

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 1199 of 2019

[**Mirza Aleem Agha versus M/s. Modern Motors (Pvt) Limited and others**]

Date of hearing : 07.03.2024.

Petitioner : Mirza Aleem Agha, through Mr. Naveed Mushtaq, Advocate.

Respondent No.1 : M/s. Modern Motors (Pvt.) Limited, through M/s. Shaikh Ikram Aziz and Rashid Khan, Advocates.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Through the instant petition, Petitioner has challenged both Decisions of the Courts below, directing eviction of the Petitioner from the demised premises-Shop Nos.8 & 9, at Plot No.24, Nabi Ahmed Building, West Wharf Road, Karachi.

2. Mr. Naveed Mushtaq, learned counsel representing the Petitioner, has argued that Rent Case was filed on the ground of default and personal *bona fide* need, *whereas*, ground of default has been decided in favour of the Petitioner, against which no Appeal was preferred, hence, it attained finality. However, the personal *bona fide* need is not properly evaluated and decided by the Courts below and both Decisions have not even discussed the evidence. The third Objection, which the Petitioner has raised with emphasis, is about a Board Resolution of Respondent-Company and it is argued that the Representative, who has filed the Rent Case and gave evidence was not authorized to do so and, therefore, entire structure of the eviction proceeding has fallen down. It is further argued that there is contradiction in the Rent Case and Affidavit-in-Evidence, filed on behalf of the Petitioner, as it is not claimed that premises in question is required for

bona fide need, but it is merely stated that it is required for business purpose. To augment his arguments, he has relied upon the following case law_

- i. **2000 S CM R 472**
[*Habib Bank Limited versus Zelins Limited and another*];
- ii. **2006 S C M R 117**
[*Mst Shirin Bai versus Famous Art Printers (Pvt.) Ltd. and others*]; and
- iii. **2006 S C M R 437**
[*Messrs A.M. Industrial Corporation Limited versus Aijaz Mehmood and others*]

3. On the other hand, Shaikh Ikram Aziz, Advocate, along with Mr. Rashid Khan, Advocate, representing the Respondent No.1, has opposed this Petition and supported both Judgments of the Courts below. It is argued that personal *bona fide* need is proven, when way back on 27.11.2006 Notice was issued to the Petitioner for vacation of premises in question, which was replied vide Correspondence dated 26.02.2007, in which two years' time was sought. In support of his contention, he has cited the following case law_

- i. **2000 S CM R 1613**
[*Mehdi Nasir Rizvi versus Muhammad Usman Siddiqui*];
- ii. **1981 S CM R 593**
[*Sarwar Hussain versus Ghulam Qadir*];
- iii. **1989 S CM R 1767**
[*Haji Muhammad Sadiq versus Iftikhar Saeed and 2 others*]; and
- iv. **2010 S CM R 1925**
[*Shakeel Ahmed and another versus Muhammad Tariq Farogh and others*].

4. Arguments heard and record perused.

5. Crux of the case law cited by the Petitioner's counsel is, that when authority to file a proceeding is challenged, then it should be proved by the applicant, who has filed the ejectment application that he or she has been given proper authorization, either by filing Board Resolution, Power of

Attorney or any other valid Authorization and if this is not done, then it would be fatal. Despite the finding of Rent Controller on the maintainability of the Ejectment Application, petitioner-Bank [of the reported case] did not file any valid Authorization or Power of Attorney in favour of his representative, who has filed the proceeding in Appeals nor any other document rectifying such an action, therefore, the eviction proceeding is correctly decided and dismissed by the Courts. Ejectment Application was dismissed, which was maintained by this Court and Honourable Supreme Court maintained the Decision, because, person filed the eviction Application was not authorized, *inter alia*, as it was brought on record that Company, which he was representing had seized to exist, followed by the consequences in the eviction proceeding.

6. Two issues are involved in this petition; first one is about the authorization of a person, who has filed the case and second one is personal *bona fide* need.

7. I have seen the Board Resolution [*at page-99*], in which two persons M/s. Javed Ahmed Bajwa and Muhammad Daud were authorized to deal with the affairs; relevant portion whereof is reproduced herein under_

“RESOLVED THAT Mr. Ch. Javed Ahmed Bajwa S/o Ch. Fazal Ahmed Bajwa holding CNIC No.42201-0437089-1 and Mr. Muhammad Daud S/o Ch. Muhammad Ishaq CNIC No. 42201-7717616-1 are authorized to conduct jointly or severally the affairs of the Property No.24 – West Wharf, Karachi pertaining to the tenants therein and to file any Rent Case against the tenants for such purpose to prosecute, lead evidence and to appoint any advocate for such purpose.”

8. Case Law cited by the Petitioner’s counsel are distinguishable, because Board Resolution has specifically authorized the persons to file

Rent Cases and give evidence. It is not necessary to mention that on what grounds, the case should be filed, as argued by the Petitioner's counsel.

9. Now adverting to the second issue about personal *bona fide* need. Undoubtedly, the Notice dated 27.11.2006 and its Reply [dated 26.02.2007] are the admitted documents, but they were exchanged between the parties in the year 2006 and 2007, *whereas*, Rent Case was filed in the year 2014. Although this Correspondence is one of the determining factors in deciding the personal *bona fide* need, but entire case cannot be decided on the basis of these Correspondences without evaluating the evidence adduced by both the Parties. Unfortunately, both the Courts below have not evaluated the evidence as required in the rent proceeding. Neither any portion of examination-in-chief nor cross-examination is mentioned with regard to the main assertion of the Parties, *inter alia*, resulting in proving or disproving of respective pleas. This defect cannot be cured in a constitutional jurisdiction.

10. In view of the above, both Decisions of the Courts below are set aside. Case is remanded back to the learned Rent Controller for deciding the same afresh but within a period of four weeks from today. If Decision is further challenged in an Appeal by any of the Parties, then learned Appellate Court should also decide the same expeditiously, preferably, within a period of four weeks as this is an old rent case.

11. Petition stands disposed of along with all pending application(s), if any.

Judge

Karachi.
Dated: 07.03.2024.

Riaz P.S.