

PLJ 2017 Quetta 72

Present: ZAHEER-UD-DIN KAKAR, J.

SAIFULLAH--Appellant

versus

NIAMATULLAH and 2 others--Respondents

F.A.O. No. 1 of 2016, decided on 16.2.2017.

Balochistan Urban Rent Restriction Ordinance, 1959 (VI of 1959)--

----S. 15--Eviction--Landlord and tenant--Relationship--Denial--Validity--Where the tenant denies relationship of landlord and tenant and such relationship stands proved, than no other course is left for the Court, but to order his eviction. [P. 75] A

1992 SCMR 1170, *ref.*

Balochistan Urban Rent Restriction Ordinance, 1959 (VI of 1959)--

----S. 15--Eviction--Personal bonafide need--statement of Landlord--Evidentiary value--Validity--Where the statement of landlord on oath was quite consistent with his avowment made in Ejectment applications, neither his statement was shaken nor any thing was brought in evidence to contradict the statement that would be considered sufficient for acceptance of ejectment application--Appeal dismissed. [P. 75] B

2000 SCMR 903, *ref.*

Mr. Mushtaq Ahmad Arjum, Advocate for Appellant

M/s. Mumtaz Hussain Baqri & Sabra Islam, Advocates for Respondents.

Date of hearing: 16.12.2016.

JUDGMENT

Zaheer-ud-Din Kakar, J.--Appellant Saifullah has filed the instant appeal against the order dated 15th December, 2015 "the impugned order" passed by the Senior Civil Judge-1/Rent Controller, Quetta, whereby the Eviction application filed by the respondents was accepted and the appellant was directed to handover the vacant and peaceful possession of the shop in question to the respondents within a period of thirty days.

2. Precisely stated facts of the present appeal are that the respondents/applicants filed an eviction application against the appellant, wherein it was averred that they are owners and landlord of six shops and three flats, situated at Gurdatt Singh Road, Quetta, which were rented out to the tenants on monthly rent basis. The respondent/appellant is tenant of shop bearing No. 5-1/2/19=21(4) on monthly rent of Rs. 900/-. The eviction application was filed on the ground of personal *bona fide* use for Shaukat Ali son of Naimatullah (Respondent No. 1). Rejoinder to the application was filed by the appellant/respondent, raised legal objections and denied the relationship of landlord and tenant between the parties.

3. Out of the divergent pleadings of the parties, the learned Rent Controller framed the following issues on 15.7.2014:

ISSUES

- (i) Whether relationship of landlord and tenant exists between the parties?
- (ii) Whether the shop in question is required in good faith for personal *bona fide* use of son of Applicant No. 1 namely Shoukat Ali?
- (iii) Whether the applicants are entitled to the relief claimed for?
- (iv) Relief?

4. In support of their claim, the respondents/applicants produced Shaukat Ali as AW-1 and attorney for the appellants namely Noor Ali got recorded his own statement, whereas, the appellant/respondent produced RW-1 Syed Hazrat Khan, RW-2 Syed

Nek Muhammad and lastly Hayatullah attorney for the appellant got recorded his own statement. The learned Rent Controller, after conclusion of the case accepted the application by means of the order dated 15.12.2015, hence this appeal.

5. Learned counsel for the appellant argued that the respondents have not approached the Rent Controller with clean hands and concealed the material facts; that the respondents (applicants) are neither owner/landlord of the shop in question nor the appellant is their tenant. He, lastly, submitted that the shop in question is not required to the respondents for personal *bona fide* use and occupation of Shaukat Ali.

6. On the other hand, learned counsel for the respondents has vehemently opposed the submissions so raised and supported the impugned order, on the ground that the Rent Controller, after proper appraisal of the record and evidence, has rightly passed the order of ejectment, which does not call for any interference by this Court.

7. I have heard the learned counsel for the parties and have gone through the record. Perusal of the record reflects that the appellant had denied the ownership of the respondents and stated that the possession of shop in question was handed over to him by Noor-ul-Haq in the year 1996 after receiving Rs. 20,000/- as advance payment. According to the appellant that Abdul Zahir is owner of the shop in Excise and Taxation record and he started collecting month rent from him and after passage of some time he (Abdul Zahir) introduced Noor Ali and told him that he will collect the monthly rent of the shop in question on his behalf. As per appellant's statement, Noor Ali had received monthly rent of the shop in question from him till September, 2014. It is necessary to mention here that Noor Ali is son of Respondent No. 1 and attorney of respondents. Perusal of the record further reflects that the appellant has failed to produce Abdul Zahir and legal heirs of Noor-ul-Haq in support of his claim, therefore, an adverse inference within the meaning of Section 129(g) of the Qanoon-e-Shahadat Order can validly be drawn against him.

