

2012 C L C 939

[Islamabad]

Before Shaukat Aziz Siddiqui, J

Messrs KING CLOTHING----Petitioner

versus

MUHABAT KHAN and others----Respondents

Writ Petition No.259 of 2010, decided on 20th December, 2011.

(a) Islamabad Rent Restriction Ordinance (IV of 2001)---

---S. 17--- Constitution of Pakistan Art.199--- Constitutional jurisdiction---Scope---Bona fide personal need of landlord---Ejectment petition of landlord was allowed by Rent Controller and such order was upheld by Appellate Court and concurrent findings of the courts below were assailed by the tenant (petitioner)---Validity---Tenant had moved a civil miscellaneous application before the High Court with the constitutional petition seeking ad-interim injunction, which was granted and the petitioner was directed to deposit up-to-date rent with the Executing Court---Such order of High Court had not been complied with by the tenant in letter and spirit---Tenant had tried his best to linger on proceedings and succeeded in the same and no rent was deposited by the tenant in the Executing Court for almost two years---Contention of tenant that no application was pending in Executing Court was nothing but chicanery---Tenant, in order to show bona fide, was required to seek permission to deposit rent in the court, if any difficulty was ever faced by him--- High Court , in its constitutional jurisdiction was required to observe the demeanour of the parties and to satisfy itself whether any litigant had invoked the jurisdiction of the High Court with clean hands---Court was not to sit as a spectator if any party tried to gain undue advantage---Duty of the court was to provide shield to a victim of such designs---Constitutional jurisdiction of the High Court was always discretionary, and he who seeks equity must come with clean hands---Landlord (respondent) had proved his case on merits---Courts below had appreciated the evidence in its true perspective which did not call for interference---High Court directed tenant to make the

outstanding payment of rent to the Deputy Registrar of the High Court---Constitutional petition was dismissed, accordingly.

Javaid Ahmed v. Muhammad Imran Malik PLD 2011 Islamabad 30; M/s Zaki-ud-Din Siddiqui v. ADJ, Islamabad 2011 CLC 652 and Muneer Khan v. Uzma Ufaq 2011 CLC 846 ref.

Muhammad Sae v. Mst. Sharif Elahi and another 2010 SCMR 1358; Tasnim Jalil and others v. Deputy Director, A.N.F. 2010 SCMR 72 and Syed Kamal Shah v. Government of N.-W.F.P 2010 SCMR 1377 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction---Scope---High Court, in its constitutional jurisdiction was required to observe the demeanor of the parties and to satisfy itself whether any litigant had invoked the jurisdiction of the court with clean hands---Court was not to sit as a spectator if any party tried to gain undue advantage---Duty of the Court was to provide shield to a victim of such designs---Constitutional jurisdiction of High Court was always discretionary, and he who seeks equity must come with clean hands.

Muhammad Sae v. Mst. Sharif Elahi and another 2010 SCMR 1358; Tasnim Jalil and others v. Deputy Director, A.N.F. 2010 SCMR 72 and Syed Kamal Shah v. Government of N.-W.F.P 2010 SCMR 1377 rel.

(c) Qanun-e-Shahadat (10 of 1984)---

---Art. 133---Cross-examination---If any part of a testimony of a witness remained unchallenged through cross-examination, said part was tantamount to admission.

Mst. Nur Jehan Begum v. Syed Mujtaba Ali Naqvi 1991 SCMR 2300; Mst. Sahab Bibi v. Lal 1992 CLC 807; Jan Muhammad v. Mulla Abdul Rehman 1999 CLC 266; Abdul Sattar and others v. Mst. Sardar Begum 2003 CLC 1294; Ali Yousaf v. The State 1999 YLR 2604; Ghulam Rasool and others v. The State 2002 YLR 1996; Muhammad Akram v. Muhammad Rauf 2001 MLD 1277 and Arshad Mehmood Siddiqui v. Muhammad Haroon, 1992 MLD 810 rel.

Abdul Rauf Rohaila for Petitioner.

Khalid Zaman for Respondents Nos.1 to 8.

