

**IN THE HIGH COURT OF SINDH, KARACHI**  
**First Rent Appeal No. 17 of 2021**

---

Date Order with signature of Judge

---

**Appellant:** Umar Saleem  
Through Mr. Iftikhar Javed Qazi,  
Advocate.

**Respondent No.1:** Zahid Majeed  
Through Mr. Muhammad Saleem  
Thepdawala, Advocate.

Ms. Naushaba Haque Solangi, AAG.

**Date of hearing:** 18.10.2023

**Date of Judgment:** 05.01.2024

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this First Rent Appeal the Appellant has impugned Order dated 02.03.2021 passed by the Additional Controller of Rents Clifton Cantonment, Karachi in Rent Application No. 72 of 2013, whereby, the Eviction Application of the Respondent in respect of the rented property for own use in good faith has been allowed.

2. Learned Counsel for the Appellant has contended that the learned Rent Controller has failed to appreciate the facts as well as the evidence available on record; that the Respondent has failed to establish personal bonafide need inasmuch as the Respondent's father, in an earlier attempt, had failed on at least three occasions to get ejection orders on various grounds including for own use; that the Respondent as per record of Military Estate Office and Cantonment Board is not the owner of the property; that the Respondent's father had been claiming to be the actual owner of the property and had put the present Appellant as his tenant, which is an admitted fact; that thereafter the property was sold to the Appellant and such fact was admitted by the father of the Appellant in his cross examination in Rent Case No.37 of 2009; that the requirement of demised premises for own use in good faith was never established through any cogent evidence; that the Respondent has been engaged in employment since his retirement in Islamabad as

admitted by his attorney, and therefore, cannot seek ejectment of the Appellant for own use in good faith; hence the impugned order is bad in law and liable to be set-aside.

3. On the other hand, Respondent's Counsel has supported the impugned Order and has contended that once the Landlord had come into the witness box through his attorney and pleaded a personal bonafide need, then no objection can be raised on such need of the Landlord and per settled law, an ejectment order can be passed in such facts and circumstances. He has prayed for dismissal of the instant Appeal.

4. Heard both learned Counsel and perused the record. It appears that the Respondent filed an Ejectment Application under Section 17 of the Cantonment Rent Restriction Act, 1963 ("Act") as it was required for own use in good faith as he stood retired from service; whereas, the said application was opposed by the present Appellant on various grounds including the denial of relationship of landlord and tenant. The learned Trial Court initially settled 5 (five) issues for adjudication, and it seems that thereafter, while dictating the judgment, an additional issue bearing issue No. 4-A was also added and by way of impugned judgment, the ejectment application has been allowed, whereby, all the issues have been answered against the present Appellant. It would be advantageous to refer to the issues settled by the learned Rent Controller, which read as under: -

- “1. Whether the applicant, being not the owner of the premises in question, can seek eviction of the opponent there from on the ground of so-called personal need?
2. Whether the case of the applicant is barred under section 23 of the Cantonments Rent Restriction Act, 1963?
3. Whether the applicant's father having already agreed to sell the premises in question to the opponent, the present case is maintainable under the law?
4. Whether the applicant requires the premises for his personal bonafide use in good faith?
5. What should the order be?
- 4-A. *Whether opponent has committed wilful default in payment of monthly rent?***”

5. Since this is a first Statutory Appeal under the Act in question; therefore, the following points are settled for determination and decision of the Appeal: -

- i. Whether the Appellant had committed a wilful default in payment of monthly rent?
- ii. Whether the Rent Controller had arrived at a correct conclusion that the tenement in question was required by the Respondent in good faith for his own use as contemplated in Section 17(4) (b) of the Act?

**Point No.(i).** *Whether the Appellant had committed a wilful default in payment of monthly rent?*

6. Insofar as Point No.1, as above regarding committing any wilful default in payment of monthly rent is concerned, on perusal of the memo of Application filed by the Respondent under Section 17 of the Act, it appears that in the entire application nothing has been pleaded as to any default committed by the present Appellant. The entire application rests the case for ordering vacant possession of the rented premises for his *own use in good faith*, whereas, the default in payment of rent was never pleaded. It further appears that it is for this reason that initially no issue to this effect was settled; whereas, parties were also never confronted on this; at least the Appellant to lead any evidence regarding default as held by the learned Rent Controller. It seems that it is only at the time of dictating the judgment that additional issue in this regard has been settled by the Court below. Though, a Court while writing a judgment is not denuded with such powers; however, at the same time, it has a limited scope as the Court must see that whether settlement of such an issues will cause prejudice to any of the parties or not. Moreover, such an additional issue must also arise out of the pleadings and the evidence already led by the parties. Anything beyond the same would be an illegality in law and procedure. Time and again such conduct of the Rent Controllers of Cantonment Areas has been noticed and has to be deprecated as it is against the settled principles of law and cannot be sustained by this Court. It is

