

IN THE HIGH COURT OF SINDH, KARACHI

Before

Mr. Justice Mohammad Abdur Rahman

C.P No.S-532 of 2023

Petitioner : Muhammad Siddique Multipurpose
Industries Private Limited through Mr.
Qaisar Alam Siddiqui Advocate for the
Petitioner
Respondent(s) :
Date of Hearing : 01.06.2023

J U D G M E N T

MOHAMMAD ABDUR RAHMAN-J., This is a Petition maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, against the Judgment dated 6 May 2023, passed in First Rent Appeal No. 57 of 2022 by the District Judge, Karachi (West) upholding an order dated 31 March 2022, passed by the learned IInd Rent Controller, Karachi (West) in Rent Case No. 251 of 2019 that had been maintained by the Respondent Nos. 3 to 5 under clause (vii) of Sub-Section (2) Section 15 of the Sindh Rented Premises Ordinance, 1979.

2. Rent Case No. 251 of 2019 has been maintained by the Respondents No. 3 to 5 who are the owners of Plot No.E-33, Survey Sheet No.28 Sindh Industrial Trading Estate Karachi admeasuring 0.94 Acres (“hereinafter referred to as the “**Said Tenement** ”) on the ground of default of payment of the rent in terms of Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and for personal use in good faith under clause (vii) of sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

3. The matter proceeded before the IInd Rent Controller Karachi (West) who was pleased to find that three issues arose for determination:

- (i) as to whether the relationship of landlord and tenant exists in between the Petitioner and the Respondents No. 3 to 5;
- (ii) as to whether the Petitioner had defaulted in payment of rent to the Respondents No. 3 to 5; and
- (iii) as to whether Respondents No. 3 to 5 required the Said Tenement for his own personal use in good faith.

After recording evidence, the IInd Rent Controller, Karachi (West) came to the conclusion that:

- (i) a relationship of landlord and tenant existed as between the Petitioner and the Respondents No. 3 to 5;
- (ii) that the Petitioner had defaulted on his obligation to pay rent to the Respondents No. 3 to 5 rendering him liable to being evicted from the Said Tenement ; and
- (iii) that the Said Tenement was required by the Petitioner for his own personal use in good faith rendering the Petitioner liable to be evicted from the Said Tenement .

4. Being aggrieved and dissatisfied by the order passed by the IInd Rent Controller, Karachi (West) the Petitioner preferred First Rent Appeal No. 57 of 2022 before the District Judge, Karachi (West) who after hearing the parties was please to uphold the order of the learned 2nd Rent Controller Karachi, (West) holding that:

- (i) the mere denial of a relationship of landlord and tenant did not ipso facto preclude the Rent Controller from exercising jurisdiction under the provisions of the Sindh Rented Premises Ordinance, 1979;
- (ii) the Petitioners cannot claim any right to the Said Tenement on the basis of an Agreement of Sale to non suit the

Respondent No. 3 to 5 from maintaining Rent Case No. 251 of 2019;

- (iii) the standard of proving the personal use of the Said Tenement in good faith had been met by the Respondent No 3 to 5 rendering the Petitioner liable to being evicted from the Said Tenement ; and
- (iv) that the Petitioner had defaulted on his obligation to pay rent to the Respondents No. 3 to 5 rendering him liable to being evicted from the Said Tenement.

5. Impugning the Judgment dated 6 May 2003 passed by the District Judge, Karachi (West) in F.R.A No. 57 of 2022 as well as the Order dated 31 March 2022 passed by the IInd Rent Controller Karachi (West) in Rent Case No. 251 of 2019, Mr. Qaisar Alam Siddiqui, Advocate for the Petitioner has contended that there was no relationship of landlord and tenant as between the Petitioner and the Respondents No. 3 to 5 as the Respondents No. 3 to 5 had entered into an agreement for the purchase of the Said Tenement for good consideration in respect of which Suit No. 361 of 2020 was pending before this Court. The learned counsel for the Petitioner further contended that, the District Judge, Karachi (West) in F.R.A No. 57 of 2022 as well as IInd Rent Controller Karachi (West) in Rent Case No. 251 of 2019 had misinterpreted the evidence that has been led by the Petitioner and sought that both the Judgments dated 6 May 2023 passed in F.R.A No. 567 of 2022 by the District Judge Karachi (West) as well as the order dated 31 March, 2022 passed by the IInd Rent Controller, Karachi (West) in Rent Case No. 251 of 2019 be set aside. At the time of

hearing the counsel for Petitioner did not rely on any case law in support of his contention.

