

IN THE HIGH COURT OF SINDH, AT KARACHI

Const. Petition No.S-1104 of 2023

[M/s Mahmood Brothers v Yousuf Ali & others]

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Hearing of Case/Priority:

1. For hearing of CMA No.8127/2023
2. For hearing of main case.

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20.02.2025.

Mr. Zahid Hussain, Advocate for the Petitioner.

Ms. Erum, Advocate for the Respondent No.1.

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SHAMSUDDIN ABBASI, J:- This Constitutional Petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, arises from the concurrent findings of two Courts below, whereby both the Courts below ordered eviction of the petitioner on the ground of personal bonafide need.

2. Ejectment Application vide Rent Case No.110 of 2016 was filed by the respondent No.1 /applicant Yousuf Ali under Section 15(2)(vii) of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as the "Ordinance") against petitioner /opponent No.1 seeking his eviction from shop No.1, situated at ground floor of the building known as Murtaza Manzil, Plot No.BC-20, Block-E, Al-Hyderi Memorial Market, North Nazimabad, Karachi, (hereinafter referred to as ("demised premises"), on the ground of personal bonafide need for the use and occupation of his son Murtaza Ali.

3. The petitioner /opponent No.1 contested the rent case and filed his written statement mainly agitating that the demised premises was let out to his father on payment of pagri amount of Rs.175,000/- and after his death the respondent No.1 started harassing the petitioner to vacate the demised premises on one pretext or the other just to grab further money, hence under compelling circumstances, the petitioner paid further amount of Rs.700,000/- as pagri despite the respondent No.1 continued his ill-practice of pressurizing the petitioner and finally filed ejectment application on baseless plea of

personal need, which is neither bonafide nor in good faith rather based on malafides.

4. The respondent No.2 /opponent No.2 filed an application under Order 1 Rule 10, CPC and he was impleaded as party in the rent case, who filed his written statement and denied the claim of the respondent No.1 /applicant.

5. Points for determination were as follows:-

1. *Whether the applicant requires the premises in question for the bonafide personal need of his son namely Murtaza Ali?*
2. *What should the order be?*

6. The parties led their evidence. The learned Rent Controller-XI, Karachi (Central) after assessing the evidence and hearing the parties' respective counsel allowed the rent case vide order dated 29.09.2020 ordering eviction of the petitioner and respondent No.2 on the ground of personal bonafide need directing them to vacate the demised premises and handover its vacant and peaceful possession to the respondent No.1 within a period of 60 days. Against eviction order, the petitioner /opponent No.1 preferred First Rent Appeal No.94 of 2020, which was assigned to Additional District Judge-VI, Karachi (Central). The learned Appellate Court while maintaining the order of the learned Rent Controller dismissed the appeal through its judgment dated 13.10.2023. Aggrieved of the order /judgment of the learned two Courts below, the petitioner has filed the instant petition and prayed for following relief(s):-

“this Hon’ble Court may be pleased to call R&P of Rent Case No.110/2016 (Yousuf Ali v M/s Mehmood Brothers) from the court of respondent No.4 i.e. XIth Rent Controller (Central) at Karachi and FRA No.94/2020 from the court of respondent No.3 i.e. VIth Additional District Judge (Central) at Karachi and after perusal of record and hearing the parties be pleased to set-aside the order dated 29.09.2020 and judgment dated 13.10.2023 and dismiss the Rent Case No.110/2016 in the interest of justice.

b. Any other relief or relief(s) which this Hon’ble Court may deem fit and proper in the circumstances of the case.

c. Cost may be awarded”.

7. It is, inter-alia, contended on behalf of the petitioner that order and judgment, impugned herein, are bad in law and facts, hence liable to be set-aside. It is next submitted that the plea of personal need was neither bonafide nor in good faith rather it was based on malafides. It is also submitted that both the learned Courts below have failed to appreciate the fact that the petitioner paid an handsome amount of Rs.875,000/- as “pagri” and despite his commitment the respondent No.1 filed ejectment application with baseless plea of personal need just to usurp the pagri amount. Per learned counsel, both the learned Courts below failed to take pain of the fact that there were other shops similar to the shop in occupation of the petitioner, suitable for the use and occupation of his son. The learned counsel submits that the impugned order and judgment, passed by the learned two Courts below, have been passed without appreciating the evidence in its true perspective rather the same are the result of misreading and non-reading of evidence and without application of a conscious judicial mind and through their order and judgment both the learned Judges of the two Courts below have extended undue favour to the respondent No.1, hence the same are liable to be set-aside and prayed that the rent case filed by the respondent No.1 may be dismissed and the possession of the demised premises may be restored to the petitioner. In support of his submissions, he has placed reliance on the cases of *Allies Book Corporation through L.Rs. v Sultan Ahmed and others* (2006 SCMR 152), *Ahmed Tanveer v Hakim Bakers and Confectioners* (1998 MLD 2092), *Muhammad Asghar v Abdul Rehman and 8 others* (2010 MLD 665), *Ghulam Muhammad Khan v Muhammad Khalid* 2000 CLC 764), *Muhammad Ismail v Mst. Bushra Fayyaz* (NLR 1993 AC (Civil) 516), *A. Hai Usmani v Qamar Jehan* (1987 MLD 2110) and *Zameer Ahmed v Bushra Fayaz* (1993 CLC 2370).

