

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 708 of 2021

Petitioner : Syed Ali Abbas Rizvi through Mr. Munawar Khan Qadri, advocate

Respondent No.1 : Mst. Sania Riaz present in person

Date of hearing : 21.03.2023

Date of judgment : 30.03.2023

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 07.09.2021 passed by appellate Court in FRA No. 38/2021, whereby while upholding the order dated 11.01.2020 passed by learned Rent Controller in Rent Case No.116/2019, dismissed the F.R.A and directed the petitioner/opponent to vacate the demised shop within 30 days from the date of judgment.

2. Briefly the relevant facts are that respondents filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller on the ground of personal bonafide need and default against the petitioner seeking his ejectment from shops No.A-13, Street No. 20, T &T KDA Flats, Sector 14-B, Shadman Town No.2, North Karachi, which was rented out to the petitioner by virtue of Tenancy Agreement dated 01.02.2017 through respondents' authorized Attorney namely Muhammad Shahid. Ejectment application was contested by the petitioner whereby he denied the relationship of tenant and landlord between the parties.

3. Learned counsel for the petitioner contended that learned Appellate Court has passed the impugned judgment without taking into consideration the material brought before it; that learned Rent Controller allowed the ejectment application of the respondents without assigning sound reasons and the learned Appellate Court has also not applied his mind judiciously while passing the impugned judgment; that the claim of the respondents regarding personal need is based on false plea; that no default has been committed by the petitioner as rent was being deposited by him in the MRC and such receipts

were produced before the Rent Controller, but the same were not considered in the final order, therefore, he prayed for setting aside the impugned judgment.

4. On the other hand, respondent No.1, who is present in person, contended that the impugned judgment as well as the order passed by the Courts below are well-reasoned, which were passed after assessment of all the material, hence the same 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 d*. 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 relevant paragraphs of the Order of the Rent Controller, whereby the ejection application filed by the respondents was allowed, which is that:-

“Points No.(i)

7. After hearing the counsel for the applicant, I have examined the record. The opponent has admitted the relation of landlord and tenant between him applicants in his cross examination. The relevant portion is reproduced as under:-

“It is correct to suggest that I am depositing rent in the name of Muhammad Shahid despite the fact that I have come to know about the ownership of premises in the name of applicants”

The above admissions are sufficient to prove the relationship of the parties being land lord and tenant. On 17.03.2019 applicants have filed this rent case against the opponent wherefrom opponent has come into knowledge that applicants are the landlady of the premises which he has been admitted in cross examination. It is the settled principal of the law that the admitted facts need not to be proved. Here it is also important to note that there is no dispute between Muhammad Shahid and applicants. Muhammad Shahid had

also acted as attorney of the applicants in the instant case too and he did not have any objection on the ownership of the applicants. Moreover, section 2 (f) of SRPO 1979 is very much clear which speaks the definition of landlord. The said section is reproduced as under: -

"Section 2 (f) : "Landlord" means the owner of the premises and includes a person who is authorized or entitled to receive rent in respect of such premises."

8. In view of the above, I am of the humble opinion that technicalities do not come in the way of applicants and the applicants are the owner/landlady of premises. Thus, the relationship between the applicants and opponent is proved.

Point No. (ii).

9. The point of the default in payment of rent is crucial in nature. Applicants claim that the opponent since March 2018 avoiding to pay monthly rent of the premises. Opponent in Para No.4 of his written statement has claimed that opponent is depositing rent in MRC No.274 /2018 in the name of Muhammad Shahid. Opponent has also annexed the copy of deposit of rent in MRC in the name of Muhammad Shahid. Opponent has claimed that upon refusal of attorney of applicants namely Muhammad Shahid opponent started depositing rent in favor of Muhammad Shahid in MRC No.274/2018 before the court of 6th rent controller Karachi central. It is also important to note that despite the fact that opponent came to know about the ownership of the premises in the name of applicants, opponent did not deposit the rent in favor of the applicants. It has been held in 2001 SCMR 678 that factum of institution of application for ejectment in substantial compliance. That the admission of the opponent that he had been depositing rent in MRC No.274/2018 in favor of Muhammad Shahid (attorney of applicants) instead of applicant comes to default. Such admissions on the part of the opponent is sufficient to prove that the opponent was required to deposit the rent in favor of applicant but instead of depositing the rent with the applicant, the opponent deposited the rent in MRC No.274/2018 in favor of Muhammad Shahid as such in such circumstances opponent has made himself defaulter in payment of rent. Moreover, the opponent came before this court through his counsel on 30.05.2019 but surprisingly despite knowledge of present proceedings, the opponent did not deposit a single penny of rent in shape of premises with name of applicants. Thus, the opponent has committed willful default. The point in question is therefore replied in affirmative.

Point No. (iii) .

10. As regard to point in question for personal bonafide need is concerned, the applicant has specifically mentioned in Para No.5 of her ejectment application that the applicants above named is required the premises for their personal use. Conversely, the learned counsel for the opponents suggested

that applicants are not required the premises as applicants are household lady and could not run the any business but the applicants has denied such suggestion and stated as under:-

"It is incorrect to suggest that I am just housewife and no experience of business."

