

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi

Civil Appeal No.47-K of 2021

(On appeal against order dated 07.04.2021
passed by the High Court of Sindh, Karachi
in C.P. No. S-1074/2018.)

Mst. Parveen Ara

...Appellant

Versus

Muhammad Hanif and others

...Respondent(s)

For the Appellant(s) : Mst. Parveen Ara, In person.

For Respondent No.1-3 : Mr. Badar Alam, ASC assisted by
Mr. Kashif Badar, Advocate

Mr. Iftikhar Javed Qazi, ASC,
Amicus Curie

Date of Hearing : 24.12.2024

Judgment

Muhammad Ali Mazhar, J.- This Civil Appeal with leave of the Court is directed against the Order dated 07.04.2021, passed by the Sindh High Court in C.P. No. S-1074/2018.

2. The short-lived facts of the case are that the respondent No.1 filed Ejectment Application under Section 15 of the Sindh Rented Premises Ordinance 1979 ("SRPO") in the capacity of a co-owner of a building, named *Krishna Mansion*, constructed on Plot No.9, SB-5, Inverity Road, Saddar, Karachi. The appellant was a tenant of Flat No.4, 1st floor. The ejectment application was moved on the ground of personal bona fide need, wherein the respondent No.1 jotted down that he has seven family members, i.e., four sons who are major and are residing with him in the

rented premises; the elder son is married, while two other sons will be married after arrangement of an accommodation for them, and since the respondent No.1 has no other property, the ejectment of the flat was sought on the basis of personal need. The ejectment application was allowed by the Vth Senior Civil Judge & Rent Controller, Karachi, South, in Rent Case No. 735/2005, which was upheld up to this Court, and as a consequence thereof, the possession of the demised premises was handed over to the landlord/respondent No.1 on 26.11.2012 for occupation based on his personal bona fide need.

3. The appellant, being an erstwhile tenant, filed an application in Rent Case No.735/2005 for restoration of possession on the grounds as provided under Section 15-A of the SRPO. In the above application, it was vigorously pleaded that the landlord obtained the possession of the tenement for personal use but, after securing the possession of the premises, neither he nor his family members occupied it. Rather, the landlord handed over the possession of the premises to some other persons. Initially, such application was allowed *ex-parte vide* order dated 14.01.2015, with the directions to hand over the vacant possession of the premises to the appellant/opponent within thirty days. However, when Execution Application No.14/2015 was filed, the respondent No.1/landlord filed an application under Section 12 (2) of the Code of Civil Procedure, 1908 ("CPC"), and *vide* order dated 25.09.2016, the *ex-parte* order dated 14.01.2015 was recalled and parties were directed to proceed on merits. Finally, the Rent Controller *vide* order dated 08.12.2017, allowed the application for restoration of possession under Section 15-A of the SRPO, with directions to the landlord to hand over the vacant peaceful possession to the opponent/appellant within the period of 30 days. The respondent No.1 filed FRA No.623/2017 before the IXth Additional District & Sessions Judge, Karachi, South which was allowed, and the order of the Rent Controller was set aside. Thereafter, the appellant challenged the said order in the Sindh High Court *vide* C.P. No. S-1074/2018, but it was dismissed by dint of the impugned order dated 07.04.2021.

4. The leave to appeal was granted by this Court *vide* order dated 21.10.2021 on the following terms as under: -

"This petition is directed against the judgment dated 07.04.2021, rendered by learned High Court of Sindh, Karachi in CP S-1074/18, whereby Constitution Petition filed by the petitioner was dismissed.

2. The short lived facts of the present lis are that Respondent No.1 filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 ('SRPO'), for the eviction of the petitioner on the ground that he has four sons, all are major and residing with him in his house at Karachi and the marriage of elder son has taken place on 27.05.2005 and the marriage of the remaining sons will be arrange shortly, therefore, he requires the subject premises for his personal bona fide use as well as for use of his sons, who wish to live separately after their marriages. From the record, it appears that in the earlier round of litigation, the ejectment was allowed and it was challenged up to the level of this Court but ultimately the petitioner handed over the possession of the premises to the respondent on 26.11.2012. The petitioner in the Rent Case No.735/2005 filed an application on 17.12.2013 for restoration of the possession on the ground that neither the respondent nor his family members have occupied the premises, which was got vacated for personal bona fide need. This application was allowed by the Rent Controller but in appeal the order of the Rent Controller was reversed, which was also maintained by the High Court in Constitution Petition.

