

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 2319 of 2017

[Adam Ali Mohammad Ali Lotia, since deceased through his legal heirs (i) Ms. Naheed Lotia and (ii) Naveed Abbas Lotia *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2320 of 2017

[Adam Ali Mohammad Ali Lotia, since deceased through his legal heirs (i) Ms. Naheed Lotia and (ii) Naveed Abbas Lotia *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2321 of 2017

[Express Services *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2322 of 2017

[Express Services *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2323 of 2017

[M/s. Raizada (Pvt.) Ltd. *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2324 of 2017

[M/s. A.F. Container System *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2484 of 2017

[Texcot International *versus* the Standard Chartered Bank Ltd., and two others]

C. P. No. S – 2485 of 2017

[Banaras House *versus* the Standard Chartered Bank Ltd., and two others]

Dates of hearing : 06.05.2024.

Petitioners : Adam Ali Muhammad Ali Lotia since Deceased through his Legal Heirs Ms. Naheed Lotia and another through Mr. Abdul Waheed Kanjoo, Advocate.

Respondent No.1 : The Standard Chartered Bank Ltd., through Mr. Hassan Arif, Advocate.

Respondents No.2 and 3 : The IIIrd Court of A.D.J. South at Karachi and the X Court of Senior Civil Judge/Rent Controller, South at Karachi.....Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due to commonality, all these

Petitions are decided by this Judgment.

2. All Petitioners are Tenants of the Respondent (Bank) in the Building known as 'Standard Chartered Bank Chamber', at Plot No.04, Survey Sheet, S. R. 2, at the Junction of I. I. Chundrigarh Road and Talpur Road Karachi.

3. The Respondent Bank has filed Rent Cases in respect of each premises (*the Demised Premises*), occupied by the Petitioners as Tenants, on the ground of personal *bona fide* need, citing the reason that the Respondent has to expand its operation of its Centralised Operation Department, to manage the overall performance of the Respondent and its network of various Branches. The above Department is housed in the Subject Building and it is to be expanded in view of constantly increasing business operations of Respondent Bank in Pakistan.

4. In sub paragraphs of Paragraph-7 of the Rent Applications (*available in the present Record*) reasons are enumerated in order to justify the eviction of the present Petitioners. Contended that it (*the Respondent*) on 13.07.2006 served all the Petitioners with the Notice for vacation of the premises (*also admitted in their Written Statement by the Petitioners*), but without any result, followed by filing of the Rent Cases (for each Unit/Premises).

5. The Petitioners resisted the Rent Cases by filing Written Statements, stating, *inter alia*, that the Petitioners are the Tenants in the respective demised Premises since decades and have always adhered to the terms of Tenancy, thus there is no justification to get them evicted from their premises/office spaces, in which they were doing the businesses and would suffer colossal losses, besides mental torture; disputed that the premises are required for *bona fide* use by the Respondent Bank because for the expansion of its above Department, other properties owned and possessed

by the Respondent can be utilised; averred that the proceeding initiated against the Petitioners is tainted with *mala fide*.

6. It is necessary to mention that being unsuccessful in the earlier round of litigation, present Respondent filed number of Constitutional Petitions, which were decided by a Common Order dated 27th February 2015 (available at page-255 of the Case File of C. P. No. S-2319 of 2017), setting aside the Decisions and remanding the Cases back to the learned Rent Controller, directing that the Decisions should be given after conclusion of the evidence, which was done, followed by the impugned Judgments.

7. Mr. Abdul Waheed Kanjoo, Advocate, representing the Petitioners, has filed the Synopsis and argued that the Judgments are erroneous; as, neither the evidence is appreciated, nor, the Case Law; that the present Petitions be allowed, because the rent proceedings initiated by the Respondent Bank is hit by *rest judicata*, because in early round of litigation all the issues, as adjudicated by the Respondent, were already decided against the latter (the Respondent Bank). Contended that the Board Resolution filed on behalf of the Respondent-Bank to initiate the Rent Proceedings was false and fabricated, as it is on simple paper and not on the Letter Head, so also the two Power of Attorneys through which the Representative of Respondent Bank has signed the pleadings, besides non-production of original of these important documents is fatal to the case of the Respondent No.1, hence, the entire proceeding was *void ab initio*. In the Written Synopsis, certain portions of the evidence, has been reproduced to show that the two Courts have completely overlooked the testimonies and decided the case contrary to record. *Secondly*, personal *bona fide* need of the Respondent Bank as put forth in the Rent Cases, is belied by the fact that Respondent sold out their another Property, viz. Al-Raheem Tower,

which could have been utilized by the Bank instead of the present Subject Building. **Thirdly**, it is stated that the tenancy of the Petitioners is not a simple Tenancy, but they have paid huge amount towards the ‘Goodwill’ (Pugree), thus, the ground of personal *bona fide* need should also fail on this account. Requested, that all the Petitions be allowed and both the Judgments be set-aside.