The evidence of the applicant is relevant and cannot be discarded merely on the ground that she has not experience to run the any business.

11. By now it is well settled law that landlord has prerogative choice to select the property for his personal use and tenant has no option to choose which premises would be suitable for landlord. I am supported in my view by the case of Ghulam Hussain vs Court of 5th Additional District Judge South reported as 2009 CLC 272 wherein Honorable Court held as under:-

"Landlord had a prerogative choice for property of his personal use and no exception could be taken to such findings of Court below. Landlord was judge of (who has to judge the) suitability of premises for his requirement and tenant had no option to choose which premises would be suitable for landlord."

12. During evidence applicant has fully supported such version and opponents side failed to rebut the personal need claim of applicant. Applicant needs the premises for her personal need. Thus, I am of the humble view that statement of applicant on oath is consistent with averment made in the ejection application. The evidence of applicant side in respect of personal need remained un-rebutted/un-shattered. Therefore, I am of the humble view that applicant has also succeeded to establish the ground of personal bonafide need. In my view I am supported by the case law reported as 2001 S.C.M.R. 1197 Honorable Supreme Court held as under:-

"Sole testimony of the landlord is sufficient to establish his personal bona fide need of premises. Where the statement of landlord on oath was quite consistent with his averments made in the ejection application and neither his statement was shaken nor any thing was brought on record in evidence to contradict the same."

13. In view of the above, discussion I am of the humble view that the applicant has established the case of ejection on the ground of personal bonafide need of premises.

7. The learned Appellate Court upheld the findings arrived at by the learned Rent Controller and dismissed the Rent Appeal filed by the petitioner through the impugned judgment which reads as under:

“Record of the case shows that in order to establish her claim, the applicant / respondent examined herself by way of filing her affidavit-in-evidence and stated that applicants entered into the tenancy agreement with the opponent in respect of shop. No.A-13, Street No.20, T&T KDA Flats Sector 14-B, Shadman Town No.2, North Karachi through their duly authorized attorney Muhammad Shahid s/o Riaz Muhamad. On the other hand, the appellant / opponent denied the relationship of landlord and tenant on the ground that the premises in question was handed over to him by Mr. Muhammad Shahid, who also entered into tenancy agreement with him and show himself as owner / landlord of rented premises. He also denied that present applicants are owners of rented premises as she herself filed four tenancy agreement and receipt with instant rent application, which shows that Muhammad Shahid is owner/landlord of rented premises.

It is an admitted fact that appellant / opponent is tenant in the rented shop, however, he disputed the relationship of landlord and tenant between him and Respondents and stated that he was entered into tenancy agreements in respect of subject shop with one M. Shahid, who shown himself to be the owner and handed over the possession of subject shop to him. In such situation the definition of landlord provided in section 2 (f) of SRPO 1979 speaks that:-

“Landlord means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.”

Perusal of record further shows that Annex"D" to the plaint, which is Transfer Order issued by KDA is available on record shows the ownership of subject shop in the names of present applicants/respondent. Further-more, Ex.0/1/J, produced by the opponent / appellant, which is the certified copy of order passed in Suit No.444/2018, filed by the present appellant for permanent injunction against Muhammad Shahid, thereby said Muhammad Shahid (Defendant No. 1 of said suit) filed statement dated 02-05-2018 produced by the opponent as Ex.0/1/K, stated that **“the property in question is actually owned by my younger sister namely (1) Sania Riaz and (2) shehnaz Shaikh both daughters of Riaz Muhammad (late) and they being domestic women are not able to look after and pursue the matters connected to their property (shop premises) which has been possessed by plaintiff as tenant only, therefore, I being their special attorney is only looking after the affairs of shop (suit premises in in this case. It is also pertinent to mention here that present rent case has been filed by the applicants through their authorized attorney "Muhammad Shahid" and the parentage of applicants and said attorney is same. So in such circumstances, I am of the humble opinion that applicants being owners/ landladies of the shop in question exists relationship of landlord with its tenant.**

So far the observations of learned trial Court upon the point of default in payment of rent is concerned, it is an admitted fact that there is no denial of the opponent / appellant upon the ownership / title of subject premises, however, the premises in question was given to the appellant on rent through Muhammad Shahid (real brother of respondent). Now a question arises that *whether the appellant / tenant was in knowledge about the ownership / title of*

subject shop, if yes, than why he deposited the rent in MRC, in favour of Muhamad Shahid?"

