

S.A.O.No.37 of 2011

Muhammad Mushtaq Bhatti

Qamar Javed etc.

**19.03.2012 Sh. Khurshid Iqbal, Advocate for the appellant.
Mr.Arshad Iqbal Tarar, Advocate for the respondent.**

This second rent appeal is directed against the concurrent judgments/ejectment orders passed against the appellant in respect of shops No.12 and 13 ground floor, Bashir Arcade, Chowk Nisbet Road, Lahore being part of property No.S-52-R-2A, Chowk Nisbet Road, Lahore. The appellant was inducted as tenant in the shops in question through a written rent agreement Exh.A4 in the year 1990 originally at the rent rate of Rs.500/-per month. An ejectment petition was instituted by the respondent No.1 against the appellant on 13.6.2007 before the learned Rent Controller Lahore on the ground of requirement of the shops in question by the respondent No.1 for his personal *bona fide* needs. The respondent contended that he needs the shops for his personal use and occupation in good faith for establishing his own business.

2. The appellant denied the contentions raised in the ejectment petition. He contended that the ejectment petition has been instituted for *malafide* purposes for demanding 135% increase in the monthly rent. The appellant further contended that he had paid a sum of Rs.70,000/-as security amount to the respondent No.1 which was refundable. The appellant further contended in reply that the respondent was in occupation of a shop in Rehmat Wazir Mansion, Chowk

Nisbet Road, Lahore in March 2007 and has let out the said premises to Bank Alfalah in March 2007.

3. The learned Rent Controller Lahore framed the following two issues:-

ISSUES

1. *Whether the property in dispute is required by the petitioner in good faith for his personal bonafide need and occupation?OPA*

2. *Relief.*

4. After recording the evidence of the parties vide ejectment order dated 01.11.2008 the learned Rent Controller Lahore passed an ejectment order against the appellant. An appeal was preferred by the appellant which appeal came up for hearing before a learned Additional District Judge and the appeal was allowed vide judgment dated 30.06.2009. The ejectment order was set aside and the case was remitted back to the learned Rent Controller for allowing the appellant the opportunity to cross examine the respondent's witnesses in accordance with law and then to decide the ejectment petition on merits.

5. After the remand order the learned Rent Controller allowed the appellant opportunity to cross examine the witnesses of the respondent and ultimately ejectment order was again passed by the learned Rent Controller Lahore against the appellant on 15.6.2010. The learned Rent Controller Lahore also held that the respondent is bound to return the security amount of Rs.70,000/-deposited with him by the appellant. An appeal was preferred by the appellant against the ejectment order dated 15.6.2010 which appeal came up for hearing before a learned Additional District Judge Lahore and has been dismissed on merits vide judgment dated 29.1.2011.

6. Through the instant S.A.O. the appellant seeks the setting aside of the ejectment order and judgment passed by the two courts below.

7. It is contended by the learned counsel for the appellant that the respondent got vacated a shop in Rehmat Wazir Mansion, Chowk Nisbet Road, Lahore prior to the institution of the ejectment petition as stated by the appellant in the reply to the ejectment petition in preliminary objection No.1 and let out the same to Bank Alfalah. The learned counsel contended that the ejectment petition moved by the respondent was not based upon good faith and it was motivated with ulterior motive of enhancing the rate of rent which at the time of moving the ejectment petition had come up to Rs.2,690/-per month. The learned counsel contended that the two courts below passed the ejectment orders against the appellant by overlooking this aspect of the matter and therefore the ejectment orders passed by the two courts below were not sustainable in the eye of law.

8. The learned counsel for the respondent No.1 contended that admittedly the respondent is the owner and landlord of the subject property. The learned counsel contends that the respondent produced the evidence to prove his *bonafide* needs by appearing himself and submitted an affidavit Exh.A1 in support of his contentions. The learned counsel further contends that two supporting witnesses Sami Ullah Khan and Naeem Pervaiz were also produced to prove that the respondent needs the subject shops in good faith alongwith other shops in possession of Zaheer and Muhammad Shahbaz Khan tenants wherein all the shops the respondent wants to start his family business of photo equipment and photo lab. The learned counsel contends that there is no proof of ownership of the fact that the respondent

was owner of any shop in Rehmat Wazir Mansion, Chowk Nisbet Road, Lahore. The learned counsel for the respondent submits that the respondent is one of the co-owners of the shops in question and being the landlord he was fully justified in making choice of the shops in question for the suitability of his own business and that statement on oath coupled with the supporting affidavits Exhs.A2 & A3 the respondent was justifiably granted relief of ejectment order by the learned two courts below in respect of the shops in question. The learned counsel for the respondent relied upon the judgments reported as **MUHAMMAD SADIQ VS. MST. MARYAM BIBI (1975 SCMR 111)**, **HAJI MUHAMMAD AND OTHERS VS. MUHAMMAD RAFIQUE AND ANOTHER (1980 SCMR 02)** and **SARDAR KHAN VS. RIAZ AHMAD AND OTHERS (1986 SCMR 1981)** to contend that the landlord is fully empowered to make a choice regarding his property which he considers suitable for doing his business in good faith. The learned counsel for the respondent No.1 thus argued that the appellant is not entitled to any relief in the instant second appeal against the ejectment orders passed by the learned two courts below in accordance with law against the appellant.

