

**IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No.S-128 of 2025**

Mir Mohammad Sangi ..... Petitioner

Versus

Anwar ellahi & others ..... Respondents

Date of Hearing : 17.03.2025

Date of announcement of judgment : 21.03.2025

Petitioner through Mr. Muhammad Ayoub Chaniho,  
Advocate.

Respondents through : Mr. Naeem Suleman, Advocate.

Mr. Irshad Ahmed Shaikh, AAG.

**ORDER**

**Muhammad Jaffer Raza, J:** - The instant petition has impugned the concurrent findings of learned lower fora. In seriatim, Order dated 31.01.2025 passed in FRA No.108/2024 by learned Additional District Judge-IX, East, Karachi and Order dated 02.05.2024 passed in Rent Case No. 443/2018 by learned Rent Controller-XIII, East, Karachi (“**Impugned Orders**”)

Facts of the case are summarised as under: -

1. The Respondent No.1 filed rent Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”) bearing No. 443/2018 on the sole ground of personal bona fide need which were clearly mentioned in para-3 & 4 of the said application. Thereafter, the learned Rent Controller vide Order dated 02.05.2024 allowed the said application. The said order was impugned in FRA No.108/2024 which was dismissed vide impugned order.
2. Learned counsel for the Petitioner has argued that the rent application No.443/2018 was filed on the basis of mala fide and the Respondent No.1 has not been able to fulfill the requirements under Section 15(2)(vii) of the personal bona fide need. He has further stated that the relationship of the landlord and

tenant was denied by him in the written statement, however, the learned trial Court as well as Appellate Court has not given any consideration and point No.1 i.e. relationship of landlord and tenant has not been adjudicated properly by the courts below. At this juncture, I asked the learned counsel to substantiate his submissions from the cross-examination of the respective parties. Learned counsel has thereafter taken me to the cross-examination of the opponent. The relevant part thereof is reproduced hereunder:-

*It is correct to suggest that my father was tenant in the premises more than 45 years. I know the facts of the case and also gone through the documents produced by the applicant. It is correct to suggest applicant is owner of demised premises. It is correct to suggest that applicant became owner of the premises in the month of May, 2009. It is correct to suggest that I have not produced any rent receipt. It is correct to suggest that we are paying monthly rent to Farman Ilahi. It is correct to suggest that as per contents of my affidavit in evidence Farman Ilahi is collecting rent from the month of July 2009. It is not in my knowledge that Farman Ilahi is collecting rent on behalf of applicant however, I only know that he is brother of applicant. It is correct to suggest that Farman Ilahi is not owner of premises. It is not in my knowledge that applicant is residing in the flat which was owned by his father and he intends to give shares to his siblings from that flat therefore, he needs the demised premises for his residence purpose. It is correct to suggest that except demised flat another flat situated on first floor beside the demised flat is in possession of applicant. It is correct to suggest that demised flat is two bed DD. It is not in my knowledge that applicant has a large family. It is not in my knowledge that the flat in possession of applicant is not enough for his large family therefore, he required the demised flat for his personal bonafide need. (Emphasis added)*

3. It is evident that the relationship has been clearly admitted by the Petitioner/opponent and therefore the deliberation on point No.1 was correctly made by the learned Rent Controller. It was argued by learned counsel for the Petitioner that there is no requirement of the tenement on the basis of personal bonafide need and the filing of rent application was mala fide. At this juncture, I enquired from the learned counsel to show me the part of cross-examination, in which according to him, the personal bona fide need of the applicant/Respondent No.1 has been shattered. The **entire** of the cross-examination of the Respondent is reproduced as under: -

*It is not in my knowledge that opponent is depositing monthly rent. It is not in my knowledge that opponents have never committed default in payment of monthly rent. It is incorrect to suggest that the property was in the name of my father. I was not - receiving rent from deceased opponent. I do not have*

*remember the date of purchasing the demised premises. I did not received the possession of demised premises. Vol. Says that tenants were residing. The previous owner did not informed me that the opponent is in possession of demised premises on Pagri basis. Previous owner did not get any meeting with the tenant. I do not have remember that previous owner told me about rate of monthly rent of the demised premises or not. I did not execute any tenancy agreement with opponent. Farman Elabi is my brother.*

