

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-1628 of 2015

Zulfiqar Hussain
Versus
District Judge & others

Date of Hearing: 18.12.2017

Petitioner: Through Mr. Abdul Qadir Khan and Farah Awan
for petitioner.

Respondents No.3&4: Through Qazi Abdul Hameed Siddiqui Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Mst. Shafiq Fatima widow of Rafiq-Uz-Zaman filed an application under section 8 of Sindh Rented Premises Ordinance, 1979 for enhancement of rent at Rs.100/- per sq. foot. The subject matter of the application is cumulative enhancement of rent of eight shops fetching Rs.12000/- per month as accumulated rent. The application was contested by the petitioner by filing written statement and also in terms of evidence, which include cross-examination of the respondent's witness. Both the Courts below enhanced the rent at Rs.5000/- per shop per month i.e. Rs.40,000/- accumulated rent of eight shops. Hence, this petition.

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

The respondent pleaded that on account of cost of construction, increase in taxes and water and conservancy charges which have been raised enormously with the passage of time the enhancement of rent is inevitable. In support of the application, affidavit-in-evidence of Mst. Shafiq Fatima was filed who has stated in her affidavit-in-evidence that

out of 17 shops, eight shops are in possession of the petitioner since 1986 and originally rent of Rs.2000/- per shop was increased to Rs.12,000/- in the year 2010. She has also stated in paragraph 8 about the cost of construction, increase in taxes including but not limited to property tax and water and conservancy charges. In paragraph 10 of the affidavit-in-evidence the references of other rented premises were described which were fetching more than the amount at which the petitioner was paying rent. These referred premises include Soneri Bank in the same vicinity and two shops of the same building. The rent of the Soneri Bank was shown as Rs.14000/- per month whereas the other shops of the same building were fetching Rs.9000/- per month. The area in terms of Sq. foot was not disputed by petitioner.

As against this evidence the cross-examination was conducted wherein an attempt was made that the rent was enhanced from Rs.10,000/- to Rs.12000/- in the year 2010. Petitioner has attempted to show that the renovation of the building was not done since inception of the tenancy whereas an attempt was made to show that the construction of Rs.2000/- per sq. foot was not an approved rate of the government. An attempt was made to show that the rate of rent of the government property/KMC/CDGK is Rs.10/- regarding which the witness showed his ignorance.

As against the evidence of the landlord/respondent no material questions were put to the witness concerning the cost of construction, enhancement of taxes and more importantly the references of premises which were fetching higher rent than the subject premises/shops. The evidence with regard to the rate of rent of the premises situated in the same vicinity or even in the same building has almost gone unchallenged and unrebutted. The burden was thus satisfactorily discharged by the respondent while leading evidence.

In addition to the above one Mubbashir Ali Khan from Soneri Bank appeared in compliance of Court notice who produced the two rent agreements. He was not cross examined. Muhammad Sanaullah also appeared in compliance of Court notice for production of tenancy agreement in between him and respondent in respect of shops No.1, 2, 3 and 4 situated in Fatima Building and he was also not cross examined. Government rate of rent and approved cost of construction is immaterial for the purpose of determining the fair rent of the premises, which are privately owned and constructed as the consideration for government rate is distinct and different. Even otherwise it was only word of mouth that government rate of rent was Rs.10/- per sq. foot.

The four ingredients of Section 8 of Sindh Rented Premises Ordinance, 1979 are the basis of determination of fair rent. Any one factor may contribute towards its enhancement or declension of rent. It is also correct interpretation of Section 8 that it is a cumulative effect of four ingredients, which may determine fair rent. However, if any one of the ingredients for the determination of rent is established then just because other ingredients have not been applied or enforced or relied upon, the other established factor(s) may not be ignored. Section 8 is not in search of increasing the rent but it is in search of fair rent. If for instance any factor cancels or adversely reflects on other factors responsible for increase in rent, it may be taken into accounts for fair rent and any decrease in cost of construction and/or waiver of taxes, (which in any case is not stated here) is the burden upon the tenant to be discharged so that a cumulative effect be provided. In the instant case however the landlord primarily relied upon rent of similar premises situated in the same building or adjoining locality while other factors may not have been applied/relied upon by landlord but the tenant has

not stated those factors to have cancelled the effect of others that exist nor provides evidence to the contrary.

The other factors such as annual value of the premises or imposition of taxes may have contributed but the landlord has not taken shelter on those grounds. Therefore, in the absence of any evidence as regards other points/ingredients of Section 8 of Sindh Rented Premises Ordinance, 1979, the consideration of existing point can be given effect. On account of enforcing only one of the ingredients the landlord is not disentitled for the enhancement of rent.

The overall effect of the evidence that has come on record is that no interference is required in the concurrent findings of two Courts below. The landlord has satisfactorily established the case of enhancement to the extent of Rs.40,000/- accumulated rent of eight shops which comes to Rs.5000/- per shop and the same appears to be justified and lawful which order was rightly passed by the Rent Controller and maintained by the appellate Court. The petition is accordingly dismissed.

Above are the reasons of my short order dated 18.12.2017.

Dated:

Judge