3. During the proceedings, it was pleaded by Respondent No.1 that the premises was not relet but it was handed over to his employees. Whereas in the rent application, Respondent No.1 pleaded that the premises was required for his personal bona fide need. The learned Appellate Court in FRA as well as the learned Judge in the High Court observed that the application was moved after 17 months but much emphasis was made that the property was not relet but it was in use of landlord's employees. In tandem, we cannot lose sight of the niceties of Section 15-A of the SRPO, which explicate that if the landlord, who has obtained the possession of the building under Clause (vii) of Section 15 of the SRPO, 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, he shall be punishable with fine which shall not exceed one year's rent of the building of the premises, and 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. It is clear that Section 15-A of the SRPO has two limbs. One is obviously debarbs landlord from re-letting the premises to anybody; and the second limb is that the landlord cannot put the premises in possession or in use of a person other than personal use but here throughout the proceedings we have observed that the Appellate Court as well as the High Court have made much emphasis that the premises in question was not relet but it was in use of the employee of Respondent No.1 but the effect of not occupying the premises for personal use has not been taken into consideration by the lower fora in terms of section 15-A of the SRPO.

4. In order to examine the above aspect of the matter, we grant leave to appeal. As a short question is involved, office is directed to fix the appeal within a period of three months after completing the codal formalities"

5. The appellant appeared in person and relied on the grounds transliterated in the memorandum of appeal stating that the possession was obtained through fraud and restoration was rightly allowed by the Rent Controller in terms of Section 15-A of the SRPO. It was further averred that as a tenant, she produced evidence before the Rent Controller to demonstrate that the landlord, after obtaining possession, handed over the premises to some other persons. The findings recorded by the Rent Controller were based on sound and cogent reasons, which were reversed by the appellate Court without appreciation of evidence. The High Court

also misinterpreted Section 15-A of the SRPO and went on to hold that no case of reletting was made out, instead of appreciating the facts as to why the landlord did not occupy the premises within one year, hence he utterly violated Section 15-A of the SRPO.

6. Mr. Iftikhar Javaid Qazi, learned *amicus curiae*, argued that while deciding an application under Section 15-A of the SRPO, it has to be seen first what the landlord actually pleaded in the ejectment application. It was further avowed that Section 15-A can be invoked against the landlord who, after obtaining possession of the premises, either relets the same to any person other than the previous tenant or puts it to a use other than personal use within a period of one year from the date of obtaining the possession. If any such misuse is brought to the knowledge of the Rent Controller, then in terms of Section 15-A of the SRPO, two reliefs can be granted to the tenant simultaneously, i.e., the fine not exceeding one year's rent of the premises payable immediately before the premises gets vacated and the restoration of possession to the tenant. He further argued that the words used in the said provision, "puts it to a use other than personal use within one year of such possession," apparently indicate that such application can be filed after expiry of one year and not within one year from the date of eviction of a tenant, and according to him, the limitation for filing an application for restoration of possession is regulated under Article 181 of the Limitation Act, 1908 ("Limitation Act"). It was further contended that Section 15-A of the SRPO provides protection to the tenants who have been ordered to be evicted on the false ground of personal need. It was further argued that the implementation and interpretation of such provision requires strict application in order to safeguard and protect the rights of a tenant who was evicted on the false ground of personal need.

7. Mr. Badar Alam, the learned counsel for the respondents No.1 to 3, in prologue argued that the perusal of the leave granting order shows that the date of handing over possession of the subject flat by the appellant is correctly mentioned as 26.11.2012. However, the date of filing of the application under Section-15-A of the SRPO for restoration of possession of the subject flat is mistakenly mentioned as 17.12.2013, whereas the correct date is 04.01.2014, which was the date of presentation of the said application. The learned counsel referred to the leave granting order wherein it was observed that Section 15-A of the SRPO has two limbs. The learned counsel averred that one limb obviously debars the landlord from

reletting the premises to anybody, and the second limb emphasizes that the landlord cannot put the premises to any use except personal use. According to the learned counsel, throughout the proceedings the appellate Court as well as the High Court both placed much emphasis on the fact that the premises in question was not relet but was in use by the employee of respondent No.1. However, the effect of not occupying the premises for personal use has not been taken into consideration by the lower fora in terms of Section 15-A of the SRPO, which cannot be considered here.

