

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-797 of 2024

Date

Order with signature of Judge

Date of hearing and Order:- 05.7.2024

Syed Zaem Haider advocate for the petitioner.

ORDER

Adnan-ul-Karim Memon, J. – Petitioner Muhammad Faraz Khan has assailed the order dated 27.5.2024 passed by learned VII-Additional District & Sessions Judge, Karachi South in First Rent Appeal No.76 of 2024, whereby the Judgment dated 12.3.2024 passed by learned XV-Rent Controller Karachi, South, in Rent Case No.1143 of 2020 was maintained and First Rent Appeal No.76 of 2024 was dismissed on the premise that finding of the learned Rent Controller were/are correct, logical and based on sound reasons.

2. Brief facts of the case are that respondents through their Attorney filed a rent application No. 1143 of 2020 under Section 15(2)(II)and(VII) of the Sindh Rent Premises Ordinance 1979 before the Rent Controller Karachi South for eviction of the petitioner in respect of the rented premises viz. Shop No.G/4 & 5 situated on the ground Floor, Plot No. AM-46, Rahat Mansion, Gali No.2. Main Burns Road, Karachi. The respondents claiming therein to be owner/landlord and holding the petitioner as a tenant in respect of the demise rented premise against monthly rent of Rs.80.000/- per month since October 2016 and after the expiry of the agreement, the petitioner was asked for vacating the premises, however, he did not pay any heed despite lapse of years; and, neither vacated premises nor paid rent, hence the respondents felt constrained to file the rent application against the petitioner in November 2020. The petitioner filed a written reply in the case and denied the allegations leveled against him with the narration that there is no relationship between the parties on the premise that the rent agreement was not signed by one of the respondents and they took the contradictory plea in the rent application, hence the demand regarding the personal use was based upon malafide; that the respondent never shows any title document regarding the ownership to the petitioner despite repeated demands and took several pleas in his affidavit in evidence. The learned Rent Controller due to divergent pleas, framed the following points for determination:-

- (i) *Whether the Rent case is competently filed and is maintainable.*
- (ii) *Whether there is a relationship between the landlord and tenants before the parties after the expiry of the agreement.*
- (iii) *Whether the opponent has committed default in payment of rent.*
- (iv) *Whether premises is required for personal bonafide use of the applicant.*
- (v) *What should the decree be?*

3. Respondent No.1 and the attorney of respondent No.1 led his evidence as Ex. A and produced his affidavit in evidence as Ex. A/1, Special Power of Attorney at Ex. A/2, tenancy agreement (consisting of three pages) at Ex. A/3; certified copy of the order dated 09.12.2020 passed in MRC No. 1148/2020 at Ex. A/4, rent receipt No. 2691 dated 01.01.2021 of the Shop where the applicant is a tenant at Ex. A/5, typed copy of the license of different categories of food business 2018/2019 at Ex. A/6 along with a photocopy of the acknowledgment receipt with the original stamp of Sindh Food Authority at Ex. A/7, legal notice dated 06.11.2020 at Ex. A/8, photocopy of deposit slip stamped by Sindh Bank Ltd. marked as X/1.

4. Thereafter, the petitioner/opponent led his evidence as Ex. O, who produced his affidavit in evidence as Ex. O/1, ten receipts of money orders at Ex. O/2 to Ex. O/11 and 18 receipts of rent deposited in the Court at Ex. O/12 to Ex. O/29.

5. The learned trial Court after hearing the parties allowed the rent application on the ground of default and personal bonafide need and appeal preferred thereon by the petitioner was also dismissed vide judgment dated 27.05.2024 on the same analogy.

6. At this stage, I asked the learned counsel to satisfy the maintainability of this constitutional petition against the aforesaid concurrent decisions rendered by the competent courts for the reason that this Court in the constitutional jurisdiction, could not reevaluate the evidence and reverse the findings on facts recorded by the Rent Controller and affirmed by the Appellate Court. Learned counsel for the petitioner argued that the Rent Controller and the Appellate Court both mechanically passed the orders without considering the evidence available on record. He further argued that the petitioner was engaged in the business of a restaurant and was using the demised premises without any alteration in the demised premises. He further argued that the Rent Controller and the Appellate Court both misread the evidence. It was further contended that

the petitioner never committed any default in the payment of rent or relevant utilities.

7. Learned counsel attempted to show that this petition is maintainable as both the forums have failed to appreciate that petitioner paid the monthly rent to respondent Muhammad Nasim and Muhammad Shamim regularly as such there was no default on his part, therefore the rent application was not maintainable. He has further contended that the respondents failed to show a personal bonafide need as such the rent case ought to have been dismissed; that the petitioner is entitled to fundamental rights including proprietary rights as enshrined in the Constitution of Pakistan 1973. Learned counsel referred to the evidence of the petitioner as well as the respondents and argued that this is the fit case whereby the rent application filed by the respondents be dismissed. He prayed for allowing the petition. I have heard the learned counsel for the petitioner and do not agree with the contention of the learned counsel for the petitioner for the reason that the findings of the competent fora are not perverse, arbitrary, fanciful, or capricious as portrayed by the petitioner. The judgments/orders passed by the learned Rent Controller and the appellate Court are well reasoned and based on proper appreciation of all factors, either factual or legal. Neither any misreading and non-reading nor any infirmity or illegality has been noticed on the record which could make a basis to take a contrary view for the following reasons:-