In this regard the opponent has stated that upon refusal of attorney of applicants namely Muhammad Shahid he started depositing rent in favour of Muhammad Shahid in MRC No. 274/2018. During the cross examination the opponent / appellant has admitted that **"it is correct to suggest that I am depositing rent in the name of Muhammad Shahid despite the fact that I have come to know about the ownership of premises in the name of applicants. "** Further more, in Suit No.444/2018, filed by the present appellant for permanent injunction against Muhammad Shahid, thereby said Muhammad Shahid (Defendant No.1 of said suit) filed Statement dated 02-05-2018 stated that **"the property in question is actually owned by my younger sisters namely (1) Sania Riaz and (2) Shehnaz Shaikh both daughters of Riaz Muhammad (late) and they being domestic women are not able to look after and pursue the matters connected to their property (shop premises)."**

It appears that the appellant was well in knowledge about the ownership of rented shop of applicant since 02-05-2018 but despite that neither he shown the names of landlord of the property in MRC No. 274/2018 nor sent any intimation to them regarding filing application under Section 10(3) of SRPO 1979 and depositing rent in Court and such deposit is still continued. That conduct of appellant/opponent made him willful defaulter in payment of rent.

So far the observations of learned trial court on Point No.3, which are with regard to personal need of applicants/respondent are concerned, in order to establish their case regarding personal need, the applicant/respondent examine before the learned trial court personally and stated in her affidavit in evidence that the demised is required by the applicants/respondents for their personal bonafide need. The respondent/landlady also appeared in witness box and she recalled & reaffirmed the contents of her affidavit-in-evidence/personal requirement on oath. On the other hand, the appellant/opponent though denied the personal need of applicants/landladies on the ground that applicants being household ladies, could not run any business in the subject shop. It is settled law that landlord has prerogative choice to select the property for his personal use and tenant has no option to choose which premises would be suitable for landlord. It is held in 2004 CLC 1326 that:

"Statement of landlord on oath of on consistent with the averment made in the application in respect of personal bona fide requirement which neither is shaken nor satisfactory contradicted, proves the bona fide of the landlord."

So, in such circumstances, I am of the view that, while dealing the point of personal bonafide need, the learned rent controller has also not committed error in deciding this point."

8. In the present case, the petitioner has denied relationship of tenant/landlady between the parties on the plea that demised shop was rented out to him by one Muhammad Shahid, hence it is vehemently argued that no

question of payment of rent and or personal bonafide need arises. I have re-examined the material brought on record. Respondent No.1 filed affidavit-in-evidence wherein she stated that petitioner entered into Tenancy Agreement with the respondents in respect of demised shop through their duly authorized Attorney Muhammad Shahid. Record reflects that Transfer Order of KDA is available on record which shows that respondents are the owners of the demised shop. Further a certified copy of the order passed in Suit No.444/2018 filed by the petitioner against said Muhammad Shahid for permanent injunction, wherein Muhammad Shahid through statement stated that respondents are his younger sisters and they being domestic women are not able to look after and pursue the matters connected to their property and he being their Special Attorney is looking after the affairs of the demised shop which is in possession of the petitioner as tenant. It is further noted that Rent Case was filed by respondents through their Attorney Muhammad Shahid and both before appellate Court and before this Court both the respondents are arrayed through their Attorney Muhammad Shahid, therefore, the findings with regard to existence of relationship of landlady and tenant between the parties do not require any interference by this Court.

9. With regard to the default, the petitioner stated that upon refusal of said Muhammad Shahid to receive rent, he started depositing the same in MRC No. 274/2018 in favour of Muhammad Shahid. However, in cross-examination, petitioner admitted that he was depositing the rent in the name of Muhammad Shahid despite the fact that he had knowledge about the ownership of the demised shop in the names of respondents. Therefore, the petitioner even after coming to know about the ownership of the demised shop in the month of May 2018, did not show the names of the respondents in the M.R.C and even did not send any intimation regarding deposit of rent in MRC, as such, such conduct of the petitioner made him willful defaulter.

10. With regard to personal bonfide need, the same is also proved as the respondents specifically stated in affidavit-in-evidence that the demised shop is required by them for their personal bonafide need. However, petitioner claims that respondents being household ladies could not run any business in the demised shop. It is well settled that nature of the business is choice and prerogative of the landlord which cannot be interfered. Reliance is placed upon the case of *F.K. Irani & Co. v. Begum Feroze* (1996 SCMR 1178). Respondent was cross-examined by counsel for the petitioner but her evidence remained

unrebutted and unshattered. In the case of Shakeel Ahmed and another v. Muhammad Tariq Farogh and others (2010 SCMR 1925), it has been held by the Hon'ble Apex court as under:

"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 in evidence as prescribed by law, if it remains unshattered in cross-examination and unrebutted in the evidence adduced by the opposite party. If any case law is needed to fortify this view, reference can be made to the case of Mst. Toheed Khanum v. Mohammad Shamshad (1980 SCMR 593), wherein the opinion of I. Mahmood, J. (as he then was) in the case of Hassan Khan v. Munawar Begum (PLD 1976 Karachi 832) to the same effect, was approved.

11. For what has been discussed above, I find no illegality in the judgment *impugned*, which is accordingly maintained. Resultantly, the petition is hereby dismissed. These are the reasons for the short order announced on 21.03.2023.

J U D G E

Sajid