

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-2084 of 2017

Muhammad Imran
Versus
Court of IV-Rent Controller Karachi South & others

A N D

C.P. No. S-2284 of 2017

Faiza Kassam & another
Versus
Muhammad Imran & others

Date of Hearing: 02.04.2018

Petitioner in CP No.S-2084 of 2017 & respondent No.1 in CP No.S-2284 of 2017: Through Mr. Mustafa Lakhani Advocate

Respondents No.3 and 4 in CP No.S-2084 of 2017 and petitioners in CP No.S-2284 of 2017: Through Mr. Iftikhar Ali holding brief for Mr. Nasrullah Malik Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These petitions are arising out of two appeals i.e. No.235 and 236 of 2016, which were disposed of by a common order dated 08.09.2017 by 11th. Additional District Judge Karachi South, hence are being decided through common judgment.

There were two rent cases filed by the petitioner one bearing No.242 of 2016 under section 15 of Sindh Rented Premises Ordinance, 1979 for eviction of the respondent on the ground of personal need and the other bearing No.40 of 2016 for determination of fair rent. The Rent Controller allowed both the applications i.e. the application for eviction of respondent No.1 as well as determination of fair rent at the rate of

Rs.10 lacs per month. As against this the respondents No.3 and 4 (C.P. No.2084 of 2017) preferred appeals and the appellate Court maintained the order passed on application under section 8 of Sindh Rented Premises Ordinance, 1979 while reversed the ejectment thus dismissed the ejectment application. The landlord (petitioner in CP No.2084 of 2017) has challenged the dismissal of ejectment application while the tenants (respondents No.3 and 4 in CP No.2084 of 2017) have assailed the fair rent in their separate petition bearing No.S-2284 of 2017.

I have heard Mr. Mustafa Lakhani, learned counsel appearing for petitioner in CP No.2084 of 2017 and for respondent in CP No.2284 of 2017, of which he waived notice and opted to straight away argue the matter along with his petition and perused the material available on record. On behalf of respondent in CP No.S-2084 of 2017 and for petitioner in CP No.S-2284 of 2017 Mr. Iftikhar Ali Lari, though has filed his power, but did not argue as his senior was to argue. He was directed to file written synopses which he did not.

In the wisdom of the appellate Court, the ejectment application on the ground that the personal bona fide need of the petitioner, was overshadowed by the claim of fair rent in terms of section 8 of Sindh Rented Premises Ordinance, 1979. The appellate Court in his concluding paragraph was of the view that he was doubtful whether a landlord can, at the same time get a fair rent determined for his rented property and get the tenants evicted on the ground of personal requirement. Although the appellate Court was in doubt while observing such but this point has now been finally determined by our apex Court that a claim of fair rent is separate demand of the landlord and that cannot overshadow the demand of personal requirement; both are independent reliefs and are not contradictory to each other. In this regard Mr. Lakhani has relied upon the cases of Shamsul Islam Khan v. Pakistan Tourism Development

Corporation Ltd. (1985 SCMR 1996), F.K. Irani & Co. v. Begum Feroze (1996 SCMR 1178) and Premier Mercantile Service v. S.M. Younas (PLD 1982 SC 79).

In the case of Altaf Hussain v. Nuzhat-un-Nisa reported in PLD 2000 SC 67 the Hon'ble Supreme Court went on to observe that:

“7. ... It is by now well-settled that mere demand for enhancement of rent and previous ejection applications would not, detract from the veracity of an eviction petition based on personal need if it is instituted in changed circumstances on a different cause of action and is substantiated by reliable evidence to prove bona fide personal need.”

Similarly in the case of Shamsul Islam Khan (Supra) the Hon'ble Supreme Court has observed as under:-

“We have heard both the learned counsel at some length. The desire of landlord to seek the maximum income from his property by itself does not furnish negation of bona fide. In this case it was ignored by the High Court that the landlord had both the options available. Either to seek more income by increase of rent and let the tenant stay or if that does not materialise as it happened, to evict the tenant so as to have the disputed premises for his own hotel which is adjacent to it. There was nothing illegal or improper about it. Moreover during the hearing the appellant's intention was put to test by offer of manifold increase in rent which was not accepted by him.

About the failure to specify the need it is observed that the eviction application was not properly read in the High Court. It is specified therein that the need was to extend the hotel facilities by including this property therein. There was no legal obligation to state more than that in the circumstances of this case. The High Court judgment on this point suffers from misreading and assumption of wrong principles. It accordingly cannot be maintained. That being so, there is no need to examine the second point about default.

In the light of the foregoing discussion this appeal is allowed and the High Court judgment is set aside regarding point of personal requirement only, with the result that the Rent Controller's order of eviction of the respondent on personal bona fide requirement of the appellant, is restored. There shall be no order as to costs.”

The provision of Section 8 of Sindh Rented Premises Ordinance, 1979 would run independently and has no bearing on the ground of

personal requirement. In case the landlord requires the premises for his personal bona fide need then a claim for determination of fair rent is always a right and choice under Sindh Rented Premises Ordinance, 1979 and landlord is always entitled to receive fair rent till such time the eviction order is passed and complied and hence the conclusion drawn by the appellate Court that the claim of fair rent and an application in this regard cause doubt upon the personal bona fide need is not sustainable under the law. The landlord cannot wait for his fate in his application for personal requirement and ignore his claim of fair rent till such time he/she get the possession. In all fairness he is entitled for fair rent from the date of its cause, so long he (tenant) does not vacate the premises. It is the genuineness and honest demand of the landlord that is to be seen independently and if the personal requirement is otherwise established then mere pendency of an application under section 8 of Sindh Rented Premises Ordinance, 1979 or even its grant simultaneously, would not detract the demand and determination of the landlord insofar as his personal requirement is concerned.

