Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 999 of 2020

Petitioner	:	Habib Carpets (Pvt.) Limited, through Mr. Zainul Abidin Jatoi Advocate.
Respondent No.1	:	Karachi Properties Investment Company (Pvt.) Limited, through Mr. Asif Ali Mastoi Advocate.
Respondents 2 & 3	:	IIIrd Rent Controller Karachi South and IInd Additional District Judge Karachi South.
Date of hearing	:	15.12.2021 and 16.02.2022.

O R D E R

NADEEM AKHTAR, J. **–** Rent Case No. 1181 of 2017 was filed by respondent No.1 against the petitioner under Section 15(2)(ii), (iii)(b), (iii)(c), (iv) and (v) of the Sindh Rented Premises Ordinance, 1979, **('the Ordinance')** seeking the eviction of the petitioner from Shop Nos.1, 2, 3 and courtyard, measuring 2,960 sq. ft., situated in the Hotel Metropole Building constructed on Plot No. 23/1, CL-5, Civil Lines, Club Road, Karachi **('the demised premises')**. The eviction of the petitioner was sought by respondent No.1 on the grounds that the petitioner had committed default in payment of the monthly rent and maintenance charges ; the petitioner had impaired the material value and utility of the demised premises ; and, the petitioner had unauthorizedly installed a generator in the open space causing noise, pollution, serious hazard and nuisance to respondent No.1 and other inhabitants of the building. The rent case was allowed by the Rent Controller vide impugned judgment dated 27.09.2019 on the grounds of default in payment of maintenance charges and impairment of the material value and utility of the demised premises, and also that the demised premises were being used by the petitioner for a purpose other than the purpose for which they were let out ; and, the petitioner was directed to vacate the demised premises within thirty (30) days. The petitioner challenged the aforesaid order of his eviction through First Rent Appeal No. 258 of 2019 which was dismissed by the appellate Court vide impugned judgment dated 18.11.2020. Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned the concurrent findings of the learned Courts below.

2. It was the case of the respondent No.1-company before the Rent Controller that it was the owner and landlord of the demised premises ; vide agreement to lease dated 01.03.1985 **('the agreement')**, the petitioner was inducted as a tenant in respect of the demised premises for a period of five (05) years at the monthly rent mentioned in the schedule to the agreement ; the agreement expired in the year 1990 whereafter it was extended by mutual consent ; the last rate of monthly rent was Rs.10,200.00, as stated in paragraph 4 of the rent case ; the monthly rent was never paid on time by the petitioner ; default was committed by the petitioner in respect of the maintenance charges ; the material value and utility of the building had been impaired by the petitioner as hoarding, board and air-conditioner were installed therein without the oral or written permission from respondent No.1 ; a generator was installed by the petitioner in the open space outside the demised premises ; the said generator was a cause of noise, pollution, serious hazard and nuisance for respondent No.1 and other inhabitants of the building ; the petitioner used to carry on business in the demised premises after office / working hours ; and, the colour of the doors of the demised premises was changed by the petitioner against the policy of the management of the building resulting in structural change, alteration and change in the demised premises.

3. In its written statement, the petitioner-company denied all the averments and allegations made by respondent No.1. It was stated by the petitioner that it was the tenant of the demised premises since the year 1967 and not 1985/1986 ; the monthly rent was always paid on time ; and, the terms and conditions of the agreement were never violated by it.

4. In view of the divergent pleadings of the parties, the following points for determination were settled by the Rent Controller :

> **"***(i) Whether the relationship of landlord and tenant exists between the parties ?*
>
> *(ii) Whether the opponent has committed default in payment of rent as well as delayed in payment of rent ?*
>
> *(iii) Whether the opponent has violated the terms and condition of lease / tenancy agreement, as well as committed such acts which have impaired the material value or utility of the premises ?*
>
> *(iv) What should the order be ?* **"**

It may be noted that the relationship of landlord and tenant between the parties was not disputed, however, a specific point for determination was settled in this behalf by the Rent Controller ; and, points for determination were not settled in

relation either to default in payment of the maintenance charges and or whether the demised premises were being used by the petitioner for a purpose other than for which they were let out to it.

5. Both the parties led their evidence by examining their respective authorized representatives who produced relevant documents in support of their contentions, and they were cross-examined by the other side. After evaluating the evidence produced by them, it was held by the Rent Controller that the relationship of landlord and tenant did exist between the parties ; the petitioner had committed default in respect of the maintenance charges ; and, the demised premises were being used by the petitioner for a purpose other than for which they were let out to it. In view of such findings, the rent case filed by respondent No.1 was allowed by the Rent Controller by directing the petitioner to vacate the demised premises within thirty (30) days. The appellate Court concurred with the findings of the Rent Controller and dismissed the appeal filed by the petitioner.