A. AGREEMENT OF SALE AND SUIT FOR SPECIFIC PERFORMANCE

6. I have heard learned counsel for the Petitioner and perused the record. In **Kassim vs. S. Rahim Shah**¹ while considering a matter where a tenant claimed to have entered into an Agreement of Sale with the original owner of a tenement, prior to the original owner of a tenement having conveyed the tenement to the landlord by way of a registered instrument, the Supreme Court of Pakistan held that:²

“ ... All this evidence, prima facie, supports the plea of the respondent that he had acquired the right of the ownership in the property through sale-deed. Until the sale-deed is cancelled and is out of the field, the respondent can claim to have stepped into the shoes of the previous owner, entitled to recover rent from the tenants of the building which was the subject-matter of the sale. There is another aspect of the case which cannot be ignored. Even if the agreement of sale was executed by the previous owner on a prior date before the registered sale-deed, by virtue of section 50 the registered sale-deed, nonetheless has precedence over the prior unregistered deed of agreement. This position would remain till such time the Civil Court passes a decree against the respondent in any of the suits pending in respect of the property. However, for the purpose of the Rent Controller, the position as it stands today was sufficient to satisfy the requirements of law that the respondent was landlord entitled to recover rent.”

Similarly, in **Haji Jumma Khan vs. Haji Zarim Khan**³ where a tenant contented that he had acquired title by way of an Agreement of Sale, the Supreme Court of Pakistan held that:⁴

“ ... 6. We have carefully perused entire record in the light of above submissions. It, is an admitted feature of the case that petitioner was occupying the shop in dispute as tenant. This fact is also incorporated in the sale-agreement dated 20-1-1989. The question about genuineness or otherwise of said sale agreement is obviously dependent upon final determination by Civil Court of competent jurisdiction. At this stage the validity of sale agreement relied upon by the petitioner/tenant is vigorously challenged by respondent/landlord Therefore, till the time

¹ 1990 SCMR 647

² *Ibid* at pg. 650

³ PLD 1999 SC 1101

⁴ *Ibid* at pgs. 1104-1105

that petitioner is able to establish his claim for specific performance on the basis of alleged sale-agreement, respondent-landlord would continue to enjoy the status of being owner and landlord of the premises. Relationship between the parties till such time would be regulated by the terms of tenancy. This Court in similar circumstances while examining dispute between the landlord and tenant where the ejection proceedings were contested on the ground of sale- agreement in case of Mst. Azeemun Nisa Begum v. Ali Muhammad PLD 1990 SC 382 has opined that ejection proceedings could not be resisted by taking shelter under section 53A of the Transfer of Property Act Relevant observations read as under:-

"For the foregoing reasons I am unable to subscribe to the conclusion arrived at by the learned Single Judge and hold that the respondent was not entitled to protect his possession and resist ejection, under the provisions of section 53-A of the Transfer of Property Act and the relationship of landlord and tenant continued to exist between the parties even after the execution of the agreement of sale. As admittedly the respondent had failed to tender rent to the appellant the eviction order passed against him by the Rent Controller was fully justified I would, therefore, allow this appeal, set aside the judgment of the learned Single Judge of the High Court and restore the order passed by the Rent Controller. There will be no order as to costs. "

The above view has been reiterated in case Iqbal v. Mst. Rabia Bibi PLD 1991 SC 242. Relevant observations read, thus:

"Be that as it may, in some recent judgments this Court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation; where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord; but on the well-known bar of estoppel in this behalf he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano v. Haji Abdul Ghani PLD 1984 SC 17, Allah Yar and others v. Additional District Judge and others f 984 SCMR 741 and Province of Punjab v. Mufti Abdul Ghani PLD 1985 SC 1."

Similarly following view has been taken in case Mst. Bor Bibi and others v. Abdul Qadir and others 1996 SCMR 877:-

"However, the Judge in Chambers of the High Court has taken pain and elaborately discussed the issues and assessed the value of the agreement deed and other documents. He has referred to various authorities in that respect and has come to the conclusion that a tenant cannot be allowed to retain his possession on such agreement till decision of their title by a Civil Court of competent jurisdiction. We do not find any

defect with his observations and conclusion. The factum of default of the payment of the rent and the requirement of the landlord has been proved. We have neither been persuaded nor satisfied that any defect lies with the judgment of the Judge in Chambers of the High Court which may call for interference of this Court in its appellate jurisdiction. The appeal fails which is dismissed accordingly with costs."