8. To establish their title, with permission of the trial Court, the respondents placed on record Mutation No. 1094, Ward No. 26, Urban-II, tehsil city, district Quetta, which clearly shows that they are owner of the shop in question. It is pertinent to mention here that the appellant also filed application for placing on record the said mutation which was allowed by the trial Court and the said mutation was made part of the record, meaning thereby that the appellant has also admitted the said revenue record. Admittedly, the respondents/applicants are landlord of the shop in question and it is worth

mentioning here that the question of title has no relevancy in the proceedings before the Rent Controller, as the pivotal point needs determination would be the relationship of landlord and tenant over the disputed property, which would be the only determining factor, because a tenant has absolutely no right to raise any objection regarding the ownership, as it would have no substantial effect on the factum of his tenancy and his status would remain as a tenant. Furthermore, it is a settled principle of law that where the tenant denies relationship of landlord and tenant and such relationship stands proved, then no other course is left for the Court, but to order his eviction. In this regard, guidance can be taken from the case titled as "Ghulam Samdani v. Abdul Hameed" 1992 SCMR 1170, wherein the Hon'ble Apex Court has held as under:

"It is by now well-settled that if a tenant denies the relationship of landlord and tenant, he is liable to eviction straight away without recording of evidence on the other allegations of default, damage to property and personal need."

9. So far as the plea of personal *bona fide* need of the respondents is concerned, I have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of law and record of the case. I have perused the order of the Rent Controller, dated 15th December, 2015 and threshed out the entire evidence as led by the parties to substantiate their respective claims. The respondents, landlord, in my view adduced cogent, concrete and worthy of credence evidence to substantiate their version. Noor Ali, attorney for the respondents and A.W. Shaukat Ali has explained their genuine, *bona fide* and personal need in a simple, straightforward and convincing manner. They stood firm to the test of cross-examination and nothing beneficial could be extracted in spite of numerous searching questions. It is well-settled by now that where the statement of landlord on oath was quite consistent with his averment made in the ejectment application, ~~neither his statement was shaken~~ nor anything was brought in evidence to contradict the statement that would be considered sufficient for acceptance of the ejectment application. In this regard, I am fortified by the dictum laid down in case titled "*Muhammad Shogib Alam and others v. Muhammad Iqbal and others*" (2000 SCMR 903), wherein it was held by the Hon'ble Apex Court as under:

"That statement of landlord on oath, if consistent with the application for ejectment and not shaken in cross-examination or disproved in rebuttal is sufficient to prove that requirement of landlord was *bona fide*."

10. A similar proposition was discussed in case titled "*Akhtar Qureshi v. Nisar Ahmed*" (2000 SCMR 1292), wherein it was held that "statement of landlady on oath was quite consistent with her averments made in the ejectment application, neither her statement was shaken nor anything was brought in evidence to contradict the said statement--Rent Controller, in circumstances, was fully justified in accepting the evidence of the landlady and ordering the eviction of the tenant." This point also finds support from cases reported in 1996 SCMR 1178 + 1980 SCMR 593 + PLD 1982 SC 218 and 2012 SCMR 854. Even otherwise, the Ordinance has provided protection to a tenant under Section 13 sub-section (4) therefore, if the respondents failed to get the possession of the shop in the stipulated period or after getting the possession, re-let it to some else within a period provided by law, the appellant has a right to recover the possession of the shop.

11. The trial Court, after assessment of the facts, circumstances and the evidence available on record, has rightly accepted the application; therefore, the impugned order dated 15th December 2015 is just and proper being well reasoning. Besides, the learned counsel for the appellant has also failed to point out any illegality, irregularity, infirmity or perversity in the impugned order warranting this Court to interfere in it.

12. Thus, in view of what has been stated and discussed herein above, the appeal is, accordingly, dismissed. However, enabling the appellant, to shift his articles from the shop in question to some other premises, he is granted two months' time from today to vacate and handover the vacant possession to the respondent. There is no order as to costs.

(W.I.B)

Appeal dismissed.