IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1708 of 2018

(M/s. Bhombal & Co. V. M/s. Pakistan National Shipping Corp.)

Date Order with signature(s) of Judge(s)

Petitioner

M/s Bhombal & Co Syed Shayan Ahmed, Advocate

Respondent

M/s PNSC Mr. Waqar Muhammad Khan Lodhi, Advocate .

Date of Hearing

& Order: 01.09.2026.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the judgment dated 14.05.2018 (**impugned judgment**) passed by the Court of Learned District Judge (South) Karachi (**Appellate Court**) in First Rent Appeal No. 428 of 2017 (M/s. Pakistan National Shipping Corporation v. M/s. Bhombal & Co.), wherein Learned Appellate court modified the order dated 23.05.2017 passed by the Court of Learned VIIIth Rent Controller (South) Karachi (Rent Controller) in Rent Case No.953 of 2003 (Re- Pakistan National Shipping Corporation V. Ms. Bhombal & Co). Learned Rent Controller had allowed the rent application and fixed the fair rent from the date of order, while Learned Appellate Court modified the Rent Controller's Order and fixed the fair rent from the date of institution of rent application.

2. Learned counsel for Petitioner contended that impugned judgment suffered from misreading and non-reading of the evidence, was illegal, unlawful and not sustainable under the law and no reason was assigned for modifying the well reasoned order passed by learned Rent Controller. He contended that Learned Rent Controller passed a well reasoned order after proper appraisal of the evidence, enhanced rent payable from the date of order. He further contended that Petitioner had already vacated the demised premises, as he was not capable to pay such a huge amount of increased rent. He further contended that there must be a rational behind fixation of fair rent from the date of the institution of rent application which is lacking in the impugned judgment, as according to learned counsel, Appellate Court failed to substantiate its findings while fixing the fair rent with effect from the date of institution of the rent application. He placed reliance on the cases of ***Khyber Insurance Company Ltd. vs. Pakistan National Shipping Corporation)*** (PLD 1994 SC 725), ***Messrs Muslim Commercial Bank Ltd. vs. S.M. Inam and 02 Ors.*** (2013 MLD 105 and ***Mst. Masudah Jawad v. State Life Insurance Corporation of Pakistan b*** (PLD 2007 Karachi 485). He lastly prayed to allow this petition and to set aside the impugned judgment.

3. Mr. Waqar Muhammad Khan Lodhi, learned counsel for the Respondent No 1, contended that, ordinarily, fair rent is determined with effect from the date of institution of the rent application; however, no reason was assigned by the learned Rent Controller while fixing the fair rent payable from the date of order on rent application. He further contended that fair rent is to be determined on the basis of rent prevailing in the vicinity, along with other factors enumerated under Section 8 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979). He contended that Landlord was held liable to pay taxes on rent at the rate of Rs 10 per square feet from the month of July 2001 through a notification issued by Excise and Taxation Department Government of Sindh

and if the fair rent is made payable from the date of order, then landlord will have to pay sufficient amount from its own pocket. He contended that order passed by learned Rent Controller was flawed and rightly modified by learned Appellate Court. He placed reliance on the cases of ***Messrs Victor Restaurant vs. State Life Insurance Corporation of Pakistan*** (2010 SCMR 745), ***Volkart (Pakistan) Ltd. Karachi vs. Interavia Pakistan Limited Karachi*** (2001 SCMR 671), ***Yasmin Islam and others vs. State Life Insurance Corporation & Ors.)*** (2009 PSC 284). He prayed to dismiss the petition.

4. Heard arguments and perused the material available on record.

5. Crux of controversy involved in the present petition is regarding the date of fixation of fair rent. Learned Rent Controller fixed the date of payment of fair rent from the date of the order allowing fair rent. Learned Appellate Court while seized with the appeal modified the order and imposed fair rent from the date of institution of rent application. Section 8 of the SRPO, 1979 envisaged mechanism for determination of fair rent of demised premises, which reads as under:-

> *"**8. Fair rent**: (1)The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:-*
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> *(a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality.*
>
> *(b) the rise in cost of construction and repair charges;*
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> *(c) the imposition of new taxes, if any, after commencement of the tenancy; and*
>
> *(d) the annual value of the premises, if any, on which property tax is levied.*

(2) Where any addition to, or improvement in, any premises has been made or any tax, or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of Section 9, to be determined or, as the case may be, revised after taking such changes into consideration."

6. From the above provisions of law, it is evident that the factors to be considered for the fixation of fair rent include the rentals paid by tenants in the premises situated in similar circumstances and in the same or adjoining locality; the increase in the cost of construction and repair charges; the imposition of new taxes after commencement of the tenancy; and the annual value of the premises on the basis of which property tax is assessed.