7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effect will be independently determined by the Civil Court

Similarly in **Abdul Rasheed vs. Maqbool Ahmed**⁵ the Supreme Court of Pakistan has also again clarified that:⁶

" ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller

Finally, In **Mst. Seema Begum. Vs. Muhsammad Ishaq**⁷ the Supreme Court of Pakistan has held that:⁸

" ... Even otherwise, mere pendency of civil suit in Court cannot defeat, prima facie, established title for purpose of rent cases under the Rent Restriction Ordinance. The genuineness or otherwise of alleged agreement and its consequential effect would be independently determined by the civil Court. It is settled law that till the time tenant was able to establish his claim for "specific performance" on the basis of alleged sale agreement, the landlord would continue to enjoy the status of being owner or landlord of the premises and the relationship between the parties till such time would be regulated by the terms of tenancy and the tenant cannot legitimately resist the maintainability of

⁵ 2011 SCMR 320

⁶ *Ibid* at pgs. 322-333

⁷ PLD 2009 SC 45

⁸ *Ibid* at pg. 48

ejectment proceedings pending against him on the ground of sale agreement. This argument is strengthened by the dictum laid down in the cases of Haji Jumma Khan v. Haji Zarin Khan (PLD 1999 SC 1101), Iqbal and 6 others v. Mst. Rabia Bibi and another (PLD 1991 SC 242), Waheed Ullah v. Rehana Nasim (2004 SCMR 1568) and Muhammad Nazir v. Saeed Subhani (2002 SCMR 1540). So in the circumstances of the case, we find that claim of respondent is baseless.

7. As is evident from the extensive case law that has been developed on this issue it is now settled law that neither the execution of an Agreement of Sale of the tenement nor the pendency of a Civil Suit for Specific Performance for the enforcement of such an Agreement of Sale can non-suit a Landlord for maintaining an application under the provisions of the Sindh Rented Premises Ordinance, 1979. The tenant if he is claiming to have purchased the tenement will never get proper title to an immovable property until the immovable property is either transferred into his name by way of a registered instrument or decreed in his favour by a Civil Court of competent jurisdiction and which decree would be subject to appeal and execution. Until that time, the landlord will continue to enjoy his status as a landlord and exercise all his rights in such a capacity including, but not limited to, the right to maintain an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking the eviction of the tenant on the grounds mentioned therein. I am therefore of the opinion that neither the learned District Judge, Karachi (West) in his Judgment dated 6 May 2023 passed in First Rent Appeal No. 57 of 2022 nor the IInd Rent Controller, Karachi (West) in his order dated 31 March, 2022, passed in Rent Case No. 25 of 2019 have committed any irregularity in holding that neither the execution of the purported Agreement of Sale nor the pendency of Suit No. 361 of 2020 before this Court could non-suit the Respondent No. 3 to 5 from maintaining an application under clauses (ii) and (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

B. PERSONAL USE IN GOOD FAITH

8. The burden of proving the requirement of using the Said Tenement for the personal use of the landlord or the persons identified in clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been considered by the Supreme Court of Pakistan in the decision reported as *Jehangir Rustom Kakalia vs. State Bank of Pakistan*⁹ wherein it was held that:¹⁰

“ ... In the impugned judgement (page 14 of paper book). While discussing evidence on the question of bona fide requirement reliance is placed on the case of Hassan Khan v. Mrs. Munawar Begum reported in PLD 1976 Karachi 832, which view was subsequently confirmed in case of Mst. Toheed Khanam v. Muhammad Shamshad reported in 1980. SCMR 593. Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”

Regarding the burden of proving the requirement of using a tenement for personal use in good faith, the Supreme Court of Pakistan in *S.M. Nooruddin vs. Saga Printer*¹¹ has held that:¹²

“ ... once the landlord had duly acquitted himself by stating on oath that his requirement is in good faith as understood in law, he should normally be deemed to have discharged his burden, which thereupon shifts to the tenant to who it remains initially to cross examine the landlord and, that being done lead his own evidence in rebuttal.”

9. In paragraph 17 of Rent Case No. 251 of 2019 the Respondent No. 3 to 5 have stated that:

⁹ 1992 SCMR 1296

¹⁰ *Ibid* at pg. 1297

¹¹ 1998 SCMR 2119

¹² *Ibid* at pg. 2123

“ ... 17. That the premises is required for the Applicants for their own personal bona fide use and need to establish their own business in the demised premises but the Opponents are unlawful in possession of the demise premises and not vacating the sae, hence the Opponent are liable to be ejected from the demised premises.”