8. It was further averred that the reason for not occupying the subject flat for personal use by the respondent No.1 has been taken into consideration by the appellate Court in the order dated 21.04.2018, passed in FRA No.623/2017, wherein it was specifically noted that, as per the bailiff's report, the premises was in a dilapidated condition and required renovation, but the appellant/ex-tenant never refuted this fact in the evidence. He placed much emphasis on the bailiff's report submitted in Execution No.68/2011 (Rent Case No.735/2005), which depicts that the ex-tenant had removed all the doors and windows, and even took away water closet and water taps from the subject flat. Therefore, in such circumstances, the respondent/landlord could not be penalized on the ground that he did not use the premises for his personal use within twelve months of taking over possession, when the appellant/ex-tenant made it impossible for occupation for personal use. However, in order to save the premises from the hands of the ex-tenant, the landlord handed over the same to their employee Shahzad and his wife Zahida till the time they renovate the same.

9. In support of his contention, the learned counsel referred to Section 182 of the Contract Act, 1872, which provides that an "Agent" is a person employed to do any act for another or to represent another in dealings with third person. He also cited Black's Law Dictionary (Sixth Edition, p. 1368) wherein "Servant" has been defined as an employee; one employed to perform service in the master's affairs, whose physical conduct in performance of the service is controlled or subject to the right to control by the master. It was further contended a public notice was published by the Sindh Building Control Authority (SBCA) in *Daily Jang* on 27.07.2012, whereby 17 buildings were declared to be in a dilapidated condition, and at Serial No.15 of the notice, the building constructed on Plot No.9, SB-5,

Inverity Road, Saddar, Karachi, is included, which also provided reasonable ground to the landlord for not occupying the premises, which is declared dangerous and not fit for habitation.

10. Heard the arguments. The learned *amicus curie* and learned counsel for the respondents both argued that the question of law involved herein is a case of first impression. The application and implication of Section 15-A of the SRPO has not been addressed by this Court earlier and there is no existing precedent of this Court for guidance or to shape the development of the law. We have also conducted diligent research to ascertain if any dictum has been laid down by this Court in the context of the aforesaid section of law. To come to the point, the underlying principle of promulgating the SRPO, in our considered view, was to standardise and align the statutory relationship between landlords and tenants with certain rights and obligations, aiming to protect their best interests. Certain efficacious and constructive provisions in respect of rented premises within urban areas have been incorporated. According to clause (g) of Section 2 (Definitions Clause) of the SRPO, the terminology "personal use" is defined as under:-

(g) "personal use" means the use of the premises by the owner thereof or his wife (or husband), son or daughter"
[emphasis Applied]

11. The ejectment application can be filed by the landlord under Section 15 of the SRPO, which provides in sub-section (1) that where a landlord seeks to evict the tenant otherwise than in accordance with Section 14, he shall make such application to the Controller. Sub-section (2) envisages that the Controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that the landlord has made out the case of eviction against the tenant on any of the grounds mentioned in sub-section (2) of Section 15 of the SRPO. Since, in the present context, the ejectment was sought on the ground of personal use, the relevant clause is reproduced as under: -

"(vii) the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children". **[Emphasis Applied]**

12. If we conscientiously explore the definition of personal use in juxtaposition with the condition of ejectment sought to be achieved on the foothold of clause (viii) of Sub-section 2 of Section 15 of the SRPO, it undoubtedly resonates that the landlord has to prove that he/she requires the premises in good faith for his/her own occupation or use or for the occupation or use of his/her spouse or any of his children. Unambiguously, the initial burden of proof that the premises is required in good faith shall be on the landlord, and once this burden is discharged, then the onus to prove the contrary is shifted on the tenant. The expression "good faith", a significant legal catchword, especially in the present controversy, has been defined in different law lexicons as under: -

1. Words and Phrases (West Publishing Co.) Vol. 18A, (Permanent Edition, Pages 84-85)

"Good faith" means something beyond honest endeavor. Generally speaking, "good faith" means being faithful to one's duty or obligation. Good faith, in the popular sense, is used to denote the actual existing state of the mind, without regard to what it should be from given standards of law or reason. Good faith is one form of credibility, it means that motive that actuated conduct in question was in fact what actor ascribes to it, that is, that what he gives as his motive was in truth his motive. Good faith is a concrete quality, descriptive of the motivating purpose of one's act or conduct when challenged or called in question.

2. Stroud's Judicial Dictionary, John S. James, (Volume 2, Page 1172)

A thing is done "in good faith," "when it is, in fact, done honestly, whether it be done negligently or not."

3. Law Terms and Phrases (Judicially Interpreted, Sardar Muhammad Iqbal Khan Mokai) Page 416.

The expression "good faith" has been defined in Sec. 52 of Penal Code. It provides that "Nothing is said to be done or believed without due care and attention". This is a negative definition but it indicates that an act is said to be done in good faith when it is done with due care and attention. Indeed, it does not require logical infallibility.

