

IN THE HIGH COURT OF SINDH, KARACHI

C.P No. S-296 of 2018
C.P No. S-297 of 2018
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PRESENT:
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Petitioner : Syed Sikandar Abbas Naqvi,
Through his counsel Mr. Waseem
Iqbal, advocate.

Respondent s : Dr. Kamran and another,
Through his counsel M/s. Abdul
Wajid Wyne and Waqas Wajid Wyne,
Advocates.

Date of hearing : 29.03.2022.

Date of Judgment : 08th April, 2022

J U D G M E N T

Kausar Sultana Hussain, J. :- By this common judgment, I shall dispose of three Constitution Petitions numbered above. The petitioner/landlord, Syed Sikandar Abbas Naqvi had initiated ejectment proceedings before the Rent Controller, Karachi East against respondent No.1/tenant Dr. Kamran on the grounds of default, personal need and subletting by filing three separate Rent Cases Nos. 73, 80 and 82 of 2011, under section 15 of Sindh Rented Premises Ordinance, 1979 (**S.R.P.O, 1979**), who is in occupation of the demised premises viz; Shops No. 13, 14 and 15 respectively, located in Ehsan Centre, Plot No. 27, Block-A, Sector-1, Darkhshan society, Malir Township Karachi (hereinafter referred as to **“case properties”**). The learned Vith Rent Controller, Karachi East had allowed the said Rent Applications of the Petitioner/Landlord vide judgment dated 18.10.2016 with directions to Respondent/Tenant to vacate the case properties and hand over the peaceful vacant possession thereof to the Petitioner/Landlord within 30 days from passing of that judgment.

2. The Respondent No.1/Tenant has assailed the said impugned judgments dated 18.10.2016 before the learned District Judge, Karachi East through filing separate F.R.As Nos. 149, 150 and 151 of 2016, which were transferred to the learned IVth Additional District Judge, Karachi East for disposal according to law. The learned IVth Additional District Judge, Karachi East, after hearing arguments of both the side vide judgment dated 20.12.2017 allowed the said F.R.As and set aside the impugned judgments of trial Court dated 18.10.2016 and consequently the Rent Cases No. 73, 80 and 82 of 2011 filed by the Petitioner/Landlord were dismissed on merits.

3. Being dissatisfied with the impugned findings of the learned IVth Additional District Judge, Karachi East, the petitioner/landlord has approached this Court with the prayer to set aside the impugned judgments dated 20.12.2017, passed by the learned IVth Additional District Judge, Karachi East in three separate FRAs as mentioned above by maintaining the judgments of learned VIth Rent Controller, Karachi East.

4. The Respondent No.1/Tenant after being served with the notices issued by this Court in these petitions, has submitted his objections, whereby he has denied the contents of these petitions.

5. Brief facts of the rent cases No. 73, 80 and 82 of 2011 are that in the year 1990, Respondent No.1/Tenant entered into a tenancy agreement with late Mrs. Alima Khatoon wife of Syed Ikram Hassan Naqvi (mother of petitioner) and upon the demise of mother of the petitioner, the petitioner became landlord alongwith other co-owners. Thereafter in the year 2009 letter of administration was granted in favour of the petitioner in which the co-owners have also executed power of attorney in favour of the

petitioner. Then the petitioner and Respondent No.1 re-settled and renegotiated the rent at the rate of Rs. 350/- per month excluding utility and other charges and it was also decided that the Respondent No.1/Tenant will pay the rent on or before 5th of each month positively as, previously, the Respondent No.1 remained unpunctual and irregular in the payment of monthly rent. After that agreement, the Respondent No.1/Tenant despite his unequivocal and explicit assurances, remained failed to pay monthly rent on time, moreover, for most of the time, his cheques for the payment of the rent were returned unpaid, ultimately the Respondent No.1/Tenant had stopped paying the rent and had not paid the rent for the period of 11 months i.e. from January 2010 to November, 2010. Thereafter, in the month of November 2010, six cheques were issued for the payment of rent which were initially returned unpaid. However, subsequently, the cheques were cleared, but one cheque No. 1495995 regarding the month of January and February 2010 is still unpaid. He further added that the Respondent No.1/Tenant had failed to pay monthly rent for January and February 2010, December 2010 and January 2011, hence Respondent No.1/Tenant had committed default in payment of monthly rent of four months. Petitioner/Landlord also require demised premises for personal bona fide need of his son, nephew and brother for the purpose of running business. In the above mentioned circumstances, the Petitioner/Landlord has filed three Rent Applications against Respondent/Tenant for each demised shop.

6. I have heard the learned counsel for the parties at length and also have gone through the record with due care and caution.

