

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1487 of 2019

Abdul Waheed Khan V/s. Vth Addl: District Judge East & another

Date	Order with signature(s) of Judge(s)
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For hearing of main case.

15.12.2025.

Mr. Arif Khan, Advocate for the Petitioner.

Mr. Muhammad Shafi Malik, Advocate for the Respondent.

Mr. Pervaiz Ahmed Mastoi, Additional Advocate General Sindh.

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has challenged the order dated 04.03.2019, passed by the Court of Learned Vth Additional District Judge East Karachi (Appellate Court) in First Rent Appeal (F.R.A) No 47 of 2018 (Re- Muhammad Hamid Jameel Vs. Abdul Waheed Khan), whereby the F.R.A. filed by the respondent No 2 (Muhammad Hamid Jamil) was allowed, order dated 15.02.2018 passed by the Court of Learned Ist Rent Controller East Karachi (Trial Court) in Rent Case No 52 of 2016 (Re- Abdul Waheed Khan Vs. Muhammad Hamid Jamil) was set aside and the Rent Case was dismissed.

2. Mr Arif Khan Learned Counsel for the petitioner argued that the tenancy relationship of the parties over the demised premises was not disputed, the respondent No 2 was tenant of shop Nos. 14 and 15 through written tenancy agreements; that the respondent No 2 later on surrendered shop No 14. He argued that Petitioner filed Rent Case on the ground of default in payment of rent and personal bonafide need. He further argued that learned trial court on proper appraisal of the evidence allowed the ejectment application. He further argued that in the rent case due to inadvertence and by typing mistake instead of Shop No 15, the Shop No. 9 was written. He argued that the respondent was in possession of the single shop in the building and mentioning of wrong shop number in the pleadings was not material. He further argued that the petitioner was non-suited on technical grounds, whereas law favours adjudication of matters on merits. He argued that letting out of the premises on the Pagri/Good will amount will not preclude the landlord to initiate ejectment proceedings, if tenant infringed the terms and conditions of tenancy agreement or defaulted in

payment of rent. He further argued that the petitioner retired from the service and intended to start his own business. He argued that the petitioner time and again approached the respondent No 2 for payment of default amount but he refused, even after the month of October 2024 respondent has failed to deposit the monthly rent in MRC proceedings. He placed reliance on the case of Messrs IRIS Communications (PVT) LTD Vs Ahmad Khalid (2019 MLD 772), Dr Nisar Ali Khan and another Vs P.I.A through Chairman and another (PLD 2004 Lahore 494), Shaikh Mohammad Yousuf Vs District Judge Rawalpindi and 2 others (1987 SCMR 307), Messrs F.K. Irani & CO Vs Begum Feroze (1996 SCMR 1178), Jahangir Rustam Kakalia through Legal Heirs Vs Messrs Hashwani Sales & Services (Pvt) Limited (2002 SCMR 241), Khawaja Imran Ahmed Vs Noor Ahmed and another (1992 SCMR 1152), Abdul Rehman Through Legal Heirs and 6 others Vs Pakistan State Oil Company Ltd and another (PLD 2004 SC 921), Iqbal Book Depot and others Vs Khatib Ahmed and 6 others (2001 SCMR 1197), Allah Din Vs Habib (PLD 1982 SC 465), Pakistan State Oil Company Ltd Karachi Vs Pirjee Muhammad Naqi (2001 SCMR 1140), Laiq Ahmed Vs Mst Shamshad Anwar (1995 SCMR 214), Mst Tayyab Begum Vs Taqi Haider (1994 SCMR 1813). He lastly prayed to allow instant petition.

3. Mr Muhammad Shafi Malik Learned counsel for the respondent No 2, controverting the submissions, argued that the petitioner had filed rent case praying for the ejectment of tenant from shop No.9 whereas respondent No 2 was tenant of shops No.14 and 15. He argued that Respondent No 2 has already surrendered shop No.14 at the request of Landlord. He argued that shop No.15 was rented out to the Respondent No 2 under Goodwill agreement, and in para 9 of the said agreement it was mutually agreed, that the petitioner will not seek vacation of the demised premises. He further argued that in reply to the rent case the respondent raised specific plea that he was not the tenant of shop No.9 but at no point of time the amendment in the pleadings was sought. He further argued that when the petitioner appeared in the witness box he affirmed the contents of Rent Application and Affidavit in Evidence. He lastly argued that the learned appellate court has rightly allowed the rent appeal as the rent case of the petitioner was defective, thus petition being without merits be dismissed.

4. Learned Additional Advocate General Sindh has supported the impugned judgment/order dated 04.03.2019 and prayed for dismissal of the petition.

