

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-348 of 2023

C.P No. S-77 of 2024

Petitioner Muhammad Ali in C.P No.S-348 of 2023	:	through Mr. Ghulam Dastagir A. Shahani, Advocate
Petitioner Muhammad Ali in C.P No.S-77 of 2024	:	through Mr. Abdul Rehman A. Bhutto, Advocate
Respondent No.1 Ali Gohar in both petitions	:	through Mr. Zameer Ali Shah, Advocate
Official Respondents in both petitions	:	through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh
Dates of hearing	:	22.03.2024, 05.04.2024 & 19.04.2024
Date of Judgment	:	08.05.2024
Date of Announcement	:	13.05.2024

J U D G M E N T

Muhammad Saleem Jessar, J.- By this single judgment, I propose to dispose of captioned two constitution petitions as in both petitions subject matter, parties as well as factual and legal aspects of the cases are one and the same.

2. By means of C.P. No.S-348 of 2023, the petitioner Mohammad Ali Shaikh has challenged the Judgment dated 07.11.2023 passed by learned 1st Additional District Judge, Larkana in Rent Appeal No.09 of 2019 filed by the petitioner / tenant, whereby he has upheld the eviction order dated 15.05.2019 passed by 2nd Senior Civil Judge / Rent Controller, Larkana in Rent Application No.09 of 2018 filed by Respondent No.1. C.P. No.S-77 of 2024 has been filed by same petitioner against the Order dated 09.02.2024 passed by VI-Additional District Judge, Larkana in Civil Revision Application No.30 of 2020, whereby he has dismissed the Revision Application filed by the

petitioner / tenant and maintained Order dated 09.09.2020 passed by 2nd Senior Civil Judge / Rent Controller, Larkana in Rent Execution Application No.04 of 2019.

3. Brief facts of the case, relevant for the purpose of deciding these constitution petitions, are that respondent No.1 / applicant filed a Rent Application for ejection of the petitioner stating therein that the father of applicant namely, Ali Nawaz Kanasro, since deceased, was owner of Latif Shopping Center consisting about 30 shops at ground floor, and one residential house at upper storey, constructed on City Survey No. 1466/1 admeasuring an area of 595 Sq. Yards. The shops were rented out to various persons by him in his life time and he used to collect rent from the tenants. It was further averred that after death of applicant's father, the entire property, being joint and undivided, was being looked after by applicant's brother namely, Sher Muhammad, who also died in the year 1990, hence the property / building was looked after by his another brother namely, Javed Ahmed, who also died in the year 2006. It was further asserted that after death of Javed Ahmed property in question was divided amongst all legal heirs / co-sharers by means of a private family settlement, thus applicant being co-owner, acquired Shop No.27 along with other shops in Latif Shopping Center, Larkana being his inherited share in the property. It was further stated in the rent application that the petitioner / opponent was rented out Shop No.27, who was using the same in the name and style of **Ali Silk and Dulhan Shop** in the Latif Shopping Center, Larkana and used to pay rent at the rate of Rs.6000/- per month under rent agreement which expired in December, 2017. It was further averred that after expiry of rent agreement in the year 2017, applicant asked the tenant to execute fresh agreement and fix new rent amount in accordance with market value but he refused and stopped paying rent to the applicant. In spite of repeated demands he failed to pay the rent, thus violated the relevant law and willfully defaulted to pay monthly rent from January 2018. It was further asserted that the applicant/landlord is an old and aged person having three sons and eight daughters and all his sons are jobless, hence premises was also required for his personal *bonafide* need in order to establish his own business in the premises.

4. Upon service of notice, the petitioner / opponent filed written statement / reply stating therein that the father of applicant had given the

