

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.562-K of 2024

[Against the order dated 01.08.2024 passed by the High Court of Sindh, Karachi
in C.P.No.S-45 of 2023]

Mst. Mussarrat Shaheen

...Petitioner(s)

Versus

Mst. Verbeena Khan Afroz and others

...Respondent(s)

For the Petitioner(s) : Chaudhary Abdul Rashid, ASC
Mr. Ghulam Rasool Mangi, AOR

For Respondent(s) : Mr. Khalid Javed Khan, ASC
Assisted by Yasir Ali, AHC

Date of Hearing : 08.08.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, the petitioner has called in question the order dated 01.08.2024 (**"Impugned Order"**) passed by the High Court of Sindh, Karachi (**"High Court"**) whereby the constitutional petition (*C.P.No.S-45 of 2023*) filed by the respondent No.1 was decided against petitioner.

2. Facts in brief are that respondent No.1/landlady filed an application for eviction (*Rent Case No.01 of 2020*) under section 15 of the Sindh Rented Premises Ordinance, 1979 (**"SRPO"**) against the petitioner/tenant on the ground of personal *bona fide* need and default in payment of rent in respect of the Flats No.1 & 3, First Floor, Al Syed Center constructed on Sub-Plot No.S-1, Plot No.C-13, Quaidabad Karachi (**"subject premises"**). The said application was allowed in the favour of the respondent No.1 by the learned

Rent Controller *vide* judgment dated 06.10.2022 and petitioner was directed to vacate the subject premises within a period of 60 days. Against this decision, the petitioner filed appeal (*FRA No.50 of 2022*) before the District Judge Malir, Karachi (appellate Court) which was allowed by setting aside the decision of learned Rent Controller *vide* order dated 03.12.2022. Being aggrieved, the respondent No.1 assailed the decision of appellate court before the High Court by filing a constitutional petition that was decided in favour of the respondent No.1 and decision of appellate Court was set aside through impugned order. Hence, this petition.

3. Learned Counsel for the petitioner submits that impugned order suffers from illegality, infirmity, as well as non-reading and misreading of the evidence; that no relationship of landlord and tenant exists *inter se* parties; that petitioner is the *bona fide* purchaser of the subject premises through sale agreement dated 27.11.2009 in lieu of sale consideration of Rs.1100,000/- which was paid in the lump sum; a civil suit for declaration in respect of the subject premises is also pending before the civil court, hence the impugned order may be set aside.

4. On the contrary, learned counsel for the respondent No.1 while supporting the impugned order submits that the learned Rent Controller, being fact-finding forum, after recording evidence of the parties has held that relationship of the landlord and tenant exists between the parties; that petitioner has committed a willful default in the payment of rent; that respondent No.1 is an old lady, who has to look-after her ill husband as well as two differently-abled (special) sons therefore she needs the subject premises for her personal *bona fide* need, thus impugned order, being well-reasoned, requires no interference.

5. We have heard the learned counsel for the parties and have perused the material available on the record with their able assistance.

6. Perusal of the record reveals that brother-in-law of the respondent No.1, on her behalf, entered into a tenancy agreement dated 01.05.2007 with the petitioner in respect of the subject premises at the monthly rent of Rs. 3000/-. With passage of time, said monthly rent was enhanced and at the time of filing of the eviction application, it was Rs.10,000/- per month. Moreover, in 2015 the tenancy was renewed *vide* second tenancy agreement dated 10.10.2015.

7. Concerning the issue of the disputed landlord-tenant relationship, it is pertinent to observe that the respondent No.1 has conclusively established the existence of such a relationship by presenting compelling evidence, including two duly executed tenancy agreements and the relevant title documents for the subject premises. Accordingly, the learned Rent Controller was justified in exercising jurisdiction over the matter.

8. With respect to the contention raised by the petitioner's counsel regarding the pending Civil Suit No. 303 of 2020, filed by the petitioner after filing of the rent case by the respondent No.1 in 2020, which seeks specific performance of the agreement dated 27.11.2009, it is essential to reaffirm a settled principle of law that a tenant cannot maintain occupancy of rented premises merely because he/she has initiated a suit for declaration. In instances where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil suit, and, upon a favorable

judgment by the competent court, regain possession of the property.