5. Heard arguments, perused the material available on record.

6. From the scanning of the record, it revealed that there is no dispute over the tenancy relationship of the parties. The petitioner had filed rent case seeking vacation of shop No.9. On notices respondent No 2 filed objections along with affidavit in evidence, wherein he specifically asserted that he was not in possession of the demised premises as mentioned in the rent case. The objections to the rent application were filed on 01.10.2016, the evidence of the parties was recorded before the trial Court on 09.05.2017, the petitioner was cross examined on 17.07.2017, in between the said period no any application seeking amendment of pleadings was filed. On the contrary, when Petitioner entered into the witness box he admitted all the contents of the affidavit in evidence even the fact that he sought vacation of Shop No 9 to be correct. In reply to a question regarding the demised premises the petitioner deposed that:

"It is incorrect to suggest that the opponent was given shop No.14 and 15 as per Pagri agreement attached with written statement of opponent as Annexure A."

The petitioner was again confronted with the contents of rent agreement, to said question he replied that:

"It is correct to suggest that it is mentioned that in the said Pagri agreement he was rented out shops No.14 and 15 as per Pagri and such fact is not denied in affidavit in evidence."

Petitioner in reply to a question regarding possession of the Respondent on shop No 15 deposed as under:

"It is incorrect to suggest that opponent is in possession of Shop No 14 & 15"

7. From the above piece of evidence it transpired that petitioner was aware that he had rented out shops No.14 and 15 to the respondent but he sought vacation of shop No.9. Learned Trial Court while rendering its findings on this issue has observed that Landlord has claimed that opponent was in possession of shop No 9 whereas the opponent has controverted this stance and stated that he was in possession of shop No 15 as such there was confusion as to number of shop, which was immaterial for the reason that tenant was in possession of only one shop in the said building. The observation of the trial court was correct to the extent that the tenant was in possession of a single shop out of the nine shops owned by landlord in the same building, but was misled in allowing the rent case as prayed. By allowing the rent case as prayed learned Trial Court ordered for vacation of Shop No 9. It was incumbent upon the parties and court to get the pleadings amended and get substituted the shop No 15 to that of shop No 9

which was the subject matter of the dispute but they failed. In absence of any amendment in the pleadings the eviction orders cannot be passed for the premises which were not the subject matter of the case. During the entire proceedings both the parties were labouring that the ejectment is sought from the shop No 9, but the learned trial court failed to appreciate this important aspect of the case which was rightly resolved by the Learned appellate Court.

8. Adverting to the contention of learned counsel for the petitioner that Respondent failed to pay monthly rent at the rate of Rs.400 per month and he was defaulter. From the reappraisal of the evidence it transpired that the demised premises was rented out on pagri (Goodwill) basis against monthly rent of Rs 300/-. Learned Counsel for the Petitioner filed statement of accounts in MRC No. 48/2011 which transpired that on 03.10.2024 Respondent No 2 deposited an amount of Rs.10,000/- Since monthly rent of Rs.400/- was payable by the respondent No 2 and he paid an amount of Rs.10,000/- which covered a period of about 24 months. Counsel for the Respondent No 2 stated that it was a rent in advance for 24 months, petitioner who was present in the court in person did not dispel such assertion. The default in payment of rent was not born out from the record as alleged by the Petitioner, as petitioner acknowledged the payment of rent until 2024 and its withdrawal from the Court concerned.

9. Adverting to the contention of the petitioner that the demised premises were required by the Petitioner for his personal bonafide need. The record shows that the petitioner in his pleadings and evidence took a clear stance that shop No 9 was required to him for his personal bonafide need. Nowhere it transpired from the record that Petitioner required Shop No 15 for his personal need. Respondent No 2 (Tenant) filed his affidavit in evidence wherein he specifically took such plea that Respondent No 2 was not tenant of the premises required by the petitioner for his personal need. Respondent No 2 was not cross examined on this point, omission to cross examine on this point amounted to the admission that shop No 15 was not required to the Petitioner for personal bonafide need. It is further the case of the Respondent No 2 that he was let out shops No 14 and 15, whereas shop No 14 was surrendered in favor of landlord on demand for personal need, after the passage of time Petitioner did not utilize the said premises for personal use but sold out the same to another person. It is also admitted by the Petitioner that he owned nine other shops in the same building. In reply to a question Petitioner deposed that he was not physically fit, thus

cannot run business the ground of personal bonafide need as such was also not available to the petitioner.

10. Under the principles of appreciation of evidence, the assessment of evidence made by the appellate Court always carries weight as the same is the result of reappraisal, unless it is shown that such reappraisal was result of misreading and non-reading of the evidence or the findings suffered from any jurisdictional defect, which petitioner failed to point out.

11. With due reverence the case laws relied upon by the Learned Counsel for the Petitioner are distinguishable and not attracted to the facts and circumstances of the present case.

12. In the wake of discussion made herein above, no case for indulgence of this Court is made out. Consequently, this petition is dismissed. Needless to observe that the petitioner is at liberty to file a fresh rent case if the respondent defaults in payment of regular rent in future.

JUDGE

Approved for reporting