

IN THE HIGH COURT OF SINDH AT KARACHI

F.R.A. NO.06/2019

Appellants : Noor Ahmed Masoodi & another,
through Mr. Iftikhar Jawed Qazi, advocate.

Respondent : Mst. Zahida,
through Mr. Fasih-uz-Zaman Abbasi, advocate.

Date of hearing : 03.12.2019.

Date of Judgment : 14.01.2020

J U D G M E N T

Salahuddin Panhwar, J: Through instant FRA, Appellant has challenged the order dated 10.1.2019, whereby Rent Controller disposed of application under Section 17(3) of the Cantonment Rent Restriction Act, 1963. Accordingly, Appellant was directed to handover the possession of the demised premises to the Respondent (Landlord).

2. Precisely, relevant facts as set out are that: -

“Brief facts of the subject case as per eviction application are that the applicant is the landlady of the flat in question by virtue of registered Sale Deed dated 16.01.2006 and opponent No.1 is the tenant of the case premises at monthly rent of Rs.900/-. The learned counsel for the applicant contended that the applicant in the year 2006 vide Sale Deed purchased the building wherein case premises is located, and the opponent No.1 was duly informed and he started paying monthly rent to the applicant. However, during the course of time the rate of monthly rent was enhanced by 10% as such the present rent is Rs.3000/- per month. He further contended that the landlady due to her illness used to collect rent from opponent through rent collector i.e. her husband Mr. Iqbal Ahmed, however the opponent has failed in payment of rent since February, 2007. He further contended that the case premises is situated in a building constructed as ground plus five and one overhead tank is also situated at roof the way of the overhead tank is from the demised premises and the opponent No.1 had executed undertaking with the previous owner of the case premises on

30.05.2005. However, the opponent did not only violate the aforementioned undertaking but also default in payment of rent and sublet the case premises to the opponent No.2. He further contended that the applicant sent a legal notice to the opponent No.1 and the opponent No.1 through his reply denied the allegations of subletting but admitted the default in payment of rent and so also execution of undertaking mentioned above. Furthermore, the learned counsel for the applicant contended that in Para-6 of the reply, the opponent though denied the subletting but admitted that his family including his daughter is living in the case premises, who as per the knowledge of the applicant is still residing with her husband who is impleaded as opponent No.2 in the instant case. He further contended that opponent has failed in payment of monthly rent since February, 2007 and also handed over possession of the case premises to the opponent No.2 without prior permission of the applicant, hence the opponent is liable to be ejected from the case premises on these grounds. Moreover, the learned counsel for the applicant contended that the applicant requires the case premises for her personal bonafide need for her daughter namely, Soobia who is living with the applicant but requires separate accommodation, hence in view of the above facts and circumstances the opponent is liable to vacate the case premises immediately and handover the peaceful possession to the applicant.

On the other hand, the learned counsel for the opponents filed Written Statement raising objections that the applicant has had a lease hold rights only of the ground floor and first floor of the property in question. However, the demised premises have been constructed on upper floors of the first floor, therefore, the applicant does not have ownership rights and locus standi to file ejection proceedings against the opponent as the applicant does not have the locus standi and ownership rights onto the demised premises, hence, the relationship of the landlord and tenant does not exist between the parties and therefore on this score, the present rent case is liable to be dismissed with heavy cost. With regards to the contents related to eviction application, the learned counsel for the opponents contended that the applicant has only ownership rights of ground and first floor of the building in question, in which 5th floor demised premises have been constructed and has been in possession and occupation of the opponent prior to the purchase of ground and first floor by the applicant. Therefore, since applicant does not have the title of the demised premises the question of ownership of landlord and tenant does not exist between the parties. He further contended that the demised premises was purchased, possessed and occupied by the opponent No.1, his father and the daughter namely, Noreen Noor jointly and severally by one Mr. Mohammad Sadiq S/o Mohammad Yunus in the year 2005, against the Goodwill sale consideration of Rs.3,60,000/- alongwith monthly rent of Rs.700, which was mostly duly paid by the daughter of the opponent No.1, who is at present wife of

the opponent No.2 and this fact is well within the knowledge of the applicant. He further contended that when applicant purchased the ground and first floor of the building, the opponent and other residents of the building presumed that he has purchased entire building from previous owner of the building. However, later on it was disclosed that the applicant only purchased ground and first floor and does not have legal and lawful ownership rights of the whole building as it was claimed by the applicant, therefore, without delay, the opponent started to deposit the disputed monthly rent of the demised premises in MRC No.49/2007 before this Hon'able court. Furthermore, the counsel for the applicant contended that the applicant has been violating the law of the land for her ulterior motives as it is in the knowledge of the applicant that the daughter of the opponent has been residing in the demised premises with her husband who is Opponent No.2 in the instant matter and no question of default in payment of rent arises. He also contended that since applicant does not have locus standi to claim the Property in question, therefore, further plea of personal bonafide need does not arise."

