

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-309 of 2006

Present

Mrs. Justice Kausar Sultana Hussain

M/s. Eastern Shipping Co. (Pvt) Limited.....Petitioner

Versus

M/s. Pakistan National Shipping Corporation & another....Respondents

Date of Hearing 27.03.2018

Date of Order 27.06.2018

Mr. Mazhar Imtiaz Lari, advocate for petitioner

Mr. Zafar Iqbal Dutt, advocate for respondent No. 1.

J U D G M E N T

Kausar Sultana Hussain, J.:- Through this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the appellant has impugned judgment dated 13.03.2006, passed by learned IInd Additional District Judge South, Karachi, in First Rent Appeal No. 189 of 2004, preferred by the respondent, whereby modified the monthly rent of the premises in question fixed by the learned Rent Controller @ Rs. 6/- per square feet per month and enhanced the fair rent of the premises in question to the extent of Rs. 20/- per square feet per month from the date of filing of case.

2. The necessary facts spelt out from instant petition are that respondent filed rent application under Section 8 of the Sindh Rented Premises Ordinance, 1979 (Rent Case No. 1609 of 2001) against the appellant claiming themselves to be owner of the commercial building known as Mohammadi House at Plot bearing survey No.

4/1A/1 and 4/1A/2, survey sheet No. SR-4, I.I. Chundrigar Road, Karachi wherein the appellant is tenant in respect of Room No. 829 on 8th floor (admeasuring 819 sq. feet) in the said building at a monthly rent of Rs. 637.06 (77 paisa per sq. feet). As per respondent, the monthly rent which is paying by the appellant is not per prevailing in the area and same is required to be fixed at the rate of Rs. 15/- to Rs. 45/- per square feet per month, due to increase in the taxation rates as well as per paying by the other tenants.

3. The appellant filed written statement, wherein denied that the rent which is being paid by them is not related to the prevailing in the locality. According to the appellant, the Mohammadi House is situated in the area of pre-partition buildings or that of built immediately after partition. It is further stated that appellant being old tenants and there has been no change in the prevailing circumstances as the newly building having equipped with all modern facilities. Lastly, the appellant while denying all the allegations enumerated in the rent application, stated that the monthly rent which is being paid by appellant is just and proper requires no enhancement, thus rent application is liable to be dismissed.

4. As per record, respondent's got filed affidavit in evidence of their representative, on the other hand, the appellant neither cross-examined the said witness of the respondent nor led their own evidence. The learned Rent Controller-1, Karachi South allowed the rent application, vide judgment dated 30.09.2004 and fixed the fair rent of the demised premises at the rate of Rs. 6/- per square feet per month from the date of filing of rent application. Thereafter, the respondent challenged the said judgment by preferring First Rent Appeal under Section 21 of the Sindh Rented Premises Ordinance,

1979 bearing F.R.A. No. 189 of 2004. The learned appellate court after hearing both the side, allowed the appeal, vide judgment dated 13.03.2006, whereby modified the fair rent of the demised premises, which was fixed by the learned Rent Controller and enhanced/fixed the same at the rate of Rs. 20/- per square feet per month from the date of filing of rent case. Being aggrieved, the appellant has assailed the judgment of Appellate Court through instant petition with the prayer to set aside the judgment of First Appellate Court and restoration of rate of rent as fixed by the learned Rent Controller viz; at the rate of Rs. 6/- per square feet per month.

5. The learned counsel for the appellant/tenant during the course of arguments in fact question the findings of the learned First Appellate Court. He contended that the impugned judgment is bad in law and has been passed in excess of jurisdiction without going through the evidence brought on record. He has contended that learned First Appellate Court did not consider the legal position that as per law it was mandatory upon the respondent/landlord to establish their demand through documentary evidence, but the learned First Appellate Court arrived to an impugned conclusion on the basis of surmises and conjectures without considering the fact that the premises in question is old one without any modern facilities rather built of the pre-partition time, so much so having no similarly with the newly executed tenancies, thus Appellate Court erred in modifying and enhancing the fair rent, already fixed by the learned Rent Controller at the rate of Rs. 6/- per square feet per month, as such, impugned judgment is liable to be set aside.

6. Conversely, the learned counsel for the respondent/landlord has vehemently controverted the submissions so agitated by learned counsel for appellant/tenant. He has submitted that claim of the

respondent/landlord gone unchallenged and un-rebutted as appellant's side failed to cross-examine the witness of the respondent. He has further pointed out that the appellant also failed to file affidavit in evidence or lead evidence, rendering the contents of written statement being without any substance or useful as per law. He has argued that it is settled law that contents of written statement is not substantiate of evidence on Oath. He has further argued that the impugned judgment passed by the First Appellate Court is based on proper assessment of the material facts ignored by the learned Rent Controller. He has argued that no lawful grounds are available for filing instant Constitution Petition, same is liable to be dismissed.

7. It is noted that the appellant/tenant has not challenged the quantum of fair rent to the tune of Rs. 6/- per square feet per month, which was fixed by the learned Rent Controller, rather accepted the same as is visible from the prayer clause (a) of the petition in hand.

8. The only question needs to be adjudged in the petition in hand, whether the learned appellate Court lawfully and factually modified and enhanced the fair rent fixed by the learned Rent Controller. On examination of impugned judgment in the perspective of ingredients of Section 8 of the Sindh Rent Premises Ordinance, 1979, it is revealed that the respondents' witness in his evidence produced lease agreements/rental receipts at Exh. A/2 to Ex. A/7 relating to the premises situated in the same building. It may be observed that, if any instance of rent in similar premises situated in the same building is produce, as it is available in the present case, it would be the best circumstance or factor which may be given due consideration and preference for fixing the fair rent of the disputed demised premises, while deriving such an opinion, I am also fortified with the

cases of Abdul Ghaffar Versus Noor Jahan Malik (1987 CLC 2182 Karachi) and Muhammad Iqbal Versus Mst. Fatima Bai (2015 MLD 397 Karachi).

9. On analysis of the lease agreement/receipts (Ex. A/2 to Ex. A/7), it is revealed that the respondent has been fetching monthly rent from their tenants of the same building situated on ground floor, 1st floor, 2nd floor, 4th floor and 7th floor at the rate of ranging from Rs. 20/- to Rs. 39.39 per square feet. These un-rebutted and un-challenged instances abundantly manifests that other tenants of the same building situated in the similar circumstances are paying monthly rent at the rate of Rs. 20/- to 39.39 per square feet per month. It is noted that the learned appellate court while elucidating such element and went on to enhance the monthly rent of the demised premises to the extent of Rs. 20/- per square feet per month above the rate which was determined and fixed by the learned Rent Controller. In the attending circumstances, the enhancement of rent at the rate of Rs. 20/- per square feet per month at lower side as being charged in the same building appears to be justified. No lawful, cogent and plausible grounds have been set forth on the basis whereof the lawful findings of the learned Appellate Court could be interfered.

10. In such a situation and keeping in view the authorities cited, I do agree with the findings of the learned Appellate Court and dismiss this Constitution Petition.

J U D G E

Faheem/PA