

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-848 of 2020

M/s Adamjee Impex
Versus
Shaikh Muhammad Khalid & others

Date of Hearing: 06.04.2021 & 13.04.2021

Petitioner: Through Mr. Ahmed Ali Hussain Advocate

Respondents: Through Mr. Naveed Anjum Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioner has impugned in this petition an order passed in First Rent Appeal No.60 of 2020 as well as that of Rent Controller passed in Rent Case No.748 of 2017. The only ground was of default which in the light of the orders of two Courts below arisen out of a tentative rent order passed on 16.04.2019.

2. Brief facts of the case are that the petitioner was a tenant of the premises in question at monthly rent of Rs.1329/- and was depositing rent in favor or predecessor of respondent/landlord (previous landlord/owner) in MRC No.341 of 1997 having Ledge No.53/1997, which was pending in the Court of VII-Rent Controller & Senior Civil South Karachi. The present respondent as being owner/landlord has served a notice under section 18 of Sindh Rented Premises Ordinance, 1979 dated 19.06.2017 and subsequently filed Rent Case no.748 of 2017 on the ground of default. The Rent Controller was pleased to pass an order after calling report from the concerned COS in respect of MRC No.847 of 2007 which reported that through MRC No.341 of 1997 an amount of Rs.326,934/- was deposited up to 11.07.2017 in the name of previous landlord at the admitted rate of rent and that the petitioner was

depositing monthly rent in MRC No.847 of 2017 in the name of present landlord/respondent and per report of COC an amount of Rs.29,238/- was deposited up to February 2019 at the rate of Rs.1329/- per month w.e.f. 18.08.2017 till 01.02.2019. The last deposit claimed to have covered April 2019. In view of this Rent Controller observed that since rent has already been deposited in MRC No.847 of 2017 up to April, therefore further rent be deposited in the said rent case (Rent Case No.748 of 2017) w.e.f. May 2019.

3. With this background it is argued that there were some errors in the calculation as far as subsequent MRC is concerned as the rent in the previous MRC was deposited up to June 2017 whereas the rent in the subsequent MRC No.847 of 2017 was deposited with effect from July 2017 till April 2019 by 01.02.2019. However inadvertently an amount of Rs.3987/- for the period of May, June and July, 2019 was also deposited in the said MRC No.847 of 2017 having Ledger No.103/2017 hence in rent case No.748 of 2017 the rent was being deposited w.e.f. August 2019 and the first deposit was made on 04.09.2019 for a period of three months i.e. August, September, October which was followed by further deposit of three months' rent on 02.11.2019 i.e. November, December 2019 and January 2020. Hence it is urged that if at all there was a default it is only technical as before copy of tentative rent order dated 16.04.2019 could be obtained the amount was deposited on 17.04.2019 (next day of order) in the aforesaid MRC No.847 of 2017 i.e. Up to July 2019.

4. In an order passed under section 16(2) of Sindh Rented Premises Ordinance, 1979 the Rent Controller observed that report of COC dated 15.01.2020 provides that in compliance of tentative rent order on 16.04.2019, Ledger No.26/2018 was opened and till 02.11.2019 Rs.7974/- were deposited by the opponent. It further appeared to him

that petitioner first deposited rent of Rs.3987/- for the period of three months i.e. May, June and July 2019 on 04.09.2019 and thereafter on 02.11.2019 for the period of August, September and October 2019. These months have been incorrectly shown as rent deposit started from August, 2019.

5. Though the dates are correct but the period of rent was incorrect as on 04.09.2019 rent for the period of August, September and October 2019 was deposited in the said rent case whereas second payment made on 02.11.2019 for period of November, December 2019 and January, 2020. Thus, there was some error in the calculation when tentative rent order was passed as of 17.04.2019 the rent for the period of May, June and July was deposited in MRC No.847 of 2017 having Ledger No.103/2017.

6. I have reconciled the record and it seems that rent for the aforesaid period, as disclosed in the impugned orders, had already been deposited in MRC and if at all there was a default it is only a technical one. The Courts below reached to this conclusion only because of incorrect calculation which is also to this extent conceded by respondent.

7. In view of facts and circumstances the case of petitioner is covered by the cases of:-

(i) Mehboob v. Nur Ahmad (1989 SCMR 1327) (Five Member Bench),

(ii) Maj. (R) A.SK. Samad v. Ltd. Col. (R) A. Hussain (1987 SCMR 1013),

(iii) Dr. Aftab Ahmed Khan v. Mst. Zaibun Nisa (1998 SCMR 2085),

(iv) Muhammad Har v. Amir Bano (1995 MLD 833),

(v) Abdullah Ghanghro v. Mst. Tahira Begum (1988 SCMR 970),

(vi) Noor Muhammad v. Mehdi (PLD 1991 SC 711) and Mst. Sughra Begum v. Aftab Ahmed (PLD 1987 Karachi 524).

8. Under similar facts and circumstances this kind of deposit either in previous MRC or previous rent case was considered to be a case of technical default in the case of Aftab Ahmed (Supra), the judgment in which was passed on the strength of aforesaid judgments as relied upon hereinabove. . The operative part of the judgment is as under:-

“The more directly applicable law on the point is reflected in Muhammad Yousaf v. Maqbool Ahmed, 1985 CLC 2862, Shahid Hussain v. Iqbal, 1986 SCMR 1069, Major (Retd.) A.S.K. Samad v. Lt. Col (Retd.) A. Hussain, 1987 SCMR 1031, Abdullah Ghanghro v. Tahira Begum, 1988 SCMR 970, Mehboob Jewellers v. Nur Ahmad, 1989 SCMR 1327, Habib Bank v. Noor Ahmed, 1990 CLC 1170, Rashid Jehan v. Muhammad Ashfaq, 1991 MLD 2619 and Noor Muhammad and another v. Mehdi, PLD 1991 SC 711, in the last of which pointed reference was made to the cases of A.S.K. Samad and Mehboob Jewellers. In all the foregoing precedents, which pertained to continue deposits in miscellaneous or other rent proceedings, rather than in accordance with tentative orders in the main rent cases, without carrying any patent contumaciousness and resulting upon circumstances lacking any obvious wilfulness to disregard orders, it was found that the tenant having been out of pocket to the extent of such erroneous, but bona fide, deposits could be purged of the technical default, if he was otherwise found, in effect, in substance and in content to have discharged his part of the obligations. The rule is sound, applies as it does to a penal visitation in the way of striking off a tenant's defence.”

9. In view of above, I found that the orders passed under section 16(2) of Sindh Rented Premises Ordinance, 1979 was harsh inasmuch as it struck off the defence without a proper scrutiny of ledgers of the rent that has already been deposited in MRC, interestingly in the name of same landlord and there could have been no inconvenience to the respondent/ landlord for the recovery of amount from such MRC.

10. With these observations, I allow this petition by setting aside the order of VII-Additional District & Sessions Judge Karachi South in FRA No.60 of 2020 dated 30.09.2020 as well as order dated 28.01.2020 passed by VII-Rent Controller & Sr. Civil Judge Karachi South under section 16(2) of Sindh Rented Premises Ordinance, 1979 in Rent Case No.748 of 2017.

Dated:

Judge