also a matter of record that the Appellant had been depositing rent before the Rent Controller in Rent Case No.37 of 2009 in favour of the father of the Respondent and such fact is a matter of record, whereas, despite this a tentative rent order was passed on 24.02.2014, directing the Appellant to deposit rent. It was further directed that the rent amount deposited in favour of the father of the Respondent in Rent Case No.37 of 2009 be transferred in the instant rent case. Not only this, the Respondent was also allowed withdrawal thereafter. In that case how a case of default on the part of the Appellant can be sustained is beyond comprehension. Moreso, when the relationship is also being denied. Accordingly, Point No.1 is answered in favour of the Appellant and against the Respondent and it is held that neither this issue was ever raised by the present Respondent in his Application under Section 17 of the Act; nor any appropriate evidence could have been led by the parties in support thereof. In view of the above, point No.1 is decided in favour of the Appellant and against the Respondent and it is held that no case for default was made out by the Respondent.

**Point No.(ii)** Whether the Rent Controller had arrived at a correct conclusion that the tenement in question was required by the Respondent in good faith for his own use as contemplated in Section 17(4) (b) of the Act?

7. Insofar as the case of Respondent is concerned, it has been pleaded that the property in question is owned by way of a Gift executed by his father somewhere in 2005, whereas, he has time and again asked the Appellant to vacate the demised premises as he had retired from Naval services and needed the demised premises for his own use in good faith and bonafidely. It is a matter of fact that in some earlier proceedings, Respondent's father had filed three different Rent Cases in respect of the same premises bearing Nos.46 of 2001 (for recovery of arrears of Rent), 04 of 2003 (for default) & 37 of 2009 for ejectment in good faith for own sue. The last Rent Application was dismissed by the Rent Controller vide order dated 14.11.2011 against which, the Respondent's father had preferred First Rent Appeal bearing No. 02 of 2012 before this Court. It is also an admitted position that during pendency of such Appeal

and after passing of Order dated 14.11.2011, the present Rent Application was filed by the Respondent and at this point of time it was claimed by him that the property stands gifted and mutated in his name somewhere in 2005. If that is so, then how come in 2009 his father could have filed a Rent Application on similar grounds seeking ejection in good faith for own use. The legal notice dated 29.08.2013 never disclosed the effective date of transfer of ownership in favour of the present Respondent, as apparently, at the same time the father of the Respondent was also pursuing his case on the same cause in respect of the same property. Such conduct of the Respondent does not lean in his favour as to his good faith. The premises in question is a shop and falls within the definition of a commercial building as per section 2 (c)<sup>1</sup> read with 2(aa) of the Act. It will also be relevant to examine the applicable provision of the Act i.e. Section 17(4)(b) which reads as under;

17. Eviction of tenant. \_ (4) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession. \_\_\_  
 (b) in the case of a commercial building, if  
 (i) he requires it in good faith for his own use; and  
 (ii) he is not occupying in the Cantonment area concerned or in any local area in the vicinity thereof in which such building is situate for the purposes of his business any other such building suitable for his needs at the time; and  
 (iii) he has not vacated such a building in the said area or vicinity without sufficient cause after commencement of this Act:

8. It further appears that the pleadings in both the cases (i.e the case filed Respondents father and the present Respondent) seeking ejection in good faith for own use is somewhat strikingly similar. It would be advantageous to refer to the Paragraphs No. 4 & 5 of present Rent Application as well as Rent Application No. 37 of 2009 filed by the Respondent's father. It reads as under:-

**Paragraph-4 of Rent Case No. 72/2013**

4. That the applicant severally asked the opponent to vacate the demised premise as the applicant has retired from 'Naval services' and needs the premise for his own use, in good faith and for 'bonafide use' of his own business. In this regard the applicant has issued notice to the opponent to vacate the premise but all went in vain.

---

<sup>1</sup> Section 2 (aa) "building" means any building or part of a building, whether residential or not, together with all fittings and fixtures therein, if any, and includes any gardens, grounds, garages and outhouses attached or appurtenant to such building or part, and vacant land, but does not include any place of religious worship;  
 (c) "commercial building" means a building used solely for the purposes of business or trade

**Paragraph-5 of Rent Case No. 37/2009 at page 125**

5. That the Applicant was serving in Navy and retired there-from as such he requires the Said Shop for his personal bonafide need/use to establish the business therein, therefore, the Opponent is liable to be evicted from the Said Shop.