6. It was contended by the learned counsel for the petitioner that the monthly rent was/is inclusive of the maintenance charges and there was no agreement between the parties whereby the petitioner was liable to pay the maintenance charges separately or in addition to the agreed monthly rent ; the Rent Controller came to the conclusion that the petitioner had not committed default in payment of the monthly rent, however, it was held that the petitioner had committed default in payment of the maintenance charges ; such finding by the Rent Controller was against the evidence on record, particularly the agreement ; such finding was rendered by the Rent Controller despite the fact that no specific point for determination was settled in this behalf ; the finding that the demised premises were being used by the petitioner for a purpose other than the purpose for which they were let out was also rendered by the Rent Controller despite the fact that no specific point for determination was settled in this behalf ; the above findings, in the absence of points for determination, were uncalled for and contrary to law ; Rent Case No.1046/2017 filed by respondent No.1 against the petitioner for fixation of fair rent was dismissed by the same Rent Controller vide judgment dated 27.09.2019 by observing that the subject building was in a bad and dangerous condition ; whereas vide impugned judgment delivered in the instant case on the same day i.e. 27.09.2019, a completely opposite view was taken by the Rent Controller by holding that the petitioner had impaired the material value and utility of the building ; and, such contrary finding rendered by the Rent Controller in respect of the same building on the same day is not sustainable. In support of his above submissions, the learned counsel placed reliance on *Mrs.*

Fatima and another V/S Orient Travels (Pvt.) Ltd. through Chief Executive Tenant and 2 others ***(2009 MLD 1033),*** *Mst. Fakhra Begum and others V/S Mst. Sadia Ashraf and others* ***(2012 SCMR 1931),*** *Dr. Nazar Ali V/S Qutabuddin and 2 others* ***(2007 MLD 1700),*** *Waheed Ahmed and others V/S Babar Khan and others* ***(2016 CLC 1732)*** and *Mst. Zahida Perveen and another V/S Iftikhar Hussain and 2 others* ***(2019 YLR 474)***.

7. On the other hand, the impugned judgments were supported by learned counsel for respondent No.1 by submitting that the same are based on correct appreciation of evidence and correct application of law, and as such do not require any interference by this Court. It was conceded by him that it was held by the Rent Controller that the petitioner had not committed default in payment of the monthly rent and his eviction was ordered on the ground of default in payment of the maintenance charges despite the fact that no point for determination was settled in this behalf. He was unable to show any provision in the agreement, or any other arrangement between the parties, requiring the petitioner to pay the maintenance charges in addition to the agreed monthly rent. It was also conceded by him that respondent No.1 had not pleaded in its eviction application that the demised premises were being used by the petitioner for a purpose other than the purpose for which they were let out nor was any point for determination settled in this behalf.

8. I have heard the learned counsel for the parties and have carefully examined the material available on record and the law cited at the bar. As noted above, the relationship of landlord and tenant between the parties was not disputed, however, a specific point for determination was settled in this behalf by the Rent Controller and it was held that such relationship did exist between the parties. This point was redundant and was settled unnecessarily, and as such the findings thereon by the Rent Controller need not be discussed here.

9. Point for determination No.2 was regarding the delay and default in payment of the monthly rent. While deciding this point, it was held by the Rent Controller that respondent No.1 had failed in proving the delay and or default in payment of rent and as such it was not proved that the petitioner had committed default in payment of rent or had delayed the payment thereof. It is significant to note that no specific point for determination was settled in relation to the alleged default in payment of the maintenance charges. Despite the absence of a specific point for determination, it was held by the Rent Controller that the petitioner had failed to pay the maintenance charges and had committed default in terms of

Section 2(i) of the Ordinance according to which the definition of **"**rent**"** included water and electricity charges and such other charges that are payable by the tenant but are unpaid. It appears that the Rent Controller was of the view that the maintenance charges fall within the purview of **"**other charges**"** mentioned in Section 2(i) ibid as it was not the case of respondent No.1 that the petitioner had committed default in paying the water and electricity charges and it was already held by him that the petitioner had not committed default in paying the monthly rent. The Rent Controller failed to appreciate that under Section 2(i) ibid the tenant would be liable to pay only such other charges that are payable by him but are unpaid. In the instant case, the petitioner had specifically and consistently denied that it was liable to pay the maintenance charges in addition to the agreed monthly rent, and admittedly there was no agreement to this effect between the parties. Such stance was reiterated by the petitioner's witness in his cross-examination through a voluntary statement which was noted by the Rent Controller in the impugned judgment. Therefore, it could not be assumed or held that the maintenance charges fell within the purview of **"**other charges**"** mentioned in Section 2(i) ibid or that the petitioner was liable to pay the maintenance charges in terms thereof.