7. It is a settled proposition that co-existence of all the four factors was not necessary for determination of fair rent, rather one or two factors were sufficient for fixation of fair rent by invoking the provisions of Section 8 of the SRPO, 1979. Reliance in this regard can be made on the judgment passed by Honorable Supreme Court of Pakistan in the case of **State Life Insurance Corporation of Pakistan and another v. Messers British Head and Footwear Store and others** reported as **2018 SCMR 581**, wherein it is held that:

"In the instant case the appellant out of four factors, as provided under section 8 of the Ordinance, 1979, according to record have proved the last three. As to the fourth factor, as provided in clause (a), we find sufficient evidence produced by the landlord to prove the rent of similar premises situated in the similar circumstances, in the same or adjoining locality which was not accepted by the Courts below and in our opinion this is the only controversy where the evidence adduced by the respective parties in terms of

the leave granting order need to be re-examined. At this juncture we would like to reiterate that by now it has been settled by this Court that it is not necessary for a landlord to prove hike in respect of all four factors as detailed in section 8 of the Ordinance, 1979, or that all four factors must co-exist in each and every case seeking fixation of fair rent."

8. The record evidenced that Petitioner entered into tenancy, for the demised premises viz. Old Ralli Building Railway Quarters, Talpur Road Karachi, at the rate of Rs 01.04 per square feet and paid such rent without any enhancement. It transpired from the evidence led by the parties, that certain facts remained admitted and un-shattered in the evidence that the cost of construction had increased by approximately 500%; the Excise & Taxation Department, Government of Sindh had enhanced the tax rate of rental premises to Rs. 10 per square foot with effect from the month of July 2001, the cost of the premises, keeping in view its location being within the heart of the City, had also increased manifold. Furthermore, owing to the prevailing inflation in the country, the cost of repairs and maintenance had also increased considerably; Tenants M/s Cool Point M/s Agha Food and Beverages and Pioneer Traders occupying space on rent in the same premises were paying rent at the rate of Rs 22.22 and Rs 14.30 per square feet. Admittedly, the Petitioner was tenant of the Respondent No 1 for more than 40 years and was paying rent at the rate of Rs. 1.04/- per square foot, which was lowest in the premises and fixed since the inception of tenancy. The Rent Controller though keeping in view the above factors determined the fair rent @ Rs.20 per. sq. foot but fixed the same from the date of order viz 23.05.2017 without taking into consideration that the tax on the said rental premises had been increased by Rs.10 per sq.feet from year 2001 and per own admission of the Petitioner that the cost of construction had increased 500% and Rent in the same premises at the time of filing of application was ranging in between rupees 14 to 22 per square feet. Learned Rent Controller

was required to determine the applicability of fair rent in consonance with the evidence of parties and material placed on record. Since the Respondent No.1 at the time of institution of rent application specifically averred that tax rate was increased and other tenants within the same premises were paying more rent and such imposition of tax on rental and enhanced rent pertained to year 2001, therefore, no rationale existed to grant fair rent from the date of order.

9. It is noticeable that the legislature has allowed a remedy under Section 8 of the Ordinance for making an application not only by the landlord for determination of fair rent of the premises but also by the tenant to safeguard the interest of both the parties. Sanguine to the fulfillment of consideration required to be fulfilled before fixation of fair rent by the Rent Controller, it is clearly provided under Section 9 of the SRPO, 1979 that where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of the SRPO, 1979 whichever is later. While sub-section (2) of Section 9 accentuates that the increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

10. Now comes the question, when the provisions of Section 8 will come into play. No hard and fast rule existed to fix the fair rent from a particular date. It all depends upon the material placed before Court and evidence adduced by the parties necessary to establish the existence of any of the four factors articulated under section 8 ibid. If a party successfully established that fair rent applicable in the vicinity was more than that of the demised premises under lis, then the Court shall consider the reduction or enhancement in the rent as the case may be. In the present case Respondent No 1 successfully established that fair rent in the same premises ranged in

between Rs 14 to 22 per square feet at the time of institution of rent application, therefore, it ought to have been enhanced from such date.

11. In the case of **Messrs Victor Restaurant vs. State Life Insurance Corporation of Pakistan reported as 2010 SCMR 745**, wherein Hon'ble Supreme Court of Pakistan has been pleased to hold in para-5 of its judgment which reads as follows:-

> *"In the normal circumstances, the fair rent is required to be enforced from the date of application, as the said date is the date from which the fair rent is to be determined after keeping in view the conditions mentioned in section 8 of the Ordinance. However, if the learned Rent Controller fixes the other date then he can take the date but for that he must assign reasons to do so. Thus there is no fault in the order of the learned High Court in concurring with the order of the Rent Controller. Therefore, the same is maintained."*

12. In another case, ***Volkart (Pakistan) Ltd., Karachi v. Interavia Pakistan Limited, Karachi*, reported as 2001 SCMR 671**, the Hon'ble Supreme Court of Pakistan held that the Rent Controller has the power to fix fair rent from such date as it may determine; however, such date must be fixed keeping in view the factors enumerated under Section 8 of the SRPO, 1979.

13. In the present case, the Respondent No 1 proved beyond reasonable doubt that at the time of institution of rent application the prevailing fair rent in the vicinity was in between Rs. 14/- to Rs. 22/- per square foot. Therefore, the learned Appellate Court was justified in maintaining the determination of fair rent, while modifying the order of Rent Controller to the extent of the date from which the same was payable.

14. The case laws relied upon by learned counsel for the Petitioner are distinguishable on the facts and circumstances of the present case.

15. For the foregoing reasons, No illegality or infirmity was pointed out in the findings of learned Appellate Court warranting interference by this Court. Consequently, this petition is dismissed along with pending application(s), if any.

JUDGE

Approved for reporting

MAK/PS