous written statement it was averred that both opponents are jointly running a business of Tiles and Sanitary in the name and style of Qadri Sanitary Tiles. Persual reveals that applicants could not establish that Atif Qadri is running his business as sub-tenant of the demised shops as Applicant's attorney in cross examination admitted that they have not produced any documentary evidence regarding sub-let of the demised shop to the Atif Qadri nor applicants have any record to prove that demised shops have been sub-let to Atif Qadir @ Rs.18,000/- per months. Consequently, Issue No.5 is determined as **"In Negative"**.

8. Initially, the petitioner has asserted that the demised shops were obtained on the basis of *Pagri*, which was allegedly paid by him to the father of the respondents/applicants, hence a right has been created. However, perusal of record reflects that in the first round of litigation no plea of *pagri* was taken by the petitioner before Rent Controller or Appellate Court. Such ground was only taken after remand of the case. If for the sake of arguments it is presumed that *pagri* amount was paid by the petitioner in respect of the

premises in question, even then it would not debar the respondents to seek eviction of the petitioner on the ground of personal bona fide need. Reliance is placed upon the case of **Sheikh Muhammad Yousuf vs. District Judge, Rawalpindi and 2 others (1987 SCMR 307)**. In the case **Mohammad Sharif v. Iftikhar Hussain Khan (1996 MLD 1505)** it was held that:

*"...Nothing was in law which would bar ejectment under Sindh Rented Premises Ordinance 1979, for personal bona fide need of landlord in case which payment of pagri, he could file suit for recovery of same in civil court in accordance with law ... Mere fact that pagri had been alleged to have been paid to landlord would not debar landlord from seeking ejectment of tenant ground of personal bona fide need of his son."*

9. With regard to default in payment of rent, perusal of the record, it reflects that during cross-examination, the petitioner has admitted that that he had not paid rent to Manzoor since July 2013 and he further admitted that he has not filed any proof along with his affidavit-in-evidence any endorsement of money order which, Manzoor has refused to accept the rent. Thus, default in payment of monthly rent stood proved.

10. With regard to the ground of personal bonfide need, Maqsood and Maqbool both sons of Wali Muhammad (original owner) applicant filed their affidavits-in-evidence and stated that being unemployed the demised shops are required for starting their business. They appeared in witness box, but their evidence remained unshaken and could not be shattered during his cross-examination. More so, no any documentary evidence has been brought on record to establish that their demand is not in good faith. It is a general principle that if the statement of landlord comes on oath if consistent with application for ejectment and not shaken in cross-examination, it is sufficient to prove that requirement of landlord is bonafide.

11. For what has been discussed above, I find no illegality in the judgment/order *impugned*, which are accordingly maintained. Resultantly, the petition in hand is hereby dismissed.

**J U D G E**



PLD 1984 SC 38, 1992 SCMR 46, 1991 MLD 801, 1990 MLD 1711, 2005 YLR 319, 1994 YLR 746, 1999 MLD 1842 and 2015 SCMR 58.