7. The learned counsel for the Petitioner/Landlord has submitted that the impugned judgment dated 20.12.2017 passed

by the learned appellate court i.e. respondent No.2, on the face of it is against the oral and documentary evidence and record, as such is liable to be set aside; landlord categorically stated on oath during evidence that rent for the month of January and February, 2010 was not paid by the Respondent/Tenant as cheque was dishonored while rent up to November, 2010 was received; it is settled principle of law that once a landlord appear in Court and states on Oath that he had not recovered rent for a certain period, in such circumstances, burden lay on landlord would sufficiently discharged and the same is shifted upon tenant to prove it affirmatively. The learned counsel for the Petitioner/Landlord has relied upon following judgments:-

2014 CLC 1695

“If landlord appearing in Court and stating on oath to have not received rent for a certain period, burden lies upon him would sufficiently discharged and shift on tenant to prove affirmatively that he paid or tender such rent.”

2015 CLC 570

“It is now well-settled that once the landlord comes in the witness box and states on oath that the tenant has committed default in payment of rent, the burden shifts on the shoulder of the tenant to rebut such assertion.”

1997 CLC 216

“once landlord entered the witness-box and denied receipt of rent due against a tenant, onus of proof is shifted to the tenant.”

8. The learned counsel for the Petitioner/Landlord urged that the Respondent/Tenant has committed willful default under Section 15(2)(ii) of S.R.P.O, hence liable to be ejected from rented premises.

9. On the point of personal need of the demised premises the learned counsel for the Petitioner/Landlord submitted that the Petitioner/Landlord in ejectment application as well as in his Affidavit in Evidence clearly mentioned that the demised premises is required by him for his own personal bona fide need for son's, brother's and nephew's business; his testimony remained unshaken during cross-examination. The learned counsel for the Petitioner/Landlord in support of his arguments on this point relied upon the following judgments:-

2012 SCMR 1498, wherein it has been decided that:-

“Personal bona fide need of the landlord--- Proof--- Statement on oath of the landlord regarding claim of his personal need, un-shattered in cross-examination and un-rebutted in defence evidence was to be accepted by the court as bona fide.”

2010 SCMR 1925

“Here it may also be observed that the selection of business is the sole prerogative of the landlord so also choice of rented shop, if having more than one, and therefore no restriction can be imposed upon the landlord/ appellant No.1 on the pretext of restoration of his clearing and forwarding license during the pendency of rent case.

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 un-rebutted 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. Muhammad 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.

7. We may further clarify here that it is not the requirement of law that the landlord, in order to prove bona fides of his, personal need, shall keep himself away from all sorts of income generating ventures or to keep himself idle as long as the fate of his ejectment case, which may consume year and years together, is finally decided by the Court.”

1989 SCMR 1366: (Relevant page No. 1369 para 10)

“Regarding the -non-mentioning the nature of the business in application it may be observed that an applicant has to state in his application, the material facts i.e. facts which constitute cause of action. In a case of present- nature the applicant has to state those facts which prima facie show that the requirement is according to law, and is made in good faith. This has been so stated in the application. It is not essential as it is not part of the cause of action to state the nature of business which the applicant intends to carry on. Take a case where the applicant states in the application that she requires the shop for her son for carrying on a particular business but later on pending hearing of the application or after eviction of the tenant, the applicant thinks that the business can no more suitably and profitably be carried on in the shop, the question might arise; could he change the nature of business or not? The choice of doing a particular business also depends on many other factors such as the nature of the locality or the nature of business being carried on in other shops in the neighborhood. It also depends on the flow of customers and class of people residing in the area. Therefore, if there is any change in circumstances, the nature of business could also be changed. Accordingly, the answer would be that the applicant could change the nature of business with the change of circumstances because in law no restraint or bar is provided. Therefore, the mentioning of the nature of business was not a

material fact or so essential that without it the application must fail.”

2002 SCMR 241

“Adverting to the submissions advanced by Mr. R.F. Virjee, Advocate Supreme Court we are of the view, that the respondents being owner and landlord of the demised premises could not be deprived of their right and interest to use their property in a manner more suited to their requirements. No unreasonable restriction can be placed on the exercise of their right which would offend the fundamental rights guaranteed under Article 23 of the Constitution.”

10. He prayed that the instant appeal may be allowed and the impugned judgment of the appellate Court may be set aside by maintaining the judgment of trial Court dated 18.10.2016.

