

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition No.S-1005 of 2023

Date	Order with signature of Judge
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Hearing of Priority Case

For hearing of MA No. 7314/23

For hearing of main case.

31.10.2023

Mr. Shaikh Muhammad Rafiq advocate for the Petitioner.

Mr. Nadir Ayoub Advocate for respondent No.1.

Mr. Ali Zardari and Naushaba Haque Solangi Assistant Advocate General.

Through the instant Constitution Petition, Petitioner Fazal Akbar Khatri wants this court to set aside the impugned judgment dated 04.09.2023 passed by the learned VI Additional District & Sessions Judge Karachi Central in FRA No. 183 of 2022 and also seeks to set aside the order dated 17.08.2022 passed by the learned 2nd Senior Civil Judge/ Rent Controller Karachi Central, in Rent Case No. 412/2021. An excerpt of the judgment dated 04.09.2023 is reproduced as under:-

“ So in the light of such observation I am of the opinion that the trial Court , after assessment of the facts, circumstances and the evidence available on record, has rightly accepted the application, therefore, the impugned order dated 17.08.2022 passed in Eviction Application No. 412 of 2021 is just and proper being well reasoned. Besides, the learned counsel for the appellant/tenant has also failed to point out any illegality, irregularity, infirmity, or perversity in the impugned order warranting this Court to interfere in it. The case law relied by the learned counsel for the appellant is distinguishable with the facts of the case in hand. Thus, the point No.1 is answered in negative.

Point No.2

Under the above-mentioned circumstances, I am of the humble view that order passed by the learned Rent Controller is based upon the well reasons and the proper determination of law, and the appellant failed to establish any sort of lacuna in the validity, therefore the impugned order is not required any interference by this Court. consequently, FRA is hereby dismissed with no order as to cost.

2. Brief facts of the case are that on 06.10.2021 respondent No.1 filed an ejectment application under Section 15 of Sindh Rented Premises Ordinance, 1979, (SRPO) against the petitioner with the narration that she was/is the owner/landlady of Unit No. M-2 Mezzanine Floor, Al-Shabbir Corner, Plot No. 1/J-9, Muslim League Quarters Nazimabad, Karachi and the petitioner had been her tenant since 2005; she further disclosed that she was/is his sister in law, however, he failed and neglected to pay monthly rent to her since January 2005. She added that the petitioner filed Civil Suit No. 765 of 2021 for Permanent Injunction which was disposed

of, and again he failed to pay the rent as per the Market Value of the rented premises. She prayed for the ejectment of the petitioner and direction to him to pay arrears of the monthly rent since January 2005 up to date as well as to clear utility bills. The aforesaid instance of the landlady was objected to by the petitioner/tenant by filing a written statement on the premise that there was no valid agreement and no cause had accrued to her for filing the rent application and prayed for dismissal of the rent application.

3. The learned trial Court after framing issues recorded the evidence of the parties and allowed the ejectment application vide judgment dated 17.08.2022 where the petitioner was directed to vacate and hand over the peaceful possession of demised premises to the landlady within 30 days. the petitioner preferred FRA No. 183 of 2022 which was dismissed vide judgment 04.09.2023 and against both the concurrent finding the petitioner has approached this Court.

4. learned counsel for the Petitioner has contended that the impugned Judgments are full of errors based on misreading and non-reading of evidence; that the findings of the learned courts below are arbitrary and perverse; that the averments of the Petitioner were not considered in the impugned Judgments, therefore both the judgments are a nullity in the eyes of law; that both the learned courts below have failed to appreciate the material aspects of the matter; that the learned trial Court failed to appreciate that petitioner is regularly paying the monthly rent to the landlady which was admitted by her in the deposition as such there is no default in rent or bonafide use of the landlady; that the learned courts below failed to appreciate that the landlady only filed rent case for enhancement of rent and not for personal bonafide use of the premises. Learned counsel referred to the cross-examination of the landlady and submitted that she admitted that a few months before the filing of the rent case she had talked to one person namely Zahid for letting the premises. Learned counsel further submitted that the trial Court failed to appreciate the law on the subject and ignored the evidence brought on record in favor of the tenant. He has further contended that the learned trial Court as well as the appellate Court exercised their jurisdiction illegally and material irregularity has been committed by both Court blows, which is erroneous and not maintainable under the law. He has further contended that Respondent No.1 has not mentioned in her prayer clause of rent case that she required the demised premises for personal bonafide use but the learned trial Court has allowed the ejectment application on the basis that the demised premises is required to the respondent No.1 for personal bonafide use; that during the entire proceedings of the rent case, the

respondent No.1 mentioned regarding the enhancement of rent and nowhere it was mentioned that whether the demised premises is required her for personal bonafide use but the same is not considered by the learned trial Court. He added that the petitioner has established the business as such it would be not fair to eject the petitioner from the subject premises on the purported plea of default of rent and bonafide use of the premises as the respondent's case was based on the enhancement of rent only and she admitted in her evidence that petitioner used to pay monthly rent regularly as such the impugned judgments are liable to be set aside. He prayed for allowing the instant petition.

5. Learned counsel representing the respondent-landlady has supported the impugned Judgments passed by the learned Courts below and contended that the petitioner the petition is not maintainable under the law; that the captioned petition is liable to be dismissed under the law; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that both the aforesaid Judgments are passed within the parameters of law that instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties; that the learned rent controller after recording the evidences passed just, proper and fair Judgment holding the respondent-landlady entitled to ejection of petitioner from the subject premises; that the learned Appellate Court after hearing the learned counsel for the parties passed the Judgment however the Petitioner has now approached this Court. He lastly prayed for the dismissal of the Constitution Petition.

6. I have heard learned counsel for the parties and have perused the material available on record.

7. It is well-settled law that sole testimony of the landlord is sufficient to establish his personal bona fide need if the statement of the landlord on oath is consistent with his averments made in the ejection application. The aforesaid proposition is evaluated and settled by the Supreme Court in the case of *Muhammad Hayat Vs Muhammad Miskeen Through Allors & Ors* (2018 SCMR 1441). In the instant case, the Petitioner has failed to rebut the evidence of the Respondent-landlady on this point.

8. The learned Rent Controller after recording evidence and hearing the parties gave a decision against the Petitioner. The learned Appellate Court concurred with the decision of the learned Rent Controller on the

same premise. The impugned Judgments passed by both the courts below explicitly show that the matter between the parties has been decided on merits based on the evidence before them.

9. I am of the view that the learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. And, the learned Appellate Court has considered every aspect of the case in its well-reasoned Judgment and there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned lower Courts, more particularly, the impugned orders are not passed without jurisdiction. Therefore, interference by this Court in Constitutional jurisdiction is unwarranted.

10. In light of the above facts and circumstances of the case, I hereby maintain the concurrent findings of the two courts below. And, dismiss the instant Petition along with the listed application(s) with direction to the Petitioner to vacate the subject premises and hand over its vacant and peaceful possession to the private Respondent within sixty (60) days from the date of receipt of this judgment. In case of failure, petitioners shall be evicted from the subject premises without any notice with police aid.

JUDGE