

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-855 of 2023

Present

Justice Mrs. Kausar Sultana Hussain

Muhammad Arshad Ali Qureshi.....Petitioner/Tenant

V e r s u s

Sajida Begum and two others.....Respondents/landlady

1. For hearing of CMA No.6137 of 2023.
2. For hearing of Main Case.

Date of Hearing 07.11.2023.

Date of Judgment 06.02.2024.

Syed Ehsan Raza, advocate for Petitioner.

Mr. Zulfiqar Haider Shah, Advocate for respondent No.1 a/w respondent No.1.

J U D G M E N T

Kausar Sultana Hussain, J. :- Rent Case No.486 of 2021 filed by respondent No.1 / landlady against the petitioner/tenant seeking his eviction from the demised premises, on the grounds of personal need and default in payment of monthly rent and utility charges was allowed by the Rent Controller vide order dated 15.05.2023 by directing the petitioner/tenant to vacate the demised premises viz; Shop No.2, situated at Ground Floor of House No. 37/4, Mohalla 400 Quarters, Firdous Colony, Sunar Wali Gali, Gulbahar No.2, Liaquatabad Town, Karachi (to be referred as demised premises) within thirty (30) days from the date of the said order. First Rent Appeal No. 95 of 2023 filed by the petitioner/tenant against the aforesaid order of his eviction was dismissed by the learned Appellate Court i.e. IVth Additional District Judge, Karachi Central, vide judgment dated 25.08.2023. The petitioner/tenant has impugned the concurrent findings of both the learned Courts below through filing this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. This case has a checker history. Respondent No.1 / landlady, claiming to be the owner of the demised premises filed a Rent Case No.486 of 2021 against the petitioner seeking his eviction on the grounds of default in payment of monthly rent for a period of 13 years w.e.f January, 2009 to onwards till to filing of this rent case i.e. November 2021. It was alleged by the respondent No.1/ landlady that she is widow and her sons are jobless, therefore she needs the demised premises for their use. The rent case was contested by the petitioner/ tenant, however, the same was allowed by the Rent Controller. The appeal filed by the petitioner against the order of the eviction was dismissed by the Appellate Court, hence this Constitution Petition.

3. Syed Ehsan Raza, learned counsel for the petitioner contended that the impugned Judgment dated 25.8.2023 and Order dated 17.05.2023 are not sustainable under the law as both verdicts given by the learned Courts below are against the settled principle of law; that the witness namely Zahida, who is real sister of the respondent No.1/ landlady denied her signature on her affidavit-in-evidence when a question was put to her during her cross examination, whereby the Appellant/ tenant was constrained to file an Application under Article 59 R/W Article 78 of the Qanoon-e-Shahadat Order, 1984 but the learned Rent Controller had dismissed the same while passing the ejectment order without any reasons, which is contrary to Section 24-A of the General Clauses Act, 1897; that the learned Rent Controller has also wrongly appreciated the evidence of the parties in their true perspectives therefore, the matter is required to be remanded to the trial Court for doing complete justice as held in PLD 2001 Karachi page 442; that the learned Courts below also failed to appreciate that the respondent No.1/ landlady did not serve any notice prior to filing an application Under Section 14 of SRPO, 1979 and also failed to give any findings in this regard even failed to frame specific issue on this point, therefore the impugned order is not sustainable under the law as held in 2007 SCMR page 307; that the learned Courts below

failed to appreciate that the respondent/landlady could not prove the plea of default in payment of monthly rent and her personal need of demised shop while the ejectment application was allowed on the plea of default, which is against the law as the ground of default could not be agitated in the application under Section 14 of SRPO, 1979; that the verdict against the settled principle of law that the 'documentary evidence always prevail over the oral evidence' hence the learned trial Court has wrongly framed the Point No.1 in the case in respect of personal bonafide need of demised premises to respondent/ landlady and applied the principle of Pick & Choose, which is not permissible under the law as held in PLD 1986 SC (Ad & K) page 120; that the impugned Order is not sustainable under the law as the Application was filed Under Section 14 SRPO, 1979 but the impugned order was passed on the ground of default for which the respondent/ landlord was supposed to file an application Under Section 15 of SRPO, 1979, therefore, he prayed for dismissal of the Application filed by the respondent No.1/ landlady under Section 14 of SRPO, 1979.