9. I have considered the arguments of the learned counsel for parties.

10. The relationship of landlord and tenant is admitted between the parties. The respondent instituted an ejectment petition only on one ground that he needs his shops for personal *bonafide* requirements in good faith. In support of his contentions he appeared himself as AW-1 and produced his affidavit as AW/1 and his statement on oath is corroborated by two witnesses AW-2 & AW-3 who also have sworn the affidavits in support of the contentions of the respondent. The relationship between the parties commenced with a written

rent agreement dated 05.03.1990 Exh.A4 which was an un-registered rent agreement. The appellant produced RW-1 Shoaib Farooqi a previous tenant in a shop forming part of the premises in question. The said witnesses produced an affidavit R-1 wherein he stated that he was a tenant in shop No.G-14 under the appellant and that at last after receiving a sum of Rs.450,000/-being the goodwill for his business he vacated the shop under his possession. The said RW-1 made reference to the year 1999 when the demand for vacation of the shop under his possession was raised. He does not mention as to when he vacated the shop under his possession. This witness further stated that the respondent is co-owner and is doing a joint business in shops No.14, 15 and 16 alongwith other co-owners. The appellant appeared as RW-2 and he produced his affidavit R-2. He contended in the affidavit that he has paid a sum of Rs.70,000/-towards goodwill to the respondent. He also stated that the respondent is running a joint business with the co-owners in the name of Imperial Digital Lab in shops No.14 and 15 by closing the passage of shops No.2, 3, 4 and 5 in the building in question. In the affidavit he does not allege that the respondent had got vacated any shop for his own *bonafide* needs. It is interesting to note that in cross examination this RW-2 has stated that he is willing to vacate the shops in questions if he is paid 25% of the present goodwill price of the shops in question. The appellant further stated in his cross examination that he had worked for twenty years in the shops in question and he needs compensation in the form of payment of goodwill for the last twenty years to him and upon this payment he has no objection to the vacation of the shops in question. The appellant further admitted that the respondent is sitting in the business place of his two brothers.

11. The respondent made a statement on oath before the court and produced two witnesses for proving the bonafide needs for running of his own business in the shops in question. The respondent is being deprived of the vacation of the shops in question by the appellant which the two courts below found to be required by the respondent in good faith for running his own business. The contents of cross examination and replies given by the appellant reflects that he wants to have a price for vacating the shops in question from the respondent in the form of twenty years goodwill which is certainly a *malafide* conduct of the appellant. The *bonafide* needs of the respondent have been established on the record. The respondent is fully entitled to have a choice of his own regarding the suitability of the subject shops for running his business.

12. The case law relied upon by the learned counsel for the respondent as noted above fully supports the contentions raised by the learned counsel for the respondent. The appellant cannot be allowed to make the *malafide* use of his possession as a tenant over the subject property by demanding a price in the form of twenty years goodwill for vacating the shops in question. The two courts below have found the appellant entitled to the refund of Rs.70,000/-which he had paid as security to the respondent. It is also observed that no fresh terms and conditions have been entered into by the parties qua the subject shops. No fresh period of tenancy has been mutually agreed upon between the parties.

13. The honourable Supreme Court of Pakistan in the reported judgment **QAISER JAVED MALIK VS. PERVAIZ HAMEED AND 2 OTHERS (2009 SCMR 846)** concluded that a tenant whose period of tenancy had expired does not have an absolute right to remain in possession of the property in his

possession after the expiry of the term fixed by lease agreement. In addition to the above noted reported judgements the honourable Supreme Court of Pakistan in the judgment reported as **SHAKEEL AHMED AND ANOTHER VS. MUHAMMAD TARIQ FAROGH AND OTHERS (2010 SCMR 1925)** has laid down the law that the statement on oath or in the form of an affidavit is sufficient to prove the *bonafide* needs of a landlord qua the subject property of ejectment proceedings.

14. The ejectment orders have been passed in accordance with law keeping in view the evidence produced by the parties. No grounds are available for interference in the ejectment orders passed against the appellant. The instant Second Appeal against the ejectment Orders is dismissed with no orders as to costs.

**(NASIR SAEED SHEIKH)
JUDGE.**

Approved for Reporting