9. Reference may be made to the case of *Rehmatullah versus Ali Muhammad and another* (1983 SCMR 1064) wherein it has been held that:-

“ . . . It is settled principle of law that if a tenant denies the propriety rights of the landlord then he is bound to first of all deliver the possession of the premises in question and then to contest his propriety rights in the property and if ultimately he succeeds in getting relief from the court and decree is passed in his favour then he can enforce the same according to law with all its consequences . . . ”

Similarly, in the case of *Muhammad Nisar versus Izhar Ahmed Shaikh and others* (PLD 2014 SC 347), it has been ruled that:-

“ . . . Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again . . .”

[Emphasis added]

Recently, this court in the case of *Nasir Khan v. Nadia Ali Butt and others*, (2024 SCMR 452), while delving on the similar proposition has observed that:-

“...the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant.

12. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.”

[Emphasis added]

10. Regarding the question of personal *bona fide* need, the learned Rent Controller, as the fact-finding forum, after recording the evidence of the parties, has correctly observed that:

“12. On this point, the case of applicant is that the subject premises is required for her personal bonafide need and use, as she is aged about 70 years being old age lady. It is

further case of the applicant is that she is living in a small house with her husband who is seriously ill having two special children and one married son, therefore the subject premises is required for her personal bonafide need. The applicant and her witness have deposed the said facts in their affidavit in evidence so thus the requirement of the present applicant bread upon tangible sound and perfect evidence. For seeking eviction of question the only requirement of law is the proof of her bonafide need by a tenant, from the premises in the landlady, which stand discharged the torment of landlady appears in the witness box and makes such statement on oath or in the form of affidavit in evidence as prescribed by law, if it remains un-shattered in cross-examination in the evidence adduced by the opponent party. The reference can be made to the case of MST. TOHEED KHANUM V. MUAHMMAD SHAMSHAD (1980 SCMR 593). I am of the considered opinion that subject premises is required for personal need of applicant. Thus the point under discussion is answered accordingly.”

11. In the same vein, the issue of default in rent payment has been sufficiently established by the respondent No.1 before the learned Rent Controller by adducing substantial evidence. The observation made by the learned Rent Controller in this regard being well reasoned is reproduced below for ease of reference:

“11. The case of applicant on this point is that the opponent failed to rent the rent since October 2019 and onwards that the other hand, opponent has denied the relationship of landlady and tenant which has been discussed in foregoing point. It is well established the law that whenever landlord have taken the plea of default for the payment of rent against the tenant, the entire burden would have been shifted to the opponent/tenant to prove the same. In the instant matter, opponent failed to establish that he has paid the rent to the applicant since October, 2019 and onwards. I am of the considered opinion that opponent failed to discharge the burden and it is sufficient to establish that opponent has committed default for the payment of rent. Thus the point is answered accordingly.”

12. When a landlord pursues eviction on the grounds of personal *bona fide* need and non-payment of rent, such a claim cannot be dismissed simply by challenging the ownership of the property. It is pertinent to consider that the substance of the landlord's claim regarding the legitimate need for the property and the alleged default in rent payment. In the case at hand respondent No.1 has established the default in payment of rent as

well as her personal *bona fide* need and has also adduced affidavit in this regard too. Thus, both the grounds for eviction i.e. default in payment of rent and personal *bona fide* need have not been disputed by the petitioner. The petitioner has not produced any evidence to rebut the claims of respondent No.1.

13. We have examined the impugned order and find that the reasoning advanced by the learned High Court is justified and apt. The learned High Court has elaborately considered all the material aspects of the case, legal as well as factual. The petitioner has failed to point out any illegality or infirmity in the impugned order so as to warrant any interference.

14. Consequently, this petition, being devoid of merit, is dismissed and leave is refused.

15. Above are the reasons for our short order pronounced on even date.

Judge

Judge

Karachi,
8th August, 2024
APPROVED FOR REPORTING
*Paras Zafar, LC**