shops to various persons on "Pagri" including the opponent / petitioner, who had paid *pagri* amount of Rs.200,000/- to the father of applicant. It was further stated that brother of the applicant namely, Sher Muhammad had died in 1990 and father of applicant expired in the year 2002 therefore it is impossible that brother of applicant could have looked after the property after death of late Ali Nawaz, as alleged in the rent application. It was further asserted that the applicant has not succeeded in establishing that Shop No.27 was acquired by him for his personal *bonafide* need. It was further stated that with mutual consent of all legal heirs of late Ali Nawaz and all the shopkeepers / tenants of Latif Shopping Center and Mairaj Shopping Center including the opponent / petitioner, it was decided that son of the applicant namely, Sajjad Hussain, will collect the rent of all the shops in future and he will also look after all the issues in respect of rented premises and in this regard Sajjad Hussain in the month of June, 2012 had executed a fresh written tenancy agreement with all the tenants including the opponent / petitioner. As per contents of said agreement, no fresh agreement was required to be executed. It was further stated that said Sajjad Hussain, as per written agreement, used to collect monthly rent from all the tenants including opponent in respect of Shop No.27 till December, 2017 but in the month of January, 2018 he refused to receive the rent from all the tenants of Latif Shopping Center including the opponent / petitioner, as agreed, and he demanded excessive / enhanced monthly rent not only from the opponent but from all the tenants of Latif Shopping Center and Mairaj Shopping Center. It was further stated that said Sajjad Hussain refused to receive rent from January, 2018 and upon his refusal, the opponent in good faith sent him monthly rent for the months of January, 2018 to April, 2018 separately through Money Orders but he also refused to receive the same. Thereafter, all the tenants of Latif Shopping Center including the opponent / petitioner had jointly filed Miscellaneous Rent Application No.01/2018 for deposit of monthly rent before the concerned Rent Controller which was allowed vide Order dated 09-5-2018, since then opponent / petitioner along with other tenants has been depositing monthly rent amount in the Court. He further stated that landlord Sajjad Hussain has also served legal notices through his advocate upon all the tenants of Latif Shopping Center including opponent / tenant of Shop No.27, which were replied through their counsel separately. He further stated that no default was committed by him in making payment of monthly rent and he has punctually

and regularly been paying monthly rent of the demised shop as per terms and conditions of tenancy agreement. It was further averred that applicant has not served any notice regarding personal use of property and according to him, the applicant, in order to get the monthly rent enhanced, has filed rent application. He further stated that applicant has recently let out 3 shops to other tenants and one shop is still vacant, therefore, if he requires any shop for his personal use, then he could have occupied the same. Thus, it is evident that he does not require the shop in question for his personal *bonafide* use. He further asserted that applicant has also not mentioned in rent application that which type of business he wants to start in the demised shop and for that purpose, which of his sons the shop is required, therefore application is not maintainable. Lastly, he prayed that the application under reply be dismissed with compensatory costs.

5. On pleadings of the parties, Rent Controller formulated following points for determination:

- i. Whether the relationship of landlord and tenant exists between the parties in respect of shop in application?
- ii. Whether the opponent committed default in payment of monthly rent?
- iii. Whether the shop in application is required for personal bonafide use of applicant?
- iv. What should the order be?

6. After recording evidence of the parties, hearing the arguments of their advocates, Points No.1 to 3 were answered in affirmative i.e. in favour of applicant / respondent No.1 and ultimately ejection application was allowed vide order dated 15.5.2019. The said order was challenged by the opponent by preferring above said First Rent Appeal (the Appeal). The appeal was decided vide order dated 30.09.2019, passed by III-Additional District Judge, Larkana on the basis of **special oath** but this Court, vide Order dated 02.03.2023 passed in CP No.S-856 of 2019 set aside said order and directed the Appellate Court to decide the matter on the basis of record. After remand, the appeal was proceeded to and ultimately the same was dismissed vide order dated 07.11.2023. The applicant / respondent No. 1 filed Rent Execution Application No. 04/2019 which was allowed vide Order dated 09.9.2020 and the Civil Revision Application filed against said order was dismissed vide order dated 09.02.2024. Instant two constitutional petitions have been filed against above said orders passed by the Courts below.

7. I have heard learned counsel for the parties and have gone through the material made available before me on the record.

8. Learned counsel for the petitioner submitted that the petitioner has committed no default in the payment of monthly rent as the landlord has admitted that the petitioner had paid monthly rent upto December 2017. However, after December, 2017, landlord refused to receive monthly rent, hence the petitioner sent rent amount to him through different money orders, receipts whereof are available at page No.107 and onward in Court File of CP No.S-348 of 2023. He next submitted that when the landlord refused to accept the rent sent through money orders, the petitioner and other tenants approached the Rent Controller by filing Misc. Rent Application which was allowed vide order dated 09.5.2018 available at page No.95 of Court File and on very next day viz. 10.05.2018, they had deposited the rent before the Rent Controller in MRC, hence the petitioner has not committed any default, therefore, the ground urged by the landlord in his application is not much of consequence. As far as the ground of personal *bonafide* use, as claimed by the landlord, is concerned, the landlord has not specified as to for which of his legal heirs and for what purpose, he needs the premises, hence the Courts below without considering this aspect of the case, have passed the impugned orders which are not in consonance with the facts of the case as well as evidence adduced by the parties. He, therefore, prayed for allowing the petition and setting aside the impugned orders.