4. Venkataramaiya's Law Lexicon and Legal Maxims [2nd Edition, Page 942 (1986)]

Good faith contemplates an honest effort to ascertain the facts upon which exercise of the power must rest. It must therefore be summed up as an honest determination from ascertained facts. 'Good faith' precludes pretence or deceit and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in law, a want of good faith. Once this is shown, good faith does not require a sound judgment.

5. Oxford Dictionary of Law, (Elizabeth A. Martin, 2022 Ed.), Page 328.

Good Faith: Honesty. An act carried out in good faith (bona fide) is one carried out honestly.

6. Merriam Webster.

[\[https://www.merriam-webster.com/dictionary/good%20faith\]](https://www.merriam-webster.com/dictionary/good%20faith)

Good faith: Honesty or lawfulness of purpose

7. LexisNexis

[\[https://www.lexisnexis.co.uk/legal/glossary/good-faith\]](https://www.lexisnexis.co.uk/legal/glossary/good-faith)

Good faith definition: An overarching concept for being open and honest in negotiations that goes beyond the idea of not deceiving the other party. There is no particular definition of 'good faith' in English law but it has been described as 'In many civil law systems, and perhaps in most legal systems out-side the common law world, the law of obligations recognises and enforces an overriding principle that in making and carrying out contracts parties should act in good faith. This does not simply mean that they should not deceive each other...; its effect is perhaps most aptly conveyed by such metaphorical colloquialisms as 'playing fair,' 'coming clean' or 'putting one's cards face upwards on the table'. It is in essence a 'principle of fair and open dealing...'"

8. Legal Information Institute (Cornell Law School)

[\[https://www.law.cornell.edu/wex/good_faith\]](https://www.law.cornell.edu/wex/good_faith)

Good faith is a broad term that's used to encompass honest dealing. Depending on the exact setting, good faith may require an honest belief or purpose, faithful performance of duties, observance of fair dealing standards, or an absence of fraudulent intent.

13. It is unequivocally clear from unembellished reading of the above provisions that the ejectment of the tenement can be sought by the landlord/owner if the premises is required in good faith for personal use. However, while securing and safeguarding the rights of the landlord/owner in the genuine and pressing need of the premises, the legislature, in order to dispel and dissipate false and dishonest claims of personal need shorn of good faith has also laid down a mandatory condition for deterrence with penal consequences under Section 15-A of the SRPO, which was added on 21.01.1980, *vide* Sind Ordinance No. II of 1980. For the ease of convenience, it is reproduced as under: -

"15-A. 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."
[Emphasis Applied]

14. The record reflects that the learned Rent Controller allowed the restoration of possession to the appellant/tenant under Section 15-A of the SRPO, after properly scanning the entire evidence led by the parties. The possession of the premises was handed over to the landlord/respondent No.1 on 20.11.2012 in terms of the writ of possession issued in the execution proceedings. It is further reflected from the order of the Rent Controller that on 17.12.2013, the appellant/tenant approached the District & Sessions Judge, Karachi, South, for directions to restore possession in Rent Case No. 735/2005 as the Xth Rent Controller, Karachi, South, was not entertaining the restoration application. The learned District & Sessions Judge passed an order, thereafter, the application was entertained by the Rent Controller in the month of January 2014. The evidence proved that after receiving possession of the rented premises, the landlord/respondent No.1, instead of occupying the premises for his personal use as claimed in the ejectment petition, inducted his employee along with his family in the premises. However, a plea was also taken that the premises was in a dilapidated condition, but no proof of any renovation was submitted. The employee remained in possession of the premises for three years with his family, including female members. The learned Rent Controller also adverted to the plea raised in defence that the tenant filed the application after one year. While disapproving this plea, the Rent Controller clearly held the appellant/tenant was trying her level best to approach the Rent Controller Vth, Karachi, South, or the Rent Controller Xth Karachi, South, for filing her restoration application, but it was not being entertained. Therefore, as a last resort, she applied to the learned District & Sessions Judge, Karachi, South, in December 2013 for seeking directions to the concerned Rent Controller. Hence, in such circumstances, the application for restoration of possession was found to be within a reasonable time.