This averment was reiterated by the Respondent No. 4 in paragraph 20 and 21 of the Affidavit in Evidence that he submitted on behalf of the Respondent No. 3 to 5. I have perused the evidence that has been recorded by the IInd Rent Controller, Karachi (West) and note that only one question was asked by the Petitioner during the deposition of the Respondent No. 4 to challenge the statement made by the Respondents No. 3 to 5 regarding the personal need of the Respondents No. 5 to use the Said Tenement in good faith and which question was as to whether the Said Tenement was not required by the Respondents No. 3 to 5 for their personal use. The Respondents No. 4 in his deposition, in response to this query, denied that the Respondents No. 3 to 5 did not require the Said Tenement for their personal use. No other question was asked of the Respondent No. 4 during his deposition. In addition, the affidavit in evidence filed by the Petitioner in Rent Case No. 25 of 2019 fails to adduce any evidence as to how the Respondents No. 3 to 5 did not require the Said Tenement for their personal use in good faith or as to how the Said Tenement could not be used by the Respondents No. 3 to 5 for their personal use. Having perused the evidence, I am of the opinion that the evidence adduced by the Respondents No. 3 to 5, that they required the Said Tenement for the personal use in good faith, has gone un rebutted and am clear that neither the learned District Judge, Karachi (West) in his Judgment dated 6 May 2023 passed in First Rent Appeal No. 57 of 2022 nor the IInd Rent Controller, Karachi (West) in his order dated 31 March, 2022, passed in Rent Case No. 25 of 2019 have committed any

irregularity in holding that the Respondent No. 3 to 5 had proved their need to use the Said Tenement in good faith.

C. DEFAULT

10. The question as to on whom the burden of proving that the tenant had defaulted on paying the rent, entitling the landlord to evict the tenant under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been decided by the Supreme Court of Pakistan in the decision reported as **Allah Din vs. Habib**¹³ wherein it was held that:¹⁴

“ ... It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 12 92) I) of the Sind Urban rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question.”

It is therefore apparent that in the first instance, the Landlord has to adduce evidence to state that he has not received rent. Once the landlord has done so the burden then shifts onto the tenant to prove that the rent has been duly paid by him.

11. In Paragraph 15 of Rent Case No. 251 of 2019 the Respondent No. 3 to 5 have stated that:

“ ... 15. That even otherwise, the above said arrears are due against the Opponents and the Applicants are at liberty to approach before the Civil Court for recover of the same from the Opponents. But the Applicants through this case are claiming the arrears of the demised premises for the period of three years from 2017 to till to this date at the rate of Rs. 150,000 /- rent per month of the demised premises and the rent accumulated of Rs. 150000X 34= 5,100,000 and the Opponents are liable to pay same to the Applicants forthwith,

¹³ PLD 1982 SC 465

¹⁴ *Ibid* at pg. 468

This averment was reiterated by the Respondents No. 3 to 5 in paragraph 19 of their Affidavit in Evidence. I have perused the evidence that has been recorded by the IInd Rent Controller, Karachi (West) and note that only one question was put to the Respondent No. 4 regarding the payment of rent and to which the Respondent No. 4 had answered that the rent had not been paid to them since 2008. No other question was asked by the Petitioner of the Respondent No. 4 during his deposition leading me to conclude that the evidence adduced by the Respondents No. 3 to 5 had gone unrebutted, I am therefore of the opinion that neither the learned District Judge, Karachi (West) in his Judgment dated 6 May 2023 passed in First Rent Appeal No. 57 of 2022 nor the IInd Rent Controller, Karachi (West) in his order dated 31 March, 2022, passed in Rent Case No. 25 of 2019 have committed any irregularity in holding that the Respondent No. 3 to 5 had proved that the Petitioner had defaulted in its obligation to pay rent to the Respondents No 3 to 5 rendering them liable to being evicted from the Said Tenement.

12. On the basis of the foregoing, I had on 1 June 2023 come to the conclusion that there was no infirmity or illegality in either the Judgment dated 6 May 2023, passed in First Rent Appeal No. 57 of 2022 by the learned District Judge, Karachi (West) which had upheld the order dated 31 March, 2022, passed by the learned IInd Rent Controller, Karachi (West) in Rent Case No. 251 of 2019 evicting the Petitioner from the Said Tenement and had dismissed the Petition along with all listed applications subject to the modification that the time granted to the Petitioner to vacate the Said Tenement should be enhanced from 30 days to 5 months with effect from 6 May 2023 and these are the reasons for that order.

Karachi dated 11 July 2023

JUDGE