8. As regards the plea of the landlord regarding payment of rent through money orders non-examination of Post Master, GPO, Larkana, he submitted that the same is not fatal to the case of the petitioner. According to him, it is a settled law that once the tenant has tendered the rent amount, he has fulfilled his job / duty, therefore, he cannot be termed to be defaulter. In support of his contentions, he placed reliance on the following cases:

- i. Haji MUHAMMAD HANIF v. MOHSIN ALI* (1997 MLD 2754).
- ii. CAPRI AUTOS MOTORCYCLE DEALERS V. Dr. MASUMA HASAN* (2019 YLR 2500).
- iii. JIAND RAI V. ARJAN DAS and 3 others* (2016 MLD 116)
- iv. Syed FAKHAR MEHMOOD GILLANI v. ABDUL GHAFUOR* (1995 SCMR 96).
- v. HIRJIBHAI BEHRANA DAR-E-MEHER through Attorney v. Messrs BOMBAY STEEL WORKS, PARTNERSHIP FIRM, through Parner* (2001 SCMR 1888)

9. Learned counsel further submitted that after change of ownership the respondent had not issued any notice to the petitioner in terms of Section 18 of the SRPO and the Appellate Court has also not considered this aspect of the case. He further submitted that it is settled law that the burden of proving the default in payment of monthly rent by the tenant always lies upon the shoulders of the landlord and said burden has not been discharged by the landlord. In support of his arguments, he placed reliance upon the judgment pronounced in the case of *SUDHAGSHU BIMAL BISWAS V. MOHAMMAD MUSTAFA CHOWDHURY*, reported in 1968 SCMR 213. He, therefore, submitted that Courts below have failed to appreciate legal aspects of the case, hence the impugned orders are liable to be set aside. He lastly prayed for allowing instant petitions.

10. Before arguing the case, learned counsel for respondent No.1 / landlord, submitted that it is second round of litigation and prior to this, the petitioner had filed CP No.S-856 of 2019 which was disposed of by order dated 02.3.2023, whereby case was remanded to the Appellate Court for deciding the same afresh, however, the petitioner has not disclosed this fact in the petition.

11. Learned counsel for respondent No.1 / landlord, while replying to the objections raised by the petitioner before the trial Court, referred to pages No.31, 61 and 69 of the Court File, and submitted that in view of clear admission on the part of the petitioner, collection of rent amount by Sajjad Hussain cannot be objected to, as the petitioners themselves had mutually agreed upon such collection. He further submitted that even if landlord had refused to receive the rent sent through money orders, then, under the law, it was incumbent upon the petitioner / tenant to deposit the same in Court through MRC **immediately**, but the petitioner / tenant instead of doing so, had sent consecutive money orders in respect of the rent for the months of January, February, March and April, 2018, and then after committing default, he deposited the rent in Court through MRC in the month of **May, 2018**, therefore, the petitioner committed willful default, hence the Courts below have rightly decided said point in favour of respondent No.1 / landlord.

12. As far as the ground of personal bonafide use is concerned, he submitted that once the landlord appears in the witness box and deposes

regarding his personal *bonafide* need, then the same would be considered sufficient to hold that the landlord has established his claim, as such there is no illegality in the findings given by the Courts below vide impugned orders. In support of his contentions, he placed reliance upon the following decisions:

1. *MUHAMMAD RIAZ SHAIKH and 2 others v. IFTIKHARUDDIN and 2 others* (2014 CLC 1695),
2. *Master Enterprises (PVT) LTD, through G.M. Administrator and Finance v. Additional District and Sessions Judge, Karachi South and 2 others* (2012 CLC 1532).
3. *RAZIA SULTANA V. MUHAMMAD HASAN KHAN and 9 others* (1991 CLC 632).