10. A perusal of the agreement shows that separate and additional charges for electricity, telephone calls and trunk calls were to be paid by the petitioner, but there was no stipulation therein that the petitioner would be liable to pay the maintenance charges separately or over and above the agreed monthly rent. As noted above, learned counsel for respondent No.1 was unable to show any provision in the agreement, or any other arrangement between the parties, requiring the petitioner to pay the maintenance charges in addition to the agreed monthly rent. It may be observed that the rights and obligations of the landlord and tenant are governed by the agreement between them, whether written or oral, provided the same are not inconsistent with any of the provisions of the Ordinance or any other law for the time being in force. Moreover, the parties to any such agreement cannot be expected or subjected to perform any such act or burdened with any such condition to which they had not agreed, nor can the Court direct any of the parties to do so. This view is fortified by *Mst. Fakhra Begum* (supra). Since admittedly there was no agreement between the parties requiring the petitioner to pay the maintenance charges in addition to the agreed monthly rent, and also as no specific point for determination was settled on this point, I am of the view that the finding on this point by the Rent Controller is not sustainable in law.

11. I shall now deal with point for determination No.3 regarding the alleged impairment of the material value and utility of the demised premises. In his cross-examination, the respondent No.1's witness had admitted that the agreement did not provide that the petitioner cannot affix its signboard on or cannot install an air conditioner in the demised premises ; the size of the signboard is not specified in the agreement ; the petitioner was allowed to make necessary alterations for its business ; respondent No.1 could not refuse requests for reasonable alterations ; the request for affixation of signboard was reasonable ; the demised premises were under the signboard ; respondent No.1 did not complain about the installation of the air conditioner nor was any evidence produced by it in this behalf ; the electricity wires appearing in the picture (exhibit A/8-A) were the responsibility of K-Electric ; the building was very old and its structure had become weak which could not be properly maintained due to lack of cooperation by the tenants ; and, in his affidavit-in-evidence, the respondent No.1's witness did not mention that the petitioner had not kept the demised premises in good condition. Despite the above admissions by the respondent No.1's witness, it was held by the Rent Controller that respondent No.1 had succeeded in discharging its burden in proving this point. It was also held that by affixing the signboard and installing the air conditioner, the petitioner had impaired the material value and utility of the demised premises. It may be noted that this point was decided by the Rent Controller against the petitioner for affixing the signboard and installing the air conditioner and not for installing a generator.

12. Regarding the signboard, it may be noted that the subject building and the demised premises were/are admittedly commercial in nature ; therefore, affixation of a signboard thereon was imperative, especially when there was admittedly no prohibition in this regard in the agreement. A perusal of the agreement shows that there was a specific clause viz. clause 5(c) therein providing use of one air conditioner (not exceeding 16,000 BTU) by the petitioner in consideration of the electricity charges specified therein. This clearly indicates that there was an agreement between the parties whereby the petitioner was entitled to install and use one air conditioner in the above terms. This important aspect was completely ignored by the Rent Controller. This fact as well as the admissions made by the respondent No.1's witness, as noted in the preceding paragraph, show that the evidence on record was not appreciated by the Rent Controller in its true perspective. Thus, this is a case of misreading and non-reading of evidence. In this context, the fact that two completely opposite views were taken by the Rent Controller on the same day viz. 27.09.2019 in respect of the same building, that is, in Rent Case No.1046/2017 filed by respondent No.1 against the petitioner for

fixation of fair rent that the subject building was in a bad and dangerous condition, and in the instant case that the petitioner had impaired the material value and utility of the building, cannot be ignored.

13. While deciding point for determination No.3 regarding the alleged impairment of the material value and utility of the demised premises, the Rent Controller also held that the demised premises were being used by the petitioner as a go-down, that is, for a purpose other than the purpose for which they were let out to it. It is significant to note that respondent No.1 had not pleaded this fact in its eviction application and had not made any such allegation therein. Moreover, no point for determination was framed nor was any evidence led in this behalf. The learned counsel for respondent No.1 has conceded to this position. Thus, the above finding by the Rent Controller, being beyond the pleadings and evidence on record, was unjustified, uncalled for and illegal. Accordingly, the findings on this point are also not sustainable in law or on facts.

14. In view of the above discussion, I have no hesitation in holding that by not appreciating the evidence on record in its true perspective and by not applying the law correctly, the Rent Controller failed in exercising the jurisdiction vested in him by law ; and, by maintaining such illegal order, the appellate Court committed a grave error in law. Thus, the illegal concurrent findings of the Courts below, being not sustainable in law, cannot be allowed to remain in the field.

15. Foregoing are the reasons of the short order announced by me on 16.02.2022 whereby the impugned judgments were set aside, and consequently this petition was allowed with no order as to costs and Rent Case No.1181 of 2017 filed by respondent No.1 was dismissed.

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