8. The Petitioner’s Counsel has relied upon the following Case Law to augment his arguments_

i. 2006 SCMR 152

[Allies Book Corporation through L.Rs vs. Sultan Ahmad and others]. **Allies Book Case.**

ii. 2000 SCMR 472

[Habib Bank Limited vs. Zelins Limited and another]

iii. 2006 SCMR 437

[Messrs A.M. Industrial Corporation Limited vs. Ajjaz Mehmood and others]

iv. 2011 SCMR 1306

[Muhammad Shoaib Naji and others vs. Muhammad Yasin and others]

9. The Petitioners of the Constitution Petitions Nos.2484 and 2585 of 2017, viz. Texcot International and Banaras House, respectively, have filed a common Synopsis in support of their averments in the above Constitution Petitions. The stance of these two petitioners is, that various Audit Reports of the Respondent Bank confirm that it has reduced its business operations, including branches and staff, besides, selling the above Al-Raheem Tower, which fact supports the case of the Petitioners, that the Respondent Bank does not require the space for its *bona fide* need, but only interested in evicting the Petitioners, who/which are doing their lawful businesses from the Premises since decades. In paragraph-5 of the Synopsis, it is stated that in recent years when 22 tenants vacated the Premises with ‘**money**’, their tenements, till date have not been utilised by the Respondent Bank, which fact belies the stance of the latter (Respondent No.1), that it requires the

space to expand its central operations department. Averred other instances to show that the Respondent Bank does not operate in a transparent way; for instance, The United States Federal Reserve imposed a penalty of US Dollar 340 million on the Respondent Bank.

10. Whereas, Mr. Hassan Arif, Advocate, representing the Respondent No.1 [Bank], refuted the above contention of the Petitioners' Counsel; argued, that the *bona fide* need of the Respondent No.1 is specifically pleaded in the Rent Cases, in particular, Paragraph-7, in support whereof an exhaustive evidence is led, which is properly discussed in both the impugned Judgments; thus, no illegality exists, therefore, these Petitions be dismissed. Stated that the eviction ordered against the other Tenants as well, but, they did not challenge it further, except the present Petitioners. The Respondent's Counsel has cited the following Case Law_

i. 2013 CLC 1541 [Sindh]

[Messrs Victoria Furniture Mart through Proprietor vs. State Life Insurance Corporation of Pakistan and 3 others]

ii. 2015 CLC 238 [Sindh]

[Jehangir R. Kakalia through L.Rs vs. VIIth Additional District Judge, South Karachi and another]

11. Arguments heard and record perused.

12. The Counsel [for Respondent No.1] was specifically asked about the sale of the above Al-Rahim Tower, one of the assets of the Respondent No.1, as argued by the Petitioners' Counsel, that, if there was a dire *bona fide* requirement of expanding the Central Operation Department, then the same can be or could have been established in the said Tower, but its sale shows that Respondent Bank is not facing any shortage of space. The learned Advocate for the Bank, on instructions stated during the argument that Al-Rahim Tower has not been sold by the Respondent Bank, and *secondly*, the suitability of the space requirement is the prerogative of the Landlord instead of the Tenant.

13. Summary of the Case Law cited by the Petitioner's Counsel is that the High Court under its constitutional jurisdiction can correct the illegality, misreading and non-reading of evidence on record, *inter alia*, based on extraneous material, by setting aside the concurrent findings and substitute the same by its own Decision; where the Landlord in evidence could not justify that why other Shop lying vacant in the same Building was not feasible to start his business, couple with the fact that the other premises, which were vacated few years back, was again re-let, then the Ejectment Application was rightly dismissed; however, in this *Allies Book Case*, the Rule is reiterated that it is the prerogative of Landlord to choose any of the premises in his possession, for his personal *bona fide* use. Authority of the Representative of the Bank was challenged, to file the Rent Case. Three options have been enumerated; (i) Power of Attorney or Board Resolution should be filed in the Proceeding or in Evidence to show that person who has filed the Ejectment Application was duly authorized, (ii) some documents of the Bank could have been produced showing the authorization, (iii) ratification on the part of Bank for filing the Proceeding. This was not done and Rent Controller decided the case against the Bank, even an Appeal before this Court, a valid authorization or copy of the Board Resolution was not produced, thus, Rent Application was rightly dismissed, which was upheld by this Court and the same Decision was maintained by the Hon'ble Supreme Court. The Leave to Defend was refused by the Hon'ble Supreme Court and the Petition of the Landlord was dismissed, primarily on the ground, because earlier when two Shops were vacated from the previous Tenants, were rented out by the petitioners (*of the reported Judgment*) to the new Tenants. Legal effect of "Pugree" explained by the High Court in *Hanif Case (supra)*, *that is*, the Tenancy Agreement contains a Clause entitling the lessee to transfer the lease to any person with the consent of the lessor, which has been construed by the

Court, as Pugree (Goodwill), while holding that, “in such a situation, relationship between the Parties is different and is not contemplated under the Rent Law, thus, disentitling the Landlord to file a Rent Proceeding”, which means that a tenant paid a very large sum of money, which is totally disproportionate to the rate of rent in order to purchase something more than tenancy rights, which is somewhat near to the ownership rights.