15. When the order of learned the Rent Controller was challenged by the respondent No.1/landlords in FRA No. 623 of 2017 before the IXth Additional District Judge at Karachi South, the appellate Court, instead of examining the effect of the landlord's non-occupation of the premises

secured on the plea of personal need, held in a slipshod manner that the appellant/tenant failed to prove that the respondent No.1/landlord relet the premises. It further held that the premises were damaged by the appellant/ex-tenant, requiring renovation, and that temporary possession of the landlord's employee did not come within the ambit of reletting. Furthermore, it was wrongly held that the appellant/tenant failed to prove that the landlord got vacated fraudulently for personal bona fide purpose and relet the same to any other person. It is also quite noticeable that the appellate Court, without considering the factual matrix discussed by the learned Rent Controller, wrongly held that the application for restoration was filed after 17 months, while the order of the Rent Controller is quite clear regarding the desperate efforts made by the appellant, only after the order of the District Judge was her application considered.

16. Even the High Court, while passing the impugned order, failed to consider the niceties of Section 15-A of the SRPO in its right perspective and simply dismissed the petition on the notion that the premises was not relet within one year. It reasoned that since the premises was not suitable for immediate occupation due to its dilapidated condition, as left by the tenant, the landlord allowed one of his employees to occupy the same along with his mother till repairs were completed. The High Court failed to consider that nothing was placed on record by the landlord regarding any efforts made for the repair of the premises within said one year, nor was any such plea taken before us.

17. According to the letter of law, Section 15-A encompasses two indispensable limbs: reletting the building or premises after obtaining possession to any person other than the previous tenant, or putting it to a use other than personal occupation within one year of such possession. If any violation or breach of this provision is committed, the tenant may apply to the Controller for an order directing that he/she shall be restored to possession of the building or the premises, as the case may be. In our view, the expression "within one year" used by the legislature is an outer limit or the limitation provided for occupation by the landlord. It also logically deduces and denotes that if any renovation or maintenance work is required, it may be easily completed within one year, after which the landlord should occupy the premises obtained on the ground of personal need in good faith. It is not expected of a tenant that just after leaving the premises, he should maintain strict vigilance or surveillance and start a

countdown of 365 days to foresee or inquire whether the premises has been occupied by the landlord or relet to another person. However, at the same time, the tenant cannot be given an unlimited period of time to apply under Section 15-A of the SRPO. The one-year time period cannot be construed as a period of limitation for the tenant to apply, but this right cannot be extended indefinitely at the leisure of the tenant. Such an application should be preferred within a reasonable period of time, and it is for the Rent Controller to decide whether the application is hit by laches, rather than applying the limitation period as provided under the residuary Article 181 of the Limitation Act.

18. The question of laches can be decided *vis-à-vis* the conduct of the tenant, whether they approached the Court vigilantly or belatedly. According to Section 29 of the Limitation Act, while it is provided that nothing in this Act shall affect Section 25 of the Contract Act, 1872, it is also accentuated that where any special or local law prescribes for any suit, appeal, or application a period of limitation different from the period prescribed in the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal, or application by any special or local law (a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and (b) the remaining provisions of the Act shall not apply. If we delve into Section 3 of the SRPO, it is clearly provided that notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance. There is no doubt that the SRPO is a special law.

19. The axiom "special laws" refers to laws that are intended to regulate specific matters or categories of cases, such as tenancy laws, family laws, or labor laws. These laws often prescribe their own limitation periods that differ from those laid out in the First Schedule of the Limitation Act. A law is special when it is distinct from others of the same general kind or premeditated for a specific ascendancy or limited in range or limited to an enumerated meadow of lawsuit or venture. It is a well-known exposition of law that special law prevails and outweighs general law, as encapsulated in the Latin maxim "*generalia specialibus non derogant*", which denotes that

general provisions do not derogate from special provisions. This principle signifies that specific or detailed provisions of a legal instrument should prevail over more general or conflicting provisions. When the provisions of a general law and a special law addresses the same issue or matter, the general law is impliedly repealed to the extent that the special law applies. However, in determining whether a statute is special or general, the focal point of consideration should principally and fundamentally be the subject matter. In the exigency of deciphering the legislative intent or in case of conflict, the rule of harmonious construction can be adopted to interpret both co-existing provisions in a manner that gives effect to both without rendering either ineffectual or out of order.

