

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1734 of 2014

[Muhammad Shafiquev..... Muhammad Khalid Hussain Shaikh & others]

C.P. No.S-1735 of 2014

[Ehsan Ellahiv..... Muhammad Khalid Hussain Shaikh & others]

Date of Hearing : 07.02.2023
Petitioner through : Ms. Nazia Siddiqui, Advocate (in both petitions).
Respondents through : Mr. Rajandar Kumar, Advocate for Respondents (in both petitions).

ORDER

Zulfiqar Ahmad Khan, J:- These petitions assail the findings of the learned trial Court dated 30.11.2011 as well as first Appellate Court dated 01.11.2014. The present petitions are being determined conjunctively vide this common order.

2. The precise facts are that the Petitioners are tenants of respondents (petitioner in C.P. No.S-1734/2014 is tenant of respondents in respect of shop No.2 Ground Floor Hussain Manzir, Survey No.243, Seet AM, Shahrah-e-Iraq, Saddar, Karachi, whereas, petitioner in C.P. No.S-1735/2014 is tenant of the respondents in respect of shop No.2 in the same building, hence the both shops will be collectively used as tenement). The respondents No.1 to 10 (in both petitions) filed an ejectment application under Section 15 of Sindh Rented Premises Ordinance, 1979 ("SRPO") on the ground of personal bona fide need as well as default which was allowed by the learned Rent Controller/Trial Court vide order dated 30.11.20211 and the petitioners were directed to vacate the tenement within 60 days. The Petitioners impugned the said order of the learned trial Court

before the Appellate Court by filing FRAs which were dismissed vide judgment dated 01.11.2014 (“Impugned Judgment”) and order of the learned trial Court was upheld to the extent of personal bonafide need of the respondents and the Appellate Court also allowed eviction of the petitioners from the tenements, however, reversed the findings of the learned trial Court to the extent of default, hence the petitioner before this Court.

3. Petitioners’ stance is that they never committed any default in payment of the rent but the only ground on which the eviction application under Section 15 SRPO was preferred by the respondents was of his personal need, where, the respondents/landlord were required to give complete details of personal bonafide before the trial Court which they failed to do, therefore, the concurrent findings need interference by this Court.

4. In contrariwise, respondent’s stance is that concurrent findings of the Courts below are upon correct appreciation of law and facts presented by the respondents and concurrent findings cannot be disturbed, therefore, the petition be dismissed.

5. Heard the arguments and perused the available record. At the outset, it can safely be recorded 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 there exists possibility of a different view would never be sufficient to seek concurrent findings disturbed by invoking constitutional jurisdiction of this Court. Reference may well be made to the case of Shakeel Ahmed and another v. Muhammad Tariq Farogh and others (2010 SCMR 1925).

6. Thus, while pressing Constitutional Jurisdiction in such like matter, the petitioner must establish that the findings of two Courts below, particularly of appellate Court, are prima facie not in accordance with law and available material. There is no denial to existence of relationship of landlord and tenant between the parties and in such like matter the claim is to be accepted once landlord states on Oath and same goes un-shattered in cross-examination. Reference is made to case of Pakistan Institute of International Affairs v. Naveed Merchant and others (2012 SCMR 1498) wherein it is held as:-

“10. The claim of appellant as regard their personal need, when examined on the basis of their word to word pleadings in paragraphs Nos.4 and 5 of the rent application and the affidavit in evidence of their witness leaves no room for doubt open for discussion on the subject of their choice and preference which has already come on record and remained un-shattered and un-rebutted from the side of respondents Nos.1 and 2 in these circumstances, subsequent developments which might have been relevant in some other cases are of no help to improve the case of respondents Nos.1 and 2 before the High Court in exercise of its jurisdiction under Article 199 of the Constitution. It will be nothing, but reiteration of settled legation position that the statement on oath of the landlord as regards claim of their / his personal need un-shattered in cross-examination and un-rebutted in defence evidence is to be accepted by the Court as bona fide. Moreover, the choice lies with the landlord to select any of the tenement for his personal need and for this purpose the tenant or the Court have no locus standi to give their advice for alternate accommodation.”