14. Précis of the Case Law relied upon by the Petitioners’ Counsel is that it is not the concern of the tenant to question that an old Building cannot be demolished or reconstructed unless permission is given by the competent authority, because it is a matter between the concerned Government Authority and the Landlord, but on this defence a tenant cannot escape eviction. The Eviction Proceeding has been filed by the Bank on the ground of *bona fide* requirement for establishing the Record Room of different Sections in the Building, which was opposed by the tenant / petitioner (of the reported case), that already sufficient space was available with the Bank, which was discarded by this Court and the Eviction Order was maintained; in this **Jahangir Case**, reliance is placed upon number of judicial precedents including of the Hon’ble Supreme Court.

15. The present Petition is the continuation of Post Remand Eviction Proceeding; subsequently, the Parties hereto led the evidence [as directed in the Remand Order]. The principle of *res judicata* by any stretch of imagination is not applicable to the facts of the present *Lis* and the argument of Petitioners’ Counsel is untenable.

Similarly, the argument about ‘Pagree’/ ‘Goodwill’ as put forth by the Petitioners’ Counsel together with the Case Law, is considered on the basis of present Record. This ground/defence of ‘Pagree’ was not taken by the Petitioners in their Written Statement; rather has **admitted the relationship** of land lord and tenant as mentioned by the Respondent Bank in its Rent Application(s); thus, this plea is an afterthought and is discarded.

16. Authorization to file the Rent Cases. This issue has been specifically dealt with by the learned Rent Controller in its Judgment, which is maintained by the learned Appellate Court. The Power of Attorney in favour of new Attorney of Respondent Bank, Syed Zeeshan uddin has been produced as Exhibit "A", with an observation, "original seen and return"; the other Power of Attorney of the Chief Executive Officer of the Respondent Bank-Shahzad Dada is produced as Exhibit "A/2" couple with the Board Resolution as Exhibit "A-3", with a remark that Certified True Copies were seen and return. These documents are available in the present Petition at pages-363 to 381. Clause-12 of the Power of Attorney is quite specific, *inter alia*, empowering the Attorney to defend any legal action against the Respondent Bank. **Secondly**, the Board Resolution bears stamp of the Respondent Bank and Signed by is Company Secretary, as required.

The Hon'ble Supreme Court in Civil Petitions No.24-K and 26-K of 2009 [*Sohail Printers, Ali Printers and Azim Printers versus Sheikh Abid & Co. (Pvt.) Limited and others*], while considering this issue of authorization vis-à-vis the Rent Proceeding, is of the view that the board resolution was not a sine-qua-non for filing proceedings before a Rent Controller, but, the requisite authority should be available with the person initiating proceedings; therefore, this argument of Petitioners is unable to lend any support to their case. The above Record shows that the Rent Proceedings were initiated by the Respondent Bank after the proper authorization and by the competent Representatives.

17. With regard to the sale of "Al-Raheem Tower", in addition to what has been stated by the Respondent's Counsel during the proceeding, even the learned Rent Controller has also dealt with the issue under Point No.2 in the Impugned Order. After evaluating the evidence, it was determined that the said Building was not sold out as alleged by the Petitioners.

18. The main ground of *bona fide* need was decided by the learned Rent Controller under Point No.3, which is upheld in the Appeal. Decision is given after the appraisal of the evidence and considering the Case Law.

19. The Judgments cited by the Petitioners' Counsel in favour of the above discussion are distinguishable, in particular the reported Decisions of Hon'ble Supreme Court with regard to the authorization of Representative of the Bank to file the Rent Proceeding; conversely, the afore-referred authorization / Board Resolution and Power of Attorney of present Respondent Bank, falls within the parameter laid down by the Hon'ble Supreme Court in its Judgment (*supra*), relied upon by the Petitioners.

20. The upshot of the above discussion is that both the Courts have not committed any illegality requiring interference in this Constitutional Jurisdiction; hence all Constitutional Petitions are dismissed, with no order as to costs.

However, Petitioners are given two (02) months' time to vacate the respective Demised Premises.

JUDGE

Karachi.

Dated : 30.05.2024

M.Javid.P.A.