20. This Court in the context of Section 29 of the Limitation Act, held in the case of Abdul Ghaffar and others Vs. Mst. Mumtaz (**PLD 1976 SC 572**), that sub-section (2) of Section 29 of the Limitation Act relates to special and local laws, therefore, as provided in section 29 (2), the provisions of Section 3 (Limitation Act) thereof would apply to such a situation, but subject to the exclusions contained in Section 29 itself. When Section 3 of the Limitation Act is applied, the provisions of Sections 4 to 25 of that Act would normally be attracted by virtue of Section 3, but if a case is covered by Section 29, the provisions of Sections 4 to 25 would apply only to the extent that they have not been excluded by the combined reading of clauses (a) and (b) of section 29 (2). It is not denied that the said two clauses, when read together in the context of the SRPO do exclude Section 5 of the Limitation Act. Therefore, the learned Single Judge of the High Court has rightly refused to apply the same in this case. Again, the case of Ali Muhammad and another Vs. Fazal Hussain and others (**1983 SCMR 1239**), this Court held that the time allowed for an appeal, under subsection (4) of Section 15 to the High Court under the Ordinance, is 30 days, whereas under Article 156 of the Limitation Act it is 90 days. The time allowed for filing the appeal by the special law i.e., West Pakistan Urban Rent Restriction Ordinance, 1959, being different from that given in the Limitation Act, meant that Section 5 stands excluded by virtue of Section 29(2) of the Limitation Act, which permits the application of only Sections 4, 9 to 18, and 22 in such situations. In the case of Allah Dino Vs. Muhammad Shah (**2001 SCMR 286**), it was held that where the law under which proceedings have been launched prescribes itself a period of limitation as under section 115, CPC, then benefit of Section 5 of the Limitation Act cannot be availed unless it has been made applicable as per Section 29 (2) of the Limitation Act, as held

in the cases (i) The Canara Bank Ltd. v. The Warden Insurance Co. Ltd. (AIR 1935 Bombay 35), (ii) Abdul Ghaffar and others v. Mst. Mumtaz (PLD 1982 SC 572), (iii) Ali Muhammad and another v. Fazal Hussain and others (1983 SCMR 1239), (iv) Collector of Customs (Appraisement) v. Messrs Saleem Adaya, Karachi (PLD 1999 Karachi 76) and (v) Haji Muhammad Ashraf v. The State and 3 others (1999 MLD 330). Whereas in the case of Haji Hussain Haji Dawood through LR's and others Vs. M.Y. Kherati (2002 SCMR 343), while referring to the dictum laid down in the cases of Abdul Ghaffar v. Mumtaz (PLD 1982 SC 88) and Ali Muhammad v. Fazal Hussain (1983 SCMR 1239), this Court held that Section 5 of the Limitation Act is not applicable to appeals filed under the SRPO. In the case of Muhammad Nazir Vs. Saeed Subhani (2002 SCMR 1540), the matter related to the Punjab Urban Rent Restriction Ordinance, 1959. This Court held that the appeal was rightly dismissed by the First Appellate Court which also does not suffer from any legal infirmity. The second appeal filed before the High Court was barred by time. It was liable to be dismissed as it has been rightly held by the learned Judge of the High Court that Section 5 of the Limitation Act was not applicable, therefore, the application seeking condonation of delay under the said section was not tenable. While in the case of Rahim Jan Vs. Securities Exchange Commission of Pakistan (2002 SCMR 1303), this Court observed that the appeal filed before the High Court under Section 34 of the Securities and Exchange Commission of Pakistan Act, 1997, against the order of the Commission, was dismissed as barred by time. This Court held that by virtue of Section 29 of the Limitation Act, Section 5 of the said Act was not attracted to the said appeal for the purpose of condonation of delay.

21. The learned *amicus curie* argued that for making an application by the tenant for restoration of possession, Article 181 (First Schedule) of the Limitation Act will apply, which is a residuary clause to deal with the applications for which no period of limitation is provided elsewhere in the Schedule or by Section 48 of the CPC. Three years' time will be available when the right to apply accrues. While disagreeing with this submission, we are of the firm view that Article 181 of the Limitation Act does not apply, and if such a long period to apply is left at the discretion or sweet will of tenant, it will have its own serious repercussions, which is seemingly not the intention of the legislature. Otherwise, an outer limit to apply could be fixed in the statute itself, but it is intentionally left open to reckon the period immediately after the one-year period so that if the tenant desperately needs

the restoration of possession, then he/she may apply promptly rather than waiting for an unreasonable period of time. So, in our view, for all intents and purposes, the principle of deciding question of laches may be elected/opted by the Rent Controller, and if the application seems to have been filed beyond a commonsensical or reasonable period of time, or the tenant failed to approach vigilantly or was found in deep slumber, the application may be rejected on the point of laches. However, in the present case, neither the appellant/tenant committed any delay nor was indolent in approaching the Rent Controller for restoration of possession, nor can the occupation by an employee with his family be considered personal occupation of the landlord in good faith when the premises was vacated by the respondent No.1 on the ground that he has seven family members, i.e., four sons who are major and residing with him in the rented premises; the elder son is married, while two other sons will be married after the arrangement of accommodation for them. Since the respondent No.1 has no other property, hence the ejectment of the flat was sought for personal need. What is more, the reliance by the learned counsel for the respondent No.1 to 3 on Section 182 of the Contract Act, 1872, is miscomprehended. While deciding a crucial question under a special law, neither any controversy with regard to the relationship of principal or agent is involved, nor can the personal need of a landlord be equated with the need of a servant, which is totally alien to the provisions of the SRPO.