8. Perusal of the order passed by the Rent Controller shows that the eviction application was filed by respondent No.1 on the grounds of his personal need and the default committed by the petitioner in payment of the monthly rent. After examining the eviction application and evidence of respondent No.1, his application was allowed by the Rent Controller by holding that he had succeeded in proving his case on both grounds and also that the evidence produced by him was not rebutted by the petitioner in its true perspective. The tenor of the order passed by the Rent Controller indicates that the eviction application was allowed by him on the strength of the evidence produced by respondent No.1 and the admission of the petitioner in his evidence. Additionally, the petitioner has admitted in his evidence that no fresh agreement had been executed after the agreement dated 01.12.2016, he also admitted that the cheque of advance was bounced, he also admitted that he had altered/added the fitting and fixture in the shop, he also admitted that he did not obtain any permission for alteration in the shop, he also admitted that he received the legal notice for the vacation of the premises, he also admitted that he had filed MRC in the

year 08.12.2020, whereas legal notice was served upon him on 06.11.2020, he also admitted that MRC was filed after four years of Execution of Rent Agreement, he also admitted that he did not pay increase rent for any year.

9. The aforesaid findings of the Rent Controller were upheld by the appellate Court. Section 15(2)(vii) of Sindh Rented Premises Ordinance, 1979 requires demonstration of elements such as (i) honesty of purpose and (ii) reasonableness.

10. It is now well settled that from the statement of the landlord/owner for eviction of a tenant on the ground of personal bona fide need only an honest intention is to be deduced; and, there is no other formula to adjudge good and bad faith, for eviction on the aforesaid count. If the Court on the scrutiny of the evidence concludes that it was an honest intention then it would be immaterial whether he remained successful in achieving the object or not. Good faith is an abstract term not capable of any rigid definition and ordinary dictionary meaning describes it as "honesty of intention". So far as the statement of the landlord on oath is concerned, it is now settled that if the statement made on oath by the landlord is consistent with the averments made by him in his ejectment application and neither is his statement shaken nor is anything brought in evidence to contradict his statement, it would be sufficient for the grant of his ejectment application; all that the landlord has to show is that he required the demised premises for his personal use and the choice was his as to the suitability of the demised premises which he required for his personal use and that his need is reasonable and bona fide; the landlord has the complete option to avail of the ground of personal need; and, the landlord himself would determine in what way, subject to law, he wants to utilize his premises after eviction of the tenant. In the instant case, respondent No.1 had successfully discharged her burden in proving that his personal need was reasonable, genuine, and bona fide, and the petitioner had failed in dislodging his claim or in proving his wrong.

11. I am of the considered view that under the provisions of Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973, the right of property as a fundamental right is protected. Admittedly, the right of ownership is superior than the right of tenancy. Thus, the petitioner, being inferior in status regarding utilization of the rented premises in question, cannot determine that he is entitled to retain possession of the rented premises indefinitely as he has admitted that he has more premises to run his hotel businesses at Burns Road

Karachi. Hence, the Rent Controller has rightly decided on issues No.3 and 4 in favor of the respondent/landlord. So far as the ground of default in payment of monthly rent by the petitioner- is concerned, the petitioner has admitted in evidence that his cheque for payment was dishonored which prima facie reveals that the petitioner has failed to deposit all the monthly rent.

12. The record shows that the Execution Application was allowed vide order dated 03.07.2024 and a Writ of Possession has already been issued, as such no further indulgence is required on my part.

13. The Supreme Court in the recent judgment on the issue of concurrent findings has held that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is to foster justice, preserve rights, and to right the wrong. While exercising writ jurisdiction, if the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere; when the finding is based on a misreading of evidence, nonconsideration of material evidence, erroneous assumption of fact, patent errors of law, excess or abuse of jurisdiction, and arbitrary exercise of power. Each case is based on its facts and circumstances.

14. The concurrent findings, if any, recorded by the forum below erroneously may not be considered so revered or untouchable or as gospel truth which cannot be upset, come what may, by the High Court in its constitutional jurisdiction. If some blatant illegalities or violations of law are unearthed or surface, the High Court cannot shut its eyes to cover, protect, or patronize such defective orders or judgments where interference is required to advance the cause of justice; and in its fine sense of judgment, may intervene, with the strength of mind that to turn a blind eye to injustice perpetuates and aggravates the injustice.

15. In the case at hand, the learned appellate court rightly dismissed the appeal as there was no misreading or non-reading of evidence as vital parts of evidence were discussed by the Rent Controller. The impugned judgment of the rent controller reveals that all relevant factors and grounds raised were properly considered and answered by the learned rent controller as well as the appellate court.

16. In view of the above discussion, the impugned concurrent findings do not suffer from any defect and as such do not require any interference by this Court in its constitutional jurisdiction, this petition is dismissed

with direction to the petitioner to hand over possession of the premises in question within fifteen days from today. However, in case the petitioner fails to hand over possession of the premises in question within fifteen days, the writ of possession which has already been issued should be issued afresh without notice and permission to break up the lock and with police aid.

17. These are the reasons for my short order dated 05.07.2024, whereby the instant constitution petition was dismissed.

JUDGE

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