ORDER

SHAUKAT AZIZ SIDDIQUI, J.--- By invoking the constitutional jurisdiction of this court, petitioner has sought declaration against concurrent findings, to the effect that order dated 20-4-2007 passed by the Rent Controller, Islamabad and order dated 22-12-2009 passed in appeal by the Additional District Judge, Islamabad are illegal against the facts and evidence available on the record, which are liable to be set aside.

2. Brief facts, as glean out from the writ petition are that respondents Nos.1 to 8 are owners/landlords (hereinafter called as landlord) of Shop Nos.7, 8 and 68-E, Paktel Plaza, Blue Area, Jinnah Avenue, Islamabad (hereinafter called as premises).

3. Premises were leased out through Deed dated.15-10-2003 to petitioner (hereinafter called as tenant) the period of which expired on 14-10-2005. Landlord of the premises filed ejectment petition under section 17 of the Islamabad, Rent Restrictions Ordinance, 2001. In pursuance of process issued, tenant put his appearance and filed reply to the ejectment petition. In light of stance taken by parties, the learned Rent Controller passed order under section 17(8) of I.R.R.O. whereby tenant was directed to deposit monthly rent @ Rs:50,820/- starting from October, 2005 upto 19-6-2006. Tenant was further directed to deposit monthly future rent in the court before 15th of each month.

4. Out of divergent pleadings of parties, following issues were framed:---

(i) Whether demised shop is required by the petitioners for their bona fide personal need? OPA

(ii) Whether the respondent has encroached upon the Verandah in violation of lease agreement and CDA bylaws? OPA

(iii) Whether the lease agreement has expired on 14-10-2005. If so, its effect? OPA.

(iv) Whether the respondent failed to hand over the possession of demised shop in spite of legal notice dated 11-7-2005? OPA

(v) Whether the respondent is liable to be ejected? OPA

(vi) Whether the petition has been filed with mala fide intention? OPR.

(vii) Order.

Vide order dated 20-4-2007, ejectment petition was allowed. Feeling aggrieved, tenant preferred an appeal under section 21 of I.R.R.O. The learned appellate court upheld the findings of Rent Controller, vide impugned judgment dated.22-12-2009.

5. Perusal of order sheet shows that my learned brother Mr. Justice, Ijaz-ul-Ahsan, J; of Lahore High Court, entertained the writ petition and vide order dated 25-1-2010 directed issuance of pre-admission notice to the respondents/landlord. And vide order of even date passed in C.M No.1 of 2010. His Lordship further directed that:---

"Subject to notice and till the next date of hearing, the petitioner shall not be dispossessed. The petitioner shall keep the demised premises intact and shall not cause any damage or destruction of any nature. It is, however, clarified that unless specifically extended, this restraining order shall automatically lapse on the next date of hearing. The petitioner shall deposit the up-to-date agreed rent with the executing court. This will of course be without prejudice to any legal objections/pleas taken by the respondents regarding default, committed in the past or that may be committed by the petitioner in the future."

6. Petitioner/tenant moved C.M No.420 of 2010 for seeking permission to place on record documents mentioned in paragraph No.3 of C.M. which was allowed vide order dated 5-3-2010. Another C.M. No.421 of 2010 was also moved through which ad interim injunction granted vide order dated.25-1-2010 was directed to be continued till next date of hearing.

7. On receipt of writ petition from Hon'ble Lahore High Court, Rawalpindi Bench, notices were issued, in response to which parties have put their appearance.

8. Learned counsel for petitioner submits that learned Rent Controller and first Appellate Court failed to appreciate the evidence brought on the record and law on the subject, more particularly when landlord was failed to prove his personal bona fide need. On the other hand, learned counsel for landlord/respondents submits that petitioner has no right of audience as in terms of order dated 25-1-2010, no rent has been deposited with the court and through C.M. No.420 of 2010, an effort was made to cover the default. Learned Counsel further states that there is concurrent findings of law and facts recorded by the courts below; therefore, writ petition is not maintainable. He placed reliance on the cases of Javaid Ahmed v. Muhammad Imran Malik (PLD 2011 Islamabad 30) M/s Zaki-ud-Din Siddiqui v. ADJ, Islamabad (2011 CLC 652) and Muneer Khan v. Uzma Ufaq (2011 CLC 846).