8. In contra, the learned counsel for the respondent No.1 has argued that the petitioner has failed to place on record any evidence to substantiate that the demised premises not required by respondent No.1 in good faith for her son, who stepped in witness box and supported the contents of rent application and remained consistent on each and every point. Per learned counsel, both the learned two Courts below have rightly ordered eviction of the

petitioner on the ground of personal need and the petitioner has failed to point out any illegality or material irregularity calling for interference and prayed for dismissal of instant petition.

9. I have given my anxious consideration to the submissions of both the sides and perused the entire material available before me with their able assistance.

10. Relationship of landlord and tenant has neither been denied nor disputed. The ejectment application filed by the respondent No.1 was allowed ordering eviction of the petitioner and respondent No.1 on the ground of personal bonafide need. The petitioner assailed eviction order in appeal, which was dismissed by the learned Appellate Court vide judgment dated 13.10.2023, penned down by the learned Additional District Judge-VI, Karachi (Central). Relevant extracts of the said judgment are reproduced below:-

“In the instant case, after scanning of the record, it appears that the respondent/landlord has mentioned the personal bonafide need of demised premises in memo of rent application and reiterated the said contention in affidavit in evidence. The respondent /landlord was cross-examined at length but justification of bonafide requirement of demised premises to respondent /landlord has not been shaken. Even from the lengthy cross examination of applicant, I did not find out any discrepancy. From the cross of applicant, I found the evidence of landlord on the personal bonafide need at all is not shattered in lengthy cross examination. It is well 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 of a particular tenant 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 bonafide; the landlord has the complete option to choose from any one of the several tenements occupied by the tenant in order 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 my humble opinion, respondent /landlord had successfully discharged his burden in proving that his personal need was reasonable, genuine and bonafide, and the appellant /tenant had failed in dislodging his claim or in proving him wrong.

As regard to the contention of the appellant that appellant/opponent has obtained the demised premises on pagri basis. In this regard it is pertinent to mention that law does not recognized payment of pagri and on the basis of payment the tenant cannot save his ejectment, if the landlord proves one of the ground of ejectment of tenant. In the reported case of Aziz ur Rehman versus Pervaiz Shah (1997 SCMR 1819), wherein the Hon'ble Supreme Court had held that, payment of pagri nor forming terms and condition of tenancy and being contrary to public policy, and Supra contractual arrangements which negated tenancy could not affect maintainability of eviction proceedings. In another reported case of Sh. Muhammad Yousuf versus District Judge, Rawalpindi (1987 SCMR 307), the Hon'ble Supreme Court has held that the payment of pagri being mutual agreement between the parties and could not debar the landlady from instituting eviction proceedings. It may be added that the pagri has not received any legal recognition and the tenant is not entitled to claim benefit of same. So far as the contention of the appellant that he had paid pagri is concerned reference may be made to the reported case of Muhammad Ashraf versus Ismail (2000 SCMR 498), wherein Kamal Mansur Alam, J expressing the view of the DB, observed as under:-

“Even assuming for the sake of argument, that Pagri had been paid to the previous owner, as contended by the learned counsel, then too no adjustment of the arrears of rent against such pagri can be claimed, when the property has already been sold to the present respondent, surely these respondents cannot, by any stretch, be made to suffer for the unlawful doings of others. In the result we find no merit to the petition which is accordingly dismissed and leave is refused.

Such view is also adopted by the Hon'ble Justice in case of Raees Ahmed Pasha versus Kamaluddin and others (20004 MLD 587).