22. In fact, the penal provision has been assimilated to maintain check and balance between good faith and bad faith as a deterrence with strict right and liability so that the occupation under the garb of good faith, if proved to be in bad faith/mala fide or based on false grounds of personal need to just get rid of the previous tenant by hook or crook, then the law may be invoked to initiate penal action against the landlord, and the Rent Controller should not hesitate to pass appropriate order as was done in this case. If the rigors or severities of the penal provision are avoided or circumvented without proper implementation, then it would not only be mockery of the law but the very purpose would be redundant, and the provision will remain in the statute book aesthetically but without any practical or serviceable purposes, which is seemingly, in our view, beyond the intention of the legislature. "*Fiat iustitia ruat cælum*" is a Latin legal phrase which epitomises "let justice be done though the heavens fall." This maxim also connotes the conviction that justice must be realized regardless of consequences. The doctrine of "*ex debito iustitiae*" refers to the remedies to which a person is

entitled to as of right, as opposed to a remedy which is discretionary. This maxim applies to the remedies that the court is bound to give when they are claimed, as distinct from those that it has discretion to grant, where it is the foremost duty of the Court to do complete justice.

23. The peculiar texture of a “continuing wrong” doctrine is that if the law is violated, the wrongdoer is continuously liable for the penalty envisioned under the law. In fact, the quintessence of a continuing wrong is an act which triggers a continuing source of injury, but the courts should not be fervent or zealous to hold the continuing wrong or default unless the language of the statute or its provision clearly expresses such intention of the legislature, or the nature of such injury is considered continuing, or it is based on a recurring cause of action, and whether the rule of “*de die in diem*” (a Latin legal term that means “from day to day” or “daily”) is applicable or not. Likewise, in the Words & Phrases (Permanent Edition), a “Continuing Offence” is defined to indicate that as long as the default continues, the offence is deemed to repeat, and therefore, it is taken as a continuing offence. According to Corpus Juris Secundum (Vol. 85, p. 1027), accrual of penalty depends upon the terms of the statute imposing it. The wrong for which the penalty is to be visited commences from the date of default and continues month after month until compliance is made and the default comes to an end.

24. The turn of phrase “no man is above the law” explicates that everyone must obey the law and no one is above the law. The law is a signpost and benchmark for amenable demeanour in the society, so it should be obeyed subject to its sanctions and legal consequence in case of default. The law of land obliges its due implementation with full force to all people, heedless of their status, race, or religion, and should be treated equally and fairly and also entitled to the equal protection of the law not only in substantive but also in procedural justice. It is a well-settled exposition that the legislature promulgates the laws with explicit purpose and objective in mind, but it is the duty of the judiciary to decrypt that intent with purposive interpretation. Lord Tom Bingham, the then Chief Justice of England and Wales and Master of the Rolls, in his book *The Rule of Law* (2010 Edition), set out eight principles of the rule of law: “(1) The law must be accessible and, so far as possible, intelligible, clear, and predictable; (2) Questions of legal right and liability should ordinarily be resolved by application of the law, and not the exercise of discretion; (3) The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation; (4) Legal

protection of such human rights as, within that society, are seen as fundamental; (5) Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve; (6) Ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred, and without exceeding the limits of such powers; (7) The adjudicative procedures provided by the state should be fair; and (8) Compliance by the state with its obligations in international law."