11. On the other hand the learned counsel for the Respondent/Tenant in respect of point of alleged default has submitted that the respondent/tenant has never avoided the payment of rent since January, 2010 to January, 2011, which plea is self-contradictory as in para-8 of the ejectment application the default has been articulated from October, 2010 up to January, 2011 only while actually the rent was paid till November, 2010 and when it was refused to acknowledge the same, then it was remitted through money order for the months of December, 2010, January and February, 2011 and after refusal to accept the said rent the same was deposited in Misc. Rent Case No. 39 of 2011 in favour of the petitioner and since then no default has been committed. The learned counsel for the respondent has further argued on the point of personal need of the demised premises by the respondent, that the petitioner during cross examination replied that there are 13 shops which are on rent; he had filed 12 Rent Cases for each of 12 shops; the petitioner in his Affidavit in Evidence has mentioned

that the shop in question is required for son, nephew and brother without giving the particular names of these person. He further argued that admittedly, the petitioner/landlord has one brother namely Faisal Kamal, who is permanent resident of USA alongwith his family and he has not provide any detail of his own sons, daughter, sisters and brother so also he did not provide detail of proposed nature of business which are to be started after taking possession of the rented premises. The learned counsel for the respondent/tenant prays that the instant petition may be dismissed.

12. After hearing arguments of both the sides and upon perusal of record, it reveals that the Petitioner/Landlord has initiated ejectment proceedings against the Respondent/Tenant on three grounds i.e. Default in payment of monthly rent, subletting and personal bona fide need of the demised premises for his sons, nephews and brother. Relationship of landlord and tenant between the parties is not denied. The Petitioner/Landlord claims default in payment of monthly rent by the Respondent/Tenant, which plea has been denied specifically by the Respondent/Tenant. While going through the period of alleged default in payment of rent, it reveals that the Petitioner/Landlord himself has no clear picture in his mind that when the Respondent/Tenant has committed default in payment of rent and when he had paid rent to him as initially he claimed that default period is pertaining to January, 2010 to January, 2011, then he claimed default period from October, 2010 to January, 2011; attorney of the Petitioner/Landlord filed his Affidavit in Evidence and he again changed his instance by mentioning therein that default period is July 2009 to January 2011. Admittedly, rent for the month of December 2010 was refused to receive by the Petitioner/Landlord even through money

orders too on the ground of late payment of rent; while the record shows contrary as admittedly it was the practice of previous owner (mother of the Petitioner) as well as Petitioner/Landlord himself to collect the rent in lump sum. The attorney of the Petitioner/Landlord has admitted the rent receipt of the demised premises dated 15.12.2009 pertaining to the months of March 2009 to December 2009 issued by the Landlord. Record shows that on refusal to receive two money orders by the Petitioner/Landlord for the months of January and February 2011, the respondent/tenant started to deposit rent in M.R.C No. 40 of 2011 in the name of landlord. In the light of above discussion, I do not find any reason to believe that the Respondent/Tenant has committed default in payment of rent as alleged by the Petitioner/Landlord.

13. Another plea for ejectment of the Respondent/Tenant from the demised premises raised by the Petitioner/Landlord in his Rent Case is that the demised premises is required to him for personal bona fide use of his son, brother and nephew to establish business in demised shops. The Respondent/Tenant has pointed out that the attorney of the Petitioner/Landlord has admitted in his cross examination that the Petitioner/Landlord has 13 shops which are on rent; while going through the pleadings of the instant Rent Case and evidence of the parties, it reveals that admittedly the Petitioner/Landlord is owner of 13 shops, which are on rent beside a Bank, which is also on rent and he has filed 12 Rent Cases for ejectment of tenants of each 12 shops, as admitted by the attorney of the Petitioner/Landlord in his cross examination.

14. Admittedly, the Petitioner/Landlord has not provided particulars of his son, brother and nephews for whom he requires the demised premises and no any detail of proposed business has

been given by the Petitioner/Landlord for claiming demised premises for personal use. Usually assertion of landlord on Oath as to his requirement for personal use is to be accepted as bona fide if consistent with his averment in case and not shaken in cross examination or disproved in rebuttal. In instant matter per record of pleadings and evidence it is clear that on the point of personal need of the demised shops neither there is any strong and specified denial on the part of the respondent/tenant nor during cross examination of the attorney of the petitioner/landlord he was asked a single question on the point of personal bona fide need of demised shops. It is well settled principle of law that it is prerogative of landlord to establish his own business in any particular area as per his choice and convenience and such need of landlord cannot be declined to him by the tenant. I therefore, do not find any misreading, non-reading and misunderstanding of evidence led by the parties before trial court. In these circumstances, the plea raised by the petitioner/landlord for personal requirement of the demised premises, found in good faith and in absence of any concrete evidence to the contrary no presumption could be drawn that the claim of landlord/owner for personal use of the demised premises is unfair and clipped with any sort of mala fide intention.

15. In the result, instant petition is allowed and the judgments of the Appellate Court are set aside, while the judgments of the learned trial Court are maintained for eviction of the respondent/tenant from the demised shops on the ground of personal bona fide need in good faith. However, the respondent/tenant is provided three months to vacate the demised shops provided due rents are paid regularly. Order accordingly.