4. On the other hand, it was contended by Mr. Zulfiqar Haider Shah, learned counsel for respondent No.1/landlady that there is no illegality, irregularity, infirmity or perversity in the impugned order and judgment passed by the learned trial Court as well as Appellate Court, that in-facts the instant petition is not maintainable under the law but it is liable to be dismissed as not maintainable; that the petitioner / tenant further delay to handover the peaceful possession of the premises in question to the respondent / landlady and with malafide intentions, he wants to deprive the respondent No.1/landlady widow from her property; that the petitioner / tenant has not paid rent amount to the respondent No.1 / landlady from the month of January 2009 to onwards, which clearly shows his malafide and comes within the definition of default in payment of rent; that the respondent No.1 / landlady had also made numerous requests to the petitioner / tenant for vacating the rented premises as the same is require to her for personal bonafide need for herself and for her family, who wish

to start their own business in the rented premises as well as petitioner / tenant become defaulter as stated above. He lastly prayed for dismissal of the instant petition with compensatory cost. In support of his arguments, he relied upon the following case laws:-

- a. SCMR 2012 S.C. page 91.
- b. SCMR 2012 S.C page 1498.
- c. SBLR 2021 Khi, page 2362.
- d. CLC 2020 Khi, page 60.
- e. YLR 2017 Khi, page 138.
- f. YLR 2017 (Note), Khi, 139.
- g. PLD 2021 Khi, page 237.
- h. SCMR 2001 S.C page 1197.
- i. SCMR 1987 S.C page 796.

5. After hearing arguments and perusal of record, I am of the opinion that admittedly the respondent No.1 / landlady is the exclusive owner of the demised premises since 2015 and before that brother of the respondent No.1 / landlady had executed tenancy agreement and after his death in December, 2008 a fresh tenancy agreement was executed between the petitioner/tenant, respondent No.1 / landlady and her sister Zahida. The respondent No.1 / landlady had approached the learned Rent Controller for eviction of the petitioner / tenant from demised premises under summary remedy provided under Section 14 of S.R.P.O, 1979. The respondent No.1 / landlady being widow claim vacant possession of the demised premises for personal requirement of her sons to establish business therein, who according to her would start therein their own business. Section 14 of S.R.P.O, 1979 makes a special provision for recovering possession of rented premises by certain class of landlord of a building like a widow, orphaned minors, salaried employees about to retire, retired persons or persons either due to reach the age of 60 years or having already attained that age and possession of the rented premises can easily be recovered through a summary procedure under that provision. It is however, settled law that the delivery of vacant possession of rented premises under Section 14 of S.R.P.O, 1979 can only be made,

if the rented premises is used for personal use of the landlord. Unlike Section 15 (2) (vii) of S.R.P.O, 1979, a landlord is not required by law to prove bona fide of his/her requirement. His/her statement to such effect would be sufficient to recover the possession of the rented premises through a summary procedure but the landlord should state in his/her case in clear and unequivocal terms that the demise premise is required for his/her personal need as required by Section 14 (1) of the Ordinance. In instant matter the landlady / widow shows her requirement of obtaining demised premises for her children and while recording her detail cross-examination she remained consistent. Record shows that the respondent No.1 / landlady resides with her children for whom she is in need of the demised premises. In my view need of the children is attributable with need of landlord and inter connection and inter-dependence is spelled out in unequivocal terms, then it can be said that need of the children is need of the landlord and benefit of Section 14 can be allowed even if premises is required for the benefit of his / her children.

6. The petitioner / tenant has submitted that the respondent No.1 / landlady has another shop in her possession and she let it out in higher rent to another tenant while she could chose that shop for her children, if they are needy and want to establish their business. In my view, if landlady owing several shops even then the question as to which premises would be appropriate for her is a matter to be exclusive left to landlady to decide.

7. The upshot of above discussion and observation of this Court is that the impugned judgments dated 15.05.2023 passed by the learned Rent Controller, Karachi Central and the judgment dated 25.08.2023 passed by the learned IVth Additional District Judge, Karachi Central, apparently are not suffering from misreading or non-reading of evidence or any of the record and further appears to be in accordance with the principle of law led down and enunciated by the Hon'ble Supreme Court and this Court in various judgments. No illegality, irregularity, perversity or

impropriety is found in the impugned judgments. The instant petition is therefore, **dismissed**. The petitioner / tenant is directed to vacate the demised premises within two months subject to deposit of monthly rent and utility bills. The petitioner / tenant shall handover vacant possession of the demised premises to the respondent No.1 / landlady on expiry of two months and in case of his failure thereof, the learned Rent Controller would issue Writ of Possession against him without any further notice, if necessary with police aid.

J U D G E

Faheem/PA