13. As far as alleged Agreement / Qabooliat is concerned, learned counsel submitted that it was maneuvered by the petitioner mentioning therein that he had obtained the shop from the land lord on the basis of *pagri* which is alien to Rent Laws, therefore, such plea is liable to be discarded from consideration. In support, he relied upon the cases reported as *MUHAMMAD AFZAL V. IIND ADDITIONAL DISTRICT AND SESSIONS JUDGE and 2 others* (PLD 2008 Karachi 189), *SHAKEEL AHMED and another V. MOHAMMAD TARIQ FAROGH and others* (2010 SCMR 1925) and *IMAM DIN v. ABDUL KARIM and others* (2000 MLD 2054). He also placed reliance upon an unreported Judgment dated 11.01.2023 passed by this Court in CP No.S-300 of 2021, (re: Qurban Ali Vs. Ali Gohar and others).

14. Learned counsel for the petitioner also referred to Subsection (3) to Section 10 of SRPO, 1979, and submitted that in case the monthly rent amount rendered by the tenant through money orders, is refused to be received by the landlord, the same may be deposited in Court through MRC which was done by the petitioner. He further submitted that after such deposit, the nominee of the landlord has been collecting / withdrawing the amount which aspect has not been taken into consideration by the Courts below. In rebuttal, Mr. Zamir Ali Shah, learned counsel for respondent No.1, submitted that if landlord collects / withdraws the rent amount deposited by the tenant in Court through MRC, the same does not cause any harm to the case of the landlord. In this connection, he placed reliance upon the case reported as *NIZAR NOOR and other v. AMEER ALI and others* (2020 CLC 254).

15. Mr. Abdul Waris Bhutto, Assistant Advocate General, supported the impugned orders and opposed the petition.

16. Mr. Abdul Rehman Bhutto, advocate for the petitioner in connected CP No.S-77 of 2024 was present before the Court in earlier part of the day, however, at the time of hearing of the petitions, he reportedly left the Court to pick up his children from school and his associate Mr. Mansoor Ali Bhutto, while adopting arguments advanced by Mr. Ghulam Dastgir A. Shahani, prayed for grant of petition and setting aside impugned orders.

17. In the first instance, I would like to deal with the plea raised by the petitioner / tenant that there is no relationship of landlord and tenant between the parties. The petitioner / tenant in his evidence has admitted that the premises in question was rented out to him by father of the applicant / respondent No.1 namely, Ali Nawaz Kansaro. He also admitted in his cross-examination that Sajjad Hussain, to whom he was allegedly continuously paying the monthly rent till December, 2017, is the son of applicant Ali Gohar. The petitioner has also admitted in the pleadings that he is tenant in respect of Shop No.27 of Latif Shopping Centre. He further admitted that Ali Nawaz was real owner of Latif Shopping Centre and that applicant Ali Gohar is son of Ali Nawaz Kanasro. He also admitted that with the consent of all legal heirs of Ali Nawaz, Sajjad Hussain, viz. son of the applicant, was authorized to receive the rent of the shops from all the tenants including the petitioner. He has not denied that Ali Gohar is the co-owner / co-sharer of Latif Shopping Centre. From above, it is clear that admittedly applicant Ali Gohar is one of the legal heirs of the original owner / landlord namely, Ali Nawaz, thus, he is co-owner of the premises in question. Needless to emphasize that now it is well settled that a co-owner is fully competent and authorized to collect the rent from the tenant and also to seek ejectment of the tenant. In this connection, reference may be made to the case of **MUHAMMAD AZAM KHAN Vs. Dr. IQBAL HAMEED and 2 others**, reported in **PLD 2021 Sindh 237**, wherein it was held as under:

*“6. In the instant matter, such plea is even misconceived for simple reason that referred earlier proceedings were launched by father of the respondent/ applicant who, undeniably, is dead thereby making his legal heirs, including the respondent/applicant as one of the co-owner/co-sharer and other legal heirs have given no objections to the present landlord though legally, in the rent jurisdiction every co-owner has a right to agitate the plea of personal bona fide need irrespective of fact that tenancy, created by other co-sharer because legally every co-sharer has his/her own circumstances hence legally shall have a right to establish the plea of personal bona fide need in respect of such premises. Reference may be made to *Imran Qadir v.**

Roqiya Sultana and 7 others 2017 CLC Note 80 wherein it is observed as:-

"Any of the co-sharers may file a rent case against the tenant irrespective of the fact that some other co-sharers had inducted the tenant in the tenement. (Abdul Ghani v. Abrar Hussain 1999 SCMR 348 and Muhammad Hanif and others v. Muhammad Jameel and 5 others 2002 SCMR 429)."

