

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
**Mr. Justice Muhammad Shafi Siddiqui**

C.P. No. S-1321 of 2011

Muhammad Irshad  
Versus  
Mst. Khalida Afsar & others

Date of Hearing: 24.10.2017

Petitioner: Through Mr. Zahid Hussain Advocate

Respondents No.1&2: Through Mr. Ghulam Mujtaba Phull Advocate

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- This petition pertains to determination of fair rent under section 8 of Sindh Rented Premises Ordinance, 1979. Respondents No.1 and 2 filed an application under section 8 of Sindh Rented Premises Ordinance, 1979 on 14.07.2007. The notices were issued and the written statement was filed by the petitioner. The application was allowed and the rent was fixed at Rs.2800/- per month by the Rent Controller which in appeal filed by the petitioner was reduced to Rs.2328/- per month hence this petition is filed by petitioner/tenant.

I have heard the learned counsel and perused the material available on record.

The affidavit-in-evidence by respondent No.1 was filed who was subjected to cross-examination and so also the petitioner and his brother/witness Muhammad Ilyas. Respondent No.1 in paragraph 4 of her affidavit-in-evidence stated that the rate of rent of similar premises situated in similar circumstances in the same locality is not less than Rs.10,000/- per month. In paragraph 5 she stated that the cost of construction and repair have risen about 200 times. In paragraph 6 it is stated that during the intervening period not only rate of taxes and

levies have enhanced but the authorities have imposed new taxes in respect of the same premises and the demand notices/challans were filed as Annexure 'B' in respect of the year 2004 and 2005 and hence she claimed the rent at the rate of Rs.5,820/-.

The initial burden was discharged by the respondent No.1 by filing affidavit-in-evidence. She also stated in the examination-in-chief that the affidavit-in-evidence that was produced as Ex. A/1 is the same and correct and bears her signature whereas in the cross-examination she has stated that she does not know about the contents of the affidavit-in-evidence. It is perhaps cumulative effect of the evidence that is to be looked into. A solitary statement regarding contents of the affidavit-in-evidence cannot wash the entire proceedings such as filing of affidavit on oath and the statement that the affidavit-in-evidence bears her signature and that the contents are correct.

In the cross-examination an attempt was made to establish that a payment of Rs.20 lacs was made as Pugree. This fact alone would not call for any interference insofar as fixation of fair rent under section 8 of Sindh Rented Premises Ordinance, 1979 is concerned. It is based on four principles and a cumulative effect of these points is to be taken into consideration while deciding the application under section 8 of Sindh Rented Premises Ordinance, 1979. Even if any point out of four is missing it is the cumulative effect that counts. Absence of any one point or more would not be fatal for the determination of fair rent.

In the cross-examination an attempt was also made to show that there is no water connection and sewerage line and that there is no facility of toilet or car parking in the subject premises. However, it is not rebutted by petitioner that the adjoining premises in the same locality as mentioned in the application are with such facilities. The petitioner also could not distinguish it by cross examining the respondent

No.1 that other referred premises are not similar to the premises in question.

The Rent Controller while allowing the application fixed the rent at the rate of Rs.2800/- per month payable from the date of order, while the appellate Court reduced it to be Rs.2328/- and the enhanced rate was made effective from the date of filing of the Rent Application i.e. dated 14.07.2007 instead of 02.09.2010. All such factors/ deficiencies in evidence were taken into consideration while determining the fair rent of the premises in question to Rs.2328/- per month by the appellate Court however it appears that the rate of rent was made applicable from the date of filing the rent application i.e. 14.07.2007 without any cogent reasoning whereas Rent Controller made the enhanced rent applicable from the date of the order. The landlady was not aggrieved of any part of the order of the Rent Controller including the effective date i.e. date of order. When the landlady has not challenged the effective date of the order, the appellate Court was not competent to take into consideration that part of the order, which was not challenged by respondent No.1 as no appeal was preferred by her.

In view of the above although no interference is required as far as the quantum of rent is concerned i.e. Rs.2328/- per month however it is held that the same is payable from the date of order of the Rent Controller. The petition thus stands dismissed with this modification in the order of the appellate Court.

Above are the reasons of my short order dated 24.10.2017.

Dated:

Judge