7. The findings of the learned trial Court as well as First Appellate Court concurrent in nature of personal bonafide need of the Respondent No.1 who intends to start his own business in the tenements. Section 15(2)(vii) of SRPO requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness. From

the statement of landlord/owner for the purpose of eviction of a tenant on the ground of personal bona fide need only an honest intention is to be deduced and there is no other formula to adjudge good and bad faith, for the purpose of eviction on the aforesaid count. If the Court on the scrutiny of the evidence comes to the conclusion that it was an honest intention then it would be immaterial whether he remained successful in achieving the object or not that is whether his son or daughter would join him in the business after completing their education. This requirement would be immaterial in the sense that the intention of the father in evicting the tenant was an honest one¹. Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as “honesty of intention”.

8. The primary requirement and condition precedent for invoking provision of Section 15(2)(vii) of SRPO claiming relief on the ground of personal bona fide need of landlord in good faith is that the landlord should be honest in his approach and sincerity of his purpose should be manifested by irreversible evidence and surrounding circumstances².

9. The requirement of premises in good faith is not capable of being confined to precise, identical or 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 the case³. My reverend brother Mr. Justice Muhammad Shafi Siddiqui in the case of *United Business Machines v. Ghulam Hussain Hidayatullah* (2023 YLR 40) discussed the requisites

¹ S.M. Nooruddin v. SAG Printers (1998 SMCR 2119)

² Nawdat Khan v. Mst. Surraya (PLD 1993 Karachi 491)

³ Muhammad Amn v. Mst. Nafeesa Khatoon (PLD 1996 Karachi 340)

of Section 15(2)(vii) of SRPO and paras 20 to 23 relevant in this respect which are reproduced hereunder:-

“20. Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness. From the statement of landlord/owner for the purpose of eviction of a tenant on the ground of personal bona fide need only an honest intention is to be deduced and there is no other formula to adjudge good and bad faith, for the purpose of eviction on the aforesaid count. If the Court on the scrutiny of the evidence comes to the conclusion that it was an honest intention then it would be immaterial whether he remained successful in achieving the object or not that is whether his son or daughter would join him in the business after completing their education. This requirement would be immaterial in the sense that the intention of the father in evicting the tenant was an honest one. Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as “honesty of intention”

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The requirement of premises in good faith is not capable of being confined to precise, identical or 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 the case.

Sufficiency of accommodation either for a commercial/industrial activity or for residential purpose is to be adjudged best by the landlord himself and it may vary not only on case to case basis but also on the basis of nature of business that one intends to establish an honest idea about future growth of the business and its prospects. Someone may have an idea of establishing humongous business set up and he may or may not be successful in achieving his object and plan but what is important, as a test, is the honesty of intention and there is nothing on record in the shape of cross-examination of the landlord/owner to demonstrate that it was not an honest and genuine intention for extending and enhancing business for himself and for his family members.”

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11. It is gleaned from appraisal of the findings of the learned trial Court as well as Appellate Court that the both the courts having examined the material produced by the parties came to the conclusion that the respondent No.1 being landlord of the said shop was entitled for its possession on personal need. It is settled by now that the landlord whenever desires to start his own business in the shop/tenement or for his son would be entitled for the tenement on account of personal need and the tenant having only a tenancy rights over the tenement is entitled to vacate the tenement and hand it over peacefully to the landlord and would not challenge the bona fide or ask for the details of business from the landlord as well as in this epoch the tenant after acquiring the tenement upon tenancy rights is considering himself/themselves as a landlord instead of tenant and illegally dragging the landlord into false litigation just to linger on the matter as well as frustrate the proceedings. It is well settled that learned trial Court is the fact finding authority where the learned trial Court as well as learned Appellate Court having examined the entire record made available before them reached to the right

conclusion mere statement of the landlord on oath is sufficient to prove the personal bona fide need⁴.

12. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.⁵

⁴ Mst. Zahida Haroon v. Muhammad Ashique (2021 CLC 120).

⁵ Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).

13. In view of the rationale and deliberation delineated above, the petition at hand is dismissed. At best to allay fears of the petitioners that the shops would not be put into personal use by the respondents, as done in a few cases by this Court, once the demised premises are vacated by the petitioners, the respondents are given four months from the date thereof to put these premises in their personal use, failing which the petitioners would be competent to approach this Court for redressal of their grievances. Office is directed to place copy of this order in petitions listed above.

Karachi
Dated: 07.02.2023.

JUDGE

Aadil Arab.