9, I have heard, learned counsel for parties and made perusal of record.

10. One thing which is floating on the surface of the record is that order dated 25-1-2010 has not been complied, in its letter and spirit. Tenant tried his level best to linger on the proceedings and succeeded in it as period of almost 2 years has elapsed but no rent deposited till to date. Although, stance has been taken through C.M No.420 of 2010 that no application was pending with the executing court, but to my mind it is nothing, except chicanery. In order to show bona fide, petitioner/tenant was required to seek permission to deposit rent in this court, if any difficulty was ever faced by him.

11. The High Court, in its constitutional jurisdiction is required to observe demeanour of parties as well, and to satisfy itself whether any litigant, invoked the jurisdiction of the court with clean hands or stinking approach? Moreover, court is not to sit as a spectator, if any party tries, to gain undue advantage. In such eventuality it is duty of the court to provide shield to a victim of such designs. Superior Courts of the country have held time and again that the constitutional jurisdiction is always discretionary, and he who seeks equity must come with clean hands. Following Judgments of apex court, provide guidance in this regard; Muhammad Saeed v. Mst. Sharif Elahi and another (2010 SCMR 1358), Tasnim Jalil and others v. Deputy Director, A.N.F (2010 SCMR 72) Syed Kamal Shah v. Government of N.-W.F.P. (2010 SCMR 1377).

In these circumstances, petitioner/tenant is directed to make entire payment of outstanding rent by 31st December, 2011 with the Deputy Registrar, Judicial of this court. If he complies with the order then period of one month commencing from 1st. Jan. to 31st Jan. 2012 will be available to tenant to vacate the premises and hand over its vacant and peaceful

possession to landlords, otherwise landlord shall be at liberty to move an application before the executing court. (Landlord present in Court has given assent in this regard). The court shall ensure recovery of possession without notice, and to avoid law and order situation, may take appropriate measures like assistance of police etc.

12. Even on merits, landlord successfully proved their case on Issue Nos.1, 2,3, 4 and 5. For instance, paragraph No.3 of the ejectment petition relates to Issue No.2, which is reproduced hereunder:---

"That the respondent has also included the back veranda with the shops in his occupation by constructing the walls, not only without their permission but against specific instructions and CDA bylaw and has thus prejudice their cause before CDA for completion certificate which is the violation of lease agreement and his possession over the area of veranda is as of illegal occupant/trespasser. His above said action has also impaired materially the utility of the building that is also a violation in the eyes of law."

Petitioner/tenant replied the same with following assertion:---

Abdul Qayyum son of Sher Bahadar Khan one of landlords appeared as "A.W.1" and tendered his affidavit "Exh.-A1". Contents of para-3 of his affidavit are provided hereinbelow:---

Entire cross-examination conducted from petitioner/tenant side is mum and silent on this aspect. It is well-settled law with the mandate of the dictums of the superior courts of the country that if any part of testimony of a witness remains unchallenged through cross-examination, said part is tantamount to admission. Reference is made to the cases of Mst. Nur Jehan Begum v. SyedMujtaba Ali Naqvi (1991 SCMR 2300), Mst. Sahab Bibi v. Lal (1992 CLC 807), Jan Muhammad v. Mulla Abdul Rehman (1999 CLC 266) Abdul Sattar and others v. Mst. Sardar Begum (2003 CLC 1294), Ali Yousaf v. The State (1999 YLR 2604) Ghulam Rasool and others v. The State (2002 YLR 1996) Muhammad Akram v. Muhammad Rauf (2001 MLD 1277) Arshad MehmoodSiddiqui v. Muhammad Haroon, (1992 MLD 810). When confronted about this omission, learned counsel for petitioner frankly conceded that no cross-examination was conducted, so much so, no suggestion is put to "A.W.1".

13. In this view of the matter, it is held that both the courts below appreciated the evidence in its true perspective which does not call for any inference in the constitutional jurisdiction. The learned counsel for the petitioner failed to point out jurisdictional defect, illegality, non-application of judicial mind and lack of appreciation of material on record, therefore, this writ petition is dismissed.

K.M.Z./37/IsI.

Petition dismissed.