4. It is evident from perusal of the above-mentioned cross-examination that not a single question was put to the applicant/Respondent No.1 regarding personal bonafide need and the applicant in his examination-in-chief has only reiterated stance taken in the rent application and, therefore, his claim regarding personal bona fide need has not been shattered. No attempt was even made by the learned counsel for the Petitioner to shatter the plea taken by the Respondent No.1/applicant. It is a settled principle of law that once the landlord steps into the witness box and the plea of personal need is unrebutted, the ejection application must be allowed under Section 15 of the SRPO. The following judgements advance the said proposition. The respective judgments and their relevant parts are reproduced below: -

- **Jehangir Rustom Kakalia vs. State Bank of Pakistan<sup>1</sup>**

*“Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.”*

- **Wasim Ahmad Adenwalla vs. Shaikh Karim Riaz<sup>2</sup>**

*“3. Leave was granted to consider the contention that the plea of personal requirement was not bona fide as a flat was available in the same premises which A the Respondent did not occupy. The learned counsel for the appellant contended that the Respondent is residing in a bungalow in Defence Housing Authority and that it is not imaginable that he would shift in a small house in a dingy and congested locality. He further contended that during the pendency of the case a portion of the house, which was an independent apartment, fell vacant, but the Respondent did not occupy it and rented it out to the tenant. On the basis of these facts it is contended that the Respondent's need is neither genuine nor bona fide. So far the first contention is concerned the learned counsel for the Respondent stated that the Respondent is*

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<sup>1</sup> 1992 SCMR 1296

<sup>2</sup> 1996 SCMR 1055

*residing in a rented house with his son in the Defence Housing Authority. The contention of the learned counsel for the appellant therefore does not hold water because firstly, the Respondent is not residing in his own house, but is residing with his son who has rented out a house in that area, and secondly, in these circumstances if a landlord chooses to reside in his own house which may be in a locality which is much inferior and congested than the place where he is residing on rent, it cannot be termed as mala fide. It is the choice of the landlord to choose the house or the place where he wants to reside." (Emphasis added)*

- **Shakeel Ahmed & another v. Muhammad Tariq Farogh**<sup>3</sup>

*"6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains unshattered in cross-examination and un-rebutted in the evidence adduced by the opposite party."*

5. Any adjudication on Section 15 (2) (vii) would be deficient without referring to the accountability mechanism provided for under Section 15-A of the SRPO. The same is reproduced below: -

*3["15-A"] 4[ Where the land-lord, who has obtained the possession of a building under section 14 or premises under clause (vii) of section 15, relets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within one year of such possession— (i) he shall be punishable with fine which shall not exceed one year's rent of the building of the premises, as the case may be, payable immediately before the possession was so obtained. (ii) The tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of the building or the premises, as the case may be, and the Controller shall make an order accordingly."]*

6. The provision reproduced above was introduced by the legislature through the Sind Ordinance No. II of 1980 on January 21, 1980, to ensure that ejection proceedings are not abused and due protection is given to the tenant in cases where the landlord/owner has misused the provisions of the Ordinance. An embargo of one year has been placed on the landlord in case the landlord

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<sup>3</sup> 2010 SCMR 1925

wishes to rent out the property to another tenant. The protection given, which is also available to the present Petitioner, has been expounded in the following judgments, relevant parts of the same are reproduced: -

a) **Mst. Zubeda through her son and General Attorney versus Muhammad Nadir.**<sup>4</sup>

*“Sufficient protection has been postulated in section 15-A of the Sindh Rented Premises Ordinance, 1979 which in the event of use of premises other than personal use not only postulates punishment for the landlord but also provide an effective mechanism for restoration of the possession to the evicted tenant before the Controller who would be entitled to exercise such authority on due consideration of the facts. Since the law provides an alternate and effective remedy to defuse the impression of the Respondent, I think the apprehension is not well founded in the present state of circumstances.”*

b) **Mst. Dilshad Bibi versus Ramzan Ali.**<sup>5</sup>

*“Keeping in view the only restriction imposed on the personal need by way of section 15-A of the SRPO as well as authorities quoted by the Petitioner and the evidence brought on record the Petitioner has proved that the shop is required for personal need to be used by her son and no doubt has been created in this respect. The apprehension of the Respondent that the Petitioner may let out the premises after obtaining the same to other tenant is covered by section 15-A of the SRPO which remove the above apprehension.”*

For the foregoing reasons the instant petition is dismissed with no order as to costs.

Karachi

Dated

JUDGE

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<sup>4</sup> 1999 MLD 3011

<sup>5</sup> 2006 CLC 1853