9. From perusal of the aforesaid pleadings of the Respondent as well as his father, it appears that they are materially based on the same ground that they have retired from Naval Services and require the demised premises in good faith for own use. Insofar as the law under consideration is concerned, it provides that a Landlord may apply to the Controller for an order directing the tenant to put him in possession in the case of commercial building, if he requires it in good faith for his own use and he is not occupying in the Cantonment Area concerned; or in any local area in the vicinity thereof, in which such building is situate for the purposes of his business any other such building suitable for his need at the time and he has not vacated such building in the said area of vicinity without sufficient cause after the commencement of this Act. Now if the evidence led by the present Respondent is examined, it does not appear that the requirement of Section 17(4)(b)(i)(ii)(iii) of the Act has been fulfilled to a satisfactory level so as to justify ejection in good faith for own use. It would be advantageous to refer to the cross-examination of the Respondent's witness / attorney, who is in fact his real brother and reads as under:

**CROSS-EXAMINATION OF THE APPLICANT'S ATTORNEY MR TAHIR MAJEED BEARING NIC NO.42000-0393465-3 APPEARED AS "AW1" BY THE LEARNED COUNSEL OF THE OPPONENT**

**03.11.2016**

It is correct to suggest that no witness has signed the power of attorney (Ex-A/2).

Shop No.1, Ground Floor, Plot No. 19-C, Main Khayaban-e-Shahbaz, Commercial Area, DHA Karachi is not in the name of Zahid Majeed in the record of Cantonment Board as well as DHA.

It is correct to suggest that Mr. Zahid Majeed was retired as Captain from Pakistan Navy.

It is correct to suggest that since the year 2009 till to-date, Mr. Zahid Majeed is employed with Behria University at Islamabad as senior assistant professor. He is still employed.

It is correct to suggest that prior to this case my father Mr. Abdul Majeed had filed three rent cases one after the other being rent cases No. 39/2009, 46/2001, and 04/2003 in this court.

It is correct to suggest that in the previous cases, my father had claimed his personal need in respect of the said shop.

It is correct to suggest that the same story has been narrated in the present case which was narrated in the previous rent cases.

It is incorrect to suggest that my father agreed to sell the shop in question to the opponent.

It is not in my knowledge that in rent case No.37/2009, my father admitted before this court about sale agreement of the said shop with the opponent.

I had not gone through the Written Statement filed by the opponent in this case.

It is correct to suggest that since I have not gone through the contents of the Written Statement therefore I have not denied the same in my Affidavit-in-Evidence.

It is correct to suggest that the Apartment in building No.19-C, Main Khayaban-e-Shahbaz, Commercial Area, DHA is owned by Zahid Majeed.

I do not know that the earlier case filed by my father on the ground of his personal need in respect of the said shop was dismissed by this court.

I do not know whether my father filed FRA No.02.2012 before the Honable High Court against the dismissal order passed in rent case No.37/2009.

I do not know whether at the time of filing this case by Zahid Majeed the FRA bearing No.02/2012 was simultaneously pending before the Hon'able High Court of Sindh at Karachi.

It may be correct that at one and the same time, my father was pursuing the matter before the Hon'able High Court claiming his personal need in respect of the same shop regarding which the present case was simultaneously filed by my brother Zahid Majeed.

It is incorrect to suggest that Zahid Majeed had not served any legal notice upon the opponent prior to filing this case.

It is correct to suggest that at the time of filing of this case and so also at present, Mr. Zahid Majid is living at Islamabad.

It is incorrect to suggest that the present rent case has been filed in bad faith and material facts have been concealed from the court.

It is incorrect to suggest that my Affidavit-in-Evidence is based on falsity. Voluntarily says that the property belongs to Zahid Majeed and the same is required for his own use as well as his children.

I do not know as to what was written in the main application under Section-17 of Cantonment Rent Restriction Act, 1963 filed by Zahid Majeed.

It is incorrect to suggest that neither Zahid Majeed is owner of the shop in question nor it is needed by him for his personal need.