Since this was the only ground in the wisdom of the appellate Court that an application under section 8 of Sindh Rented Premises Ordinance, 1979 would overshadow the personal requirement, I set aside the order of the appellate Court insofar as eviction application is concerned on the ground of personal requirement and allow the application under section 15 of Sindh Rented Premises Ordinance, 1979. The tenant however shall vacate the demised premises within three months from the date of this order.

Insofar as the CP No.S-2284 of 2017, which is filed by the tenants challenging the fair rent is concerned, the burden to claim the fair rent at the rate of Rs.2 Million or as ordered by the Rent Controller and maintained by the appellate Court was upon the landlord. The

application under section 8 of Sindh Rented Premises Ordinance, 1979 was filed on or about 09.01.2016, just three months after the advocate for landlord had issued a notice under section 18 of Sindh Rented Premises Ordinance, 1979 demanding the rent at the rate of Rs.5 lacs per month w.e.f. November 2015 which letter was replied and the demand of Rs.5 lacs was declined followed by another notice of counsel on 13.12.2015 by the landlord asking for rent at the rate of Rs.2 Million.

The affidavit-in-evidence was filed by the landlord/respondent does not absolutely satisfy the requirement of Section 8 of Sindh Rented Premises Ordinance, 1979. There are four components for considering the application under section 8 of Sindh Rented Premises Ordinance, 1979 and in general it is a cumulative effect of all these four factors which may affect the determination of fair rent. The components have respective burden on the parties as per their assertion. The landlord/respondent has neither placed any material on record in terms of rent of similar kind of premises in the similar or adjoining locality by producing the rent receipts nor the imposition of new taxes were established.

One factor which may be relevant is the cost of construction and the value of the premises which to some extent was established by the landlord. It is claimed in the evidence that the demised premises was purchased in the sum of Rs.100 Million whereas it now worth more than 300 Million. It has also been agreed by the tenant's witness/attorney in the cross-examination that the cost of construction of 500 sq. yards plot was around 50 lacs in the year 1995 which has now raised to 1500 to 2000 per sq. feet. A general question was asked from the tenant that the maintenance and taxation was increased but the quantum and as to how many folds it was increased since it was rented out, was not established.

No doubt two property valuers i.e. Sadruddin Khan and Khalid Lakhani have appeared but except their personal views/oral statement no documents such as rent agreements of the similar premises in the same locality were filed. If they were doing business of real estate then as an estate agent they must have rented out many premises on rent in the area however neither of the two witnesses have placed on record any such rent agreement. The first witness Sadruddin Khan in his cross-examination has deposed that he was consulted by the respondent/landlord for assessing the rent of the demised premises. He was never summoned by the Court nor he visited the demised premises personally. He had no idea about the structure, facilities available and the number of rooms and/or constructed area of the demised premises. The witness namely Khalid Lakhani, was however given up by the landlord.

Surprising factor as against determination of fair rent at the rate of Rs.10 lacs is that three months before filing application, the respondent/landlord claimed future rent at the rate of Rs.5 lacs per month. How then, all of a sudden after three months when the application under section 8 of Sindh Rented Premises Ordinance, 1979 was filed in the month of January 2016 the rent was claimed at the rate of Rs.20 lacs (2 Million).

I do not see any justification for passing order for enhancement of rent at the rate of Rs.10 lacs per month as compared to the existing rent of Rs.2 lacs, which he (petitioner/tenant) started depositing in compliance of notice under section 18 of Sindh Rented Premises Ordinance, 1979 as previously he was depositing rent at Rs.150,000/-. It is a fact that not a single penny was spent on renovation or maintenance of the building ever since it was leased out to the petitioner/tenant.

The appellate Court has relied upon the affidavit of witnesses, out of whom one was given up, who claimed to be real estate agent however none of them filed any rent agreement in respect of their assertion as to the rent prevailing in the locality/area. The demised premises may have located in commercial hub/prime location but it is a matter of fact that it was and is a residential premises. It may have been surrounded by landmark buildings such as Marriot Hotel, Moven Pick Hotel, Karachi Club, PC Hotel and Chief Minister House but that would lead to nowhere unless the requirement in terms of section 8 of Sindh Rented Premises Ordinance, 1979 are met.

There is no other yardstick or formula except section 8 of Sindh Rented Premises Ordinance, 1979 that minutely governs the situation and the fair exercise of discretion is thus a paramount consideration. I, therefore, keeping the balance and by applying cumulative effect of the kind of evidence that came on record and considering the demand just before filing rent application, set the fair rent at Rs.6 lacs per month. I, therefore, allow petition bearing C.P. No.2284 of 2017 and modify order of the two Courts below to the extent of enhancement of rent at the rate of Rs.6 lacs instead of Rs.10 lacs and so also allow C.P. No.S-2084 of 2017 and set aside the order of the appellate Court on the ground of personal requirement and allow the ejectment application, as observed above.

Dated: 17.04.2018

Judge