18. In another case reported as *MOHAMMAD AKRAM BHATTI Vs. ADDITIONAL DISTRICT JUDGE, ATTOCK and 3 others (2021 CLC 1405)*, Honourable Rawalpindi Bench of Lahore High Court, held as under:

"Even if respondent No.4 as a co-owner inducted respondent No.3 as a tenant in the shop which was a joint-property, the respondent as tenant could not deny the right of the petitioner as co-owner and landlord of the property to receive rent or to seek eviction. In "Aftab Ahmed Saeed v. Faisal Shahzad and others" (2005 CLC 1668) it was observed to the effect that every co-owner is entitled to receive rent of the premises as landlord and if one co-owner has not let out the property, but some other co-owner or authorized person entitled to receive rent has, by legal fiction every co-owner of the property shall be deemed to be landlord and competent to maintain ejectment application on any ground available to him under the law and even without joining other co-owners as applicants if the ground of ejectment is otherwise available. Relevant excerpt of the judgment is as under:

"7. Reverting to the legal position, a bare reading of definition of word "landlord", given under section 2(t) of the Sindh Rented Premises Ordinance, 1979, makes it clear that besides person, who is authorized or entitled to receive rent of the premises, every co-owner of the premises is landlord. Thus, if one co-owner has not let out the property, but some other co-owner or authorized person entitled to receive rent has let out the property, by legal notion every co-owner of the property shall be deemed to be the landlord, and competent to maintain ejectment application on any ground available to him under section 14 or section 15 of the Sindh Rented Premises Ordinance, 1979, even without joining other co-owners as applicants, if otherwise such ground of ejectment is available to him."

19. In view of above, the plea raised on behalf of the petitioner / tenant regarding relationship of landlord and tenant between the parties is misconceived hence, liable to be discarded.

20. Now, advertent to the issue of default in payment of monthly rent by the petitioner / tenant, it seems that the claim of respondent No.1 / applicant is that the petitioner / opponent has committed default in payment of monthly rent from January, 2018. It has been deposed on oath by respondent

No.1 / landlord before the Rent Controller that he did not receive rent for the defaulted period from the petitioner / opponent. In his affidavit-in-evidence, so also during his cross examination the applicant / respondent No.1 deposed in categorical terms that the opponent / petitioner had committed default in payment of monthly rent from January, 2018. In such an eventuality, as per settled law, now the burden shifts upon the shoulders of the petitioner / tenant to prove that he had paid rent for the alleged period.

21. In this context, reference may be made to a decision given by a Full Bench of Honourable Supreme Court in the case of *ALLAH DIN Vs. HABIB*, reported in **PLD 1982 SC 465**, wherein it was held as under:

“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 13 (2) (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.”

Reliance, in this connection, can also be placed upon the case of *Mrs. Asma Makhdoom Vs. Mrs. Yasmeen Azam (2018 MLD 976)*.

22. In support of his plea that he has committed no default in payment of monthly rent, the petitioner / tenant stated that aforesaid Sajjad Hussain had been receiving rent from all the tenants of Latif Shopping Centre including the petitioner but all of a sudden he refused to receive monthly rent from January, 2018, hence the rent was tendered to him through postal money orders for the period from January, 2018 to April, 2018 but he also refused to receive the said money orders. The petitioner / opponent further asserted that finding no alternate, he and other tenants filed Misc. Rent Application in the Court of Rent Controller, Larkana in **May, 2018** which was allowed, thus, he started depositing rent for the premises in question in Court. He also produced customer receipts of Money Orders before the Rent Controller.

23. From perusal of the coupons / receipts of alleged money orders, Photostat copies whereof are available at pages 113-114 of the Court File, it appears that name of the landlord viz. respondent No.1 or even his son Sajjad

Hussain, does not find mention in said money orders. Besides, the date of the money orders has been shown to be **05.04.2018** whereas, as per own admission of the petitioner / tenant himself, through said money orders rent for the months of January to April, 2018 were sent by him to the landlord, meaning thereby that even the rent for the months of January to March, 2018 were sent after delay in the month of April, 2018.