10. From perusal of the aforesaid cross-examination, it appears that though he has admitted that the Respondent had retired from Pakistan Navy; but at the same time he further admits that he is in employment since 2009 till date with Bahria University at Islamabad. The Rent Application was filed on 25.09.2013 whereas, this cross examination has been recorded on 3.11.2016, on which date he states that the Respondent is still in employment. The witness has not suggested in any manner that the premise is required in good

faith for his own use; nor his response has supported the claim of the Respondent that he is retired and requires the premises for his own use. The witness has further admitted the filing of earlier rent cases by the Respondent's father; whereas, he has further admitted that he has never gone through the written statement of the Appellant in this matter, and therefore, has also failed to deny the contents of the same in his affidavit-in-evidence. He has further admitted that it may be correct that at one and the same time, the Respondent as well as his father were pursuing the same matter before the Court claiming personal need in respect of the same shop. This evidence led on behalf of the Respondent is neither confidence inspiring; nor supports the claim so pleaded in the Rent Application. It appears that the Rent Controller has not appreciated the evidence, nor the facts as well as record available before her. Though the two conditions attached to Section 17(4)(b)(i) i.e. (ii) & (iii) along with good faith for own use are not always required to be proved in the affirmative mandatorily; however, the law at least requires that it is pleaded properly in the Rent Application with some details or denial; and then the burden is discharged and shifted upon the tenant to prove it otherwise. Per settled law ejection of a tenant on the ground of using the premises for own use in good faith has to be decided by the objective assessment of evidence and facts brought on record. In fact it has been held in a number of cases that a mere desire or statement even on oath that the landlord wanted to carry on business in the demised premises by itself is not sufficient to prove his bona-fide requirement<sup>2</sup>. Under Section 17(4)(b) of the Act, there appears to be some stringent requirement as compared to the Sind Rented Premises Ordinance, 1979, and therefore, the landlord has to submit true facts to prove his requirement of own use in good faith. It is further settled that mere *ipse dixit* of landlord that he requires the premises in good faith was not enough as such facts are to be pleaded specifically supported by valid reasons as to his requirements being genuine<sup>3</sup>. It has been further settled that no vague grounds mentioned in the eviction application can be

---

<sup>2</sup> Muhammad Azizullah v Abdul Ghaffar (1984 CLC 2837)

<sup>3</sup> Sultan Press Ltd v Muhammad Hasan (PLD 1985 Karachi 624)



considered in the case of own use in good faith<sup>4</sup>. In the instant matter there is not even an assertion to that effect, whereas, no disclosure has been made in this regard. The present Appellant had brought certain facts in his written statement but nothing was specifically denied or disputed; rather a generalised statement to the contrary was made in the affidavit in evidence by Respondents Attorney. And to add to this, the entire evidence of the said Attorney is not confidence inspiring; rather the questions proposed have been answered in favour of the Appellant; and therefore, it could be safely held that his evidence has been shaken; hence, cannot be relied upon. Apparently, the Rent Controller has relied upon part evidence of the Respondent and has failed to appreciate it as a whole which is not a correct approach. It is settled law that evidence of a witness has to be looked into as a whole; specially the cross examination so as to ascertain the veracity and truth of his assertion in his examination in chief. Picking and choosing of such minor portion of statement does not amount to pragmatic and positive inference and approach. The court is supposed to draw a conclusion keeping in view the substance of entire deposition of witness and one sentence cannot be torn out of context<sup>5</sup>. While considering the evidence as a whole and arriving at a certain conclusion on the basis thereof, there are three things which are kept in view; the volume of evidence, the weight of the evidence and the probability of evidence. It is the cumulative effect of all the three aspects of the evidence that finally determines a certain question of fact<sup>6</sup>. The overall conduct of the present Respondent and his joint efforts along with his father (the alleged predecessor in interest of the tenement) show that they are bent upon to seek ejection of the Appellant on one ground or the other. This apparently does not show the good faith of the Respondent, nor does it support the case of the Respondent in any manner. In view of such position Point No.2 as above is also answered in favour of the Appellant and against the Respondent.

---

<sup>4</sup> *ibid*

<sup>5</sup> 2016 C L C Note 73 RIAZ AHMAD V. FAZAL HUSSAIN

<sup>6</sup> *Fatima Bai v Shaikh Muhammad Zaki* (1990 CLC 1064)

11. In view of hereinabove facts and circumstances of this case, it appears that the Respondent was not able to establish his case within the contemplation of Section 17(4)(b)(i)(ii)(iii) of the Act in question; and therefore, the Rent Controller was not justified in passing the impugned order for ejection of the Appellant. Accordingly, the impugned Order dated 02.03.2021 passed by the Additional Controller of Rent Clifton Cantonment Karachi in Rent Application No. 72 of 2013 stands set-aside and this appeal is hereby **allowed**.

Dated: 05.01.2024

**J U D G E**

Ayaz