So in the light of such observation I am of the opinion that the trial court, after assessment of the facts, circumstances and the evidence available on record, has right accepted the application, therefore, the impugned order dated 29.09.2020 passed in Eviction Application No.110 of 2016 is just and proper being well reasoned. Besides, the learned counsel for the appellant /tenant has also failed to point out any illegality, irregularity, infirmity or perversity in the impugned order warranting this Court to interfere in it. The case laws relied by the learned counsel for the appellant is distinguishable with the facts of the case in hand. Thus, the point No.1 is answered in negative”.

11. Section 15 of the Ordinance empowers a landlord/ landlady to seek eviction of tenant on the grounds mentioned therein including the ground of personal bonafide need for his /her own occupation or use or for the occupation or use of his spouse or any of his children.

The only requirement in this provision for landlord/ landlady is to show that he /she requires the premises in good faith. The respondent No.3 (applicant) in her rent application has specifically stated that the demised premises is required by her for the use and occupation of her son Murtaza Ali, who also stepped in witness box and deposed in the same line as stated and deposed by his mother in her pleadings as well as evidence. They remained consistent on each and every point of pleadings and their evidence has extended adequate confidence to the learned Rent Controller to be believed upon them more particularly when such a claim of the respondent No.1 was not specifically denied by the petitioner. More so, no any documentary evidence has been brought on record to establish that the demand of the respondent No.1 was not in good faith or based on malafide. It is a general principle that if the statement of landlord /landlady comes on oath if consistent with application for ejectment and not shaken in cross-examination, it is sufficient to prove that requirement of landlord /landlady is bona fide. Reliance in this behalf may well be made to the case of *Akhtar Qureshi v Nisar Ahmed* reported as 2000 SCMR 1292, wherein it has been held as under:-

“The assertion or claim on oath by the landlady/landlord that she/he required the premises for her/his personal use, should be accepted by the Rent Controller as bona fide, if such claim, or assertion although by itself may not be sufficient, yet is consistent with his/her averments made in the application and are neither shaken in the cross-examination nor are disproved in rebuttal”.

Likewise, in the case of *Shakeel Ahmed and another v. Muhammad Tariq Farogh and others* reported as 2010 SCMR 1925, it is held as follows:-

"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 un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is need to fortify this.

12. As to the contention that during subsistence of tenancy, the petitioner has paid huge amount towards goodwill ("Pagri") in

respect of the rented shop. The term goodwill (*"Pagri"*) is not recognized by Sindh Rented Premises Ordinance, 1979, however, the superior Courts have equalized it with term *"Pagri"*. The plea of a tenant that he paid goodwill (*"Pagri"*) for premises, in no manner could succeed as a ground of defence when eviction of tenant was being sought by the landlord as held in the case of *Nargis Bano v Rehman Bhai* (1993 CLC Karachi 266), however, if for the sake of arguments it is presumed that goodwill (*"Pagri"*) amount was paid in respect of demised shop, even then it would not debar the respondent No.1 from seeking eviction of the petitioner on the ground of personal bona fide need or any other ground as defined in Section 15 of the Ordinance. Guidance in this behalf is taken from the cases of *Sheikh Muhammad Yousuf v District Judge, Rawalpindi and 2 others* (1987 SCMR 307) and *Mohammad Sharif v Iftikhar Hussain Khan* (1996 MLD 1505), wherein the Hon'ble Supreme Court held as follows:-

"...Nothing was in law which would bar ejectment under Sindh Rented Premises Ordinance 1979, for personal bona fide need of landlord in case which payment of pagri, he could file suit for recovery of same in civil court in accordance with law - Mere fact that pagri had been alleged to have been paid to landlord would not debar landlord from seeking ejectment of tenant ground of personal bona fide need of his son."

13. Findings of facts given by the learned Rent Controller are concurred by the learned Appellate Court, therefore, under the Constitutional Jurisdiction, this Court avoid to give contrary findings until and unless the same are proved to be perverse and contrary to record. Besides, the powers in rent matters under Constitutional Jurisdiction of this Court are limited and confined only to ascertain whether the learned Courts below have flouted the statute or failed to follow the law relating thereto. In the case in hand, neither there is any jurisdictional error nor any perversity, illegality and infirmity in the order /judgment, impugned herein, passed by the learned two Courts below. As regard the case law cited by the learned counsel for the petitioner, in support of his submissions, is concerned, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the petitioner. This Constitutional

Petition No.S-1104 of 2023, is, therefore, bereft of any merit stands dismissed alongwith all pending applications.

JUDGE

Naeem/PA