24. Apart from above, there is also delay caused in depositing the monthly rent by the petitioner / tenant in Court through MRC. Admittedly, the rent for the months of January, February, March and April, 2018 was deposited in lump-sum in the month of May, 2018 in Court through MRC, i.e. after the default has already been committed, whereas, under the law, upon refusal of the landlord to receive the rent for the month of January, 2018, he was obliged to have sent the same through money order and upon refusal of the landlord to receive the money order too, he should have straight away approached the Court of Rent Controller and after seeking permission started depositing the rent through Misc. Rent Case. On the contrary, admittedly the petitioner starting depositing the rent through MRC in the month of May, 2018 i.e. when the default had already been committed. Such practice is contrary to the well settled principle enunciated by the Superior Courts.

25. In this connection, reference may be made to the case of **MUHAMMAD RIAZ SHAIKH and 2 others Vs. IFTIKHARUDDIN and 2 others**, reported in **2014 CLC 1695 [Sindh]**, wherein it was held as under:

"14. Here in this case, it is an established practice by the tenant to pay rent in advance on every 5th of the calendar month and this fact has admitted by the attorney of the petitioners in his evidence, therefore, under the circumstances, the petitioners were required to pay/tender the rent as admitted practice but here in this case admittedly the tenants have sent rent for the month of January, 1994 to March, 1994 on 24-3-1994 through money order, which was also not received by landlord and thereafter the tenants have started to deposit the rent of the disputed period and onward in M.R.C. No.553 of 1994 on 1-1-1995 after committing willful default."

26. This point has elaborately been discussed by this Court in an earlier decision given in the case of **Mst. RAZIA SULTANA Vs. Mrs. MUHAMMAD HASAN KHAN and 9 others**, reported in **1991 CLC 632 [Karachi]**, wherein it was observed as under:

“10. The Rent case was filed by the appellant on the ground of non-payment of rent for the period from the month of March to August 1980. The respondents pleaded that the rent for the months of March and April was sent under money order dated 8-3-1980 which was refused by the appellant. Money order was again sent on 9-3-1980 towards the payment of rent for March 1980. This money order was refused and therefore rent for the months of March and April 1980 was sent under money order dated 6.4.1980 which met the same fate. In these circumstances respondents on 24-8-1980 filed Misc. Rent Case No.4767/80 seeking permission of the Rent Controller to deposit rent in Court which was allowed on 2-9-1980 and rent for the months of March to August 1980 was deposited on 8-9-1980. Money Order coupons sent during March and April 1980 are on record as Ex.0-9, 0-10 and 0-11. The authenticity of these Money Orders is highly doubtful. The said Money Orders do not bear round seal of the Post Office or the endorsement of the postman. The respondents failed to produce postal receipts pertaining to the said Money Orders. The first Money Order is alleged to have been sent on 8-3-1980 and second on 9-3-1980 after refusal of the first one by the appellant. The return of first Money Order by the postal authorities on the next day of its dispatch is an act unbelievable and cannot be accepted. Be that as it may, the fact, remains that the said money orders were towards rent for the months of March and April 1980 and thereafter the respondents chose not to pay rent by any of the modes prescribed by law until September 1980 when they deposited rent in the Misc. Rent Case. The payment made in the Misc. Rent Case at a time when the default was already committed cannot save the respondents from the consequence of default in payment of rent. In case the Money Orders were refused by the appellant, as is the case of the respondents, they were under an obligation to immediately avail the alternate mode for legal tender of rent prescribed under section 10 of the Ordinance for enjoyment of the protection provided to tenants by the Ordinance.”

27. In view of above, learned Rent Controller had rightly given finding and so also the Appellate Court rightly upheld such finding that the petitioner / tenant had committed default in the payment of rent from January, 2018 to April, 2018.

28. So far as the point of personal *bonafide* need of the landlord / respondent No.1 is concerned, in the rent application as well as in the evidence adduced on his behalf, it has categorically been stated that applicant is an aged person and has three sons and eight daughters. All of his sons are jobless, hence the shop in question is required for his own personal *bonafide* use. However, the stand taken by the petitioner / tenant in this context is; that the applicant has not served any notice upon him regarding personal *bonafide* use of the demised shop. The opponent has further asserted that applicant has recently rented out three shops to other tenants and one shop is

still lying vacant and in case he requires any shop, the said vacant shop may be utilized for his personal need.