25. The domain and discipline of interpretation of statutes embroils the scrutiny of text of the statute and its purposefulness. In fact, the literal rule is the basic rule of interpretation, according to which, a law should be given its ordinary and plain meaning unless it is found to be incongruous or irrational. The golden rule, under certain circumstances, permits an estrangement from the literal rule wherein the courts may rearticulate the connotation to avoid absurd or unreasonable domino effects. The rule of harmonious construction insinuates that laws should be interpreted to align conflicts and nip them in the bud. The Latin phrase "*noscitur a sociis*" is a doctrine and a rule of construction which holds that the meaning of a word or phrase can be determined by the context provided by its surrounding words or phrases and the meaning of an unclear or ambiguous word should be determined by considering the words with which it is associated in the context. While another Latin phrase "*ejusdem generis*" (of the same kind) expresses in clear terms that where general words or phrases follow a number of specific words or phrases, the general words are specifically construed as limited and apply only to persons or things of the same kind or class as those expressly mentioned. In addition, the Latin phrase "*expressio unius est exclusio alterius*" denotes that to express or include one thing implies the exclusion of the other, or of the alternative, keeping in mind that if a law or contract explicitly mentions one thing, it is assumed that other things are not included or allowed. The Latin phrase "*ex visceribus actus*" unerringly deciphers the principle that every section/clause of a statute should be construed with reference to the context and other clauses of the Act, so as to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.

26. The Courts ought to opt for the construction which safeguards and preserves vested rights rather than emboldening such construction that impairs or disparages those rights. In the same context, the legal maxim "*ut*

res magis valeat quam pereat" conveys the principle of giving effect to the matter rather than having it fail. Therefore, a statute or any enacting provision should be comprehended to make it effective and operative with a presumption in favour of its constitutionality, preserving the statute within the competence of the lawmakers, rather than interpreting it in a manner that renders it ineffectual or unserviceable. The rule of mischief further aids the courts in identifying the problematic area to address, ensuring that the law remains true to its purpose through a purposive approach. In the case of Dr.Mobashir Hassan & others Vs. Federation of Pakistan (PLD 2010 S.C. 265), this Court reiterated the principle that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation, keeping in view that the rule of constitutional interpretation is that there is a presumption in favour of the constitutionality of the legislative enactments, unless *ex facie*, it is violative of a constitutional provision. Whereas in the case of Baz Muhammad Kakar Vs. Federation of Pakistan (PLD 2012 SC 923), this Court recapitulated that the literal rule of interpretation of the Constitution and statutes, also known as the golden rule of interpretation, is that the words and phrases used therein should be read keeping in view their plain meaning. In the case of Pakistan Burmah Shell Ltd. Vs. Mrs.Nasreen Irshad & others (1989 SCMR 1892), this Court held that where the law takes notice of a particular situation and makes a provision of it, then the legislative intent must be given effect to and respected and according to the dictum laid down in the case of Abdus Sattar Molla v. Crown (PLD 1958 FC 145), it was held that penal law must be interpreted strictly and in favour of the subject so as to not deprive anyone of their legal rights.

27. The learned counsel for the respondent No.1 to 3 argued that since the building was declared dangerous by SBCA, therefore, it was not suitable for human habitation. We are at a loss to understand that if the building/tenement was declared dangerous, then why the life of a poor employee and his family was put at risk and peril by the landlord. In order to resolve this controversy, the learned Rent Controller, under Section 20 of the SRPO, has the powers of a Civil Court under the CPC in respect of the following matters, namely (a) Summoning and enforcing the attendance of any person and examining him on Oath; (b) Compelling production or discovery of documents; (c) Inspecting the site; and (d) Issuing commission for examination of witnesses or documents. The Rent Controller is directed to pass orders for conducting inspection of the subject premises to verify

whether the building is dangerous, habitable, or unfit for human habitation, and may also summon the concerned department if any verification is required for its satisfaction before executing an order under Section 22 of the SRPO, where all questions arising between the parties and relating to the execution, discharge, or satisfaction of the order are to be determined by the Rent Controller, including any compromise or agreement between the parties.

28. In wake of the above discussion, this Civil Appeal is allowed. As a consequence thereof, the judgment dated 21.04.2018, passed by IXth Additional & District Judge, Karachi, South, in FRA No.623/2017, and the Order dated 07.04.2021, passed by the Sindh High Court in Constitution Petition No.S-1074/2018, both are set aside and the Order dated 08.12.2017, passed by the Vth Senior Civil Judge & Rent Controller, Karachi South, in Rent Case No.735/2005, on the application moved by the appellant/tenant for the restoration of possession is restored to its original position for execution by the Rent Controller, subject to the compliance of the directions contained in paragraph 27 of this judgment.

We also record appreciation for the valuable assistance rendered to us by Mr. Iftikhar Javed Qazi, the learned *amicus curiae*, and Mr. Badar Alam, the learned counsel for the respondent No. 1 to 3, in the matter.

Judge

Judge

Announced in open Court

On 07.03.2025 at Islamabad Judge_____

Khalid

Approved for reporting.