29. I am of the firm view that above stand taken by the petitioner is contrary to the well settled principle enunciated by the Superior Courts on this point from time to time to the effect that *it is the prerogative / choice of landlord to select any premises owned by him for residential purpose or for starting any business therein and the tenant, even the Court too, has no locus standi to advise him to select any particular house / shop for his personal need.*

30. In this connection, reference may be made to the case of **PAKISTAN INSTITUTE OF INTERNATIONAL AFFAIRS Vs. NAVEED MERCHANT and others**, reported in 2012 SCMR 1498, wherein it was held as under:

“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.”

31. In this context reference can also be made to case of **Mrs. SHABANA ANJUM Vs. MUHAMMAD GULZAR and 2 others**, reported in PLD 2014 Sindh 295, wherein this Court held as under:

“10. While considering the submissions made by both the sides, I reached at the conclusion that it is now settled law as laid down by the Hon'ble apex courts that the choice lies with the landlord to select any tenement for his personal need and for this purpose the tenant or the court has no locus standi to give their advice for alternate accommodation as held in the case of Pakistan Institute of International Affairs v. Naveed Merchant 2012 SCMR 1498. Bona fide requirement of landlord/owner may conveniently be placed after pronouncement of apex court, starts from the case of Saira Bibi v. Syed Anees-ur-Rehman 1989 SCMR 1366 and subsequent decisions reported in 2002 SCMR 241 (Jehangir Rustum Kakalia v. Hashwani Sales Services) and 2001 SCMR 1197 (Jabal Book Depot v. Khatib

Ahmedi. In the case of F. K. Irani v. Begum Feroz) 1996 SCMR 1178 the Hon'ble apex Court held that suitability of business and selection of area is choice of landlord and the same cannot be interfered with."

32. In view of above legal position, I fully agree with the finding given by learned Rent Controller and affirmed by the Appellate Court on this point.

33. Even otherwise, it is now well settled that concurrent findings of the two Courts below could be interfered with by this Court in exercise of its extraordinary constitutional jurisdiction **only in exceptional cases.**

34. In this context, reference may be made to the case of **MUHAMMAD SALIK ATHAR through Attorney Vs. MUHAMMAD OBAID and 3 others**, reported in **P L D 2023 Sindh 411**, wherein it was held as under:

"5. Now, before proceeding further, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather tightened. It is pertinent to mention here that captioned petition fall within the writ of certiorari against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence."

35. In the case of *Martin Dow Marker Ltd., Quetta Vs. Asadullah Khan*, reported in **2020 SCMR 2147**, it was held by Honourable Supreme Court that *for displacing the concurrent findings of fact recorded by the Lower Courts, also upheld by the High Court in its constitutional jurisdiction, appellant was required to show and establish misreading of evidence and wrongful exercise of jurisdiction by the forum below.*

36. In another recent case of *A. RAHIM FOODS (PVT.) LIMITED and another Vs. K&N'S FOODS (PVT.) LIMITED and others*, reported in **2023 C L D 1001** [Supreme Court], wherein learned Apex Court held as under:

"6. In the exercise of its appellate jurisdiction in civil cases, this Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are on the face of it against the evidence available on the record of the case and is so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence. A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with such findings."

37. The upshot of above discussion is that instant petitions merit no consideration, consequently the same are hereby **dismissed** along with all pending Misc. Applications. The petitioner / tenant is directed to vacate the premises in question and hand over its vacant and peaceful physical possession to Respondent No.1 within five (5) months time from the date of this judgment positively without fail, subject to the deposit of monthly rent with the Nazir of trial Court/Rent Controller/Executing Court for four months in lump-sum. In case, petitioner may fail to deposit rent amount in lump sum or to vacate the demised premises on or before 13.10.2024, the respondent/landlord may seek immediate eviction by moving an appropriate Application before the learned Rent Controller/Executing Court. Upon receipt of such application, the Executing Court shall be competent to issue writ of possession with police aid even without issuing of notice to the petitioner / tenant. The aforesaid rent amount should be made / paid by the petitioner / tenant by 17th May, 2024 positively.

Office is directed to place a copy of signed judgment in the connected file.

JUDGE

Larkana
Dated. 13-05-2024