3. Evidence was led by both parties on following issues (framed on 17.12.2015): -

1. *Whether the instant application is maintainable under the prevalent building by-laws/Cantonments rules? (OPP)*

However, Rent Controller at the time of deciding the issue, by impugned judgment declared above issue as redundant and framed two new issues that: -

1. *Whether opponent No.1 has sublet the premises in question to the opponent No.2?*

2. *Whether the opponent No.1 has committed willful default in payment of monthly rent?*

3. *What should the order be?*

4. Learned counsel for Appellant while relying upon the case law i.e. (1) PLD 1994 Lahore 252 [*Nazir Ahmed v. Mariam Salauddin Khawaja*], (2) 2004 MLD 943 [*Khairat Masih v. Aziz Sadiq*], and (3) 2005 CLD 454 [Karachi] [*A.F. Ferguson & Co. v. Securities and Exchange Commission of Pakistan*] contends that under Order XIV Rule 2 CPC, Rent Controller was bound to frame issues from the pleadings, but he failed and at the time of writing of judgment, two new issues were framed while declaring earlier issues as redundant. That exercise undertaken by the Rent Controller is unwarranted under the law and parties

were not provided opportunity to be heard and led evidence on the new issues. He also referred Section 19 of Cantonments Rent Restriction Act, 1927. According to the counsel for Petitioner, the Petitioner got possession of demised premises on rent alongwith his daughter and plea of landlord that Petitioner has sublet in question property to one Raza, who is his son-in-law residing with him and cannot termed as new tenant in any way. Further it is contended that there was no default committed by the Petitioner, admittedly he sent money order thereafter started to deposit the amount in MRC.

5. In contra, learned counsel for Respondent has relied upon the case law i.e. (1) 2004 SCMR 1130 [*Muhammad Akram v. Muhammad Ishaque*], (2) 2004 SCMR 1219 [*Safdar Ali Khan v. Public-at-Large*], (3) 1988 SCMR 4 [*Sughra Bibi v. Asghar Khan*], (4) PLD 1991 Karachi 452 [*Moizur Rehman v. Mrs. Fakhra Javed*], (5) NLR 1992 CLJ 78 [*Noor Din etc. v. Muhammad Hussain*], (6) 1986 MLD 1448 [*Abdul Shakoor v. Abdul Aziz*] (7) 2007 CLC 1245 [*Collector Land Acquisition v. Ghulam Muhammad*] and contends that new issues framed by the trial Court at the time of judgment is not illegality as all facts were in the knowledge of the parties, evidence was led by them and pleas taken by respective parties were adjudicated in shape of new two issues, hence impugned judgment is in accordance with law.

6. The core issue, begging an *answer*, in the instant appeal can be framed as:-

“Whether in Rent proceedings, the framing of *issue* is mandatory requirement or otherwise?”

7. At the outset, I would add that proceedings in **rent laws** are not *similar* to that of *trial proceedings* in a **civil suit** because of *legal* difference within terms '*Court*' & '*Tribunal*'. Before going further into the details of issue, it is important to add that there exists two Rent Laws which have got application in Sindh i.e *Sindh Rented Premises Ordinance, 1979* and *Cantonments Rent Restriction Act, 1963*. The status of both laws to be '*special enactments*' are not disputed hence, *legally*, the *special enactment* shall prevail. In both laws, the procedures have been detailed hence, in requirement of settled principle of law i.e **“Accumni observentia non-est recedenum”** (*things need to be*

done in the manner as specified and not at all) therefore, Rent Controller shall always be required to follow the detailed procedure while conducting the **proceedings**, particularly in those matters which have been addressed in the relevant *rent law*.

8. Resuming, I would say that application of the *Code* (CPC) in both *rent laws* have been for *specific purpose* i.e:-

'Sindh Rented Premises Ordinance, 1979

- i) summoning and enforcing attendance of any person and examining him on oath;
- ii) compelling production or discovery of documents;
- iii) inspecting the site; and
- iv) issuing commission for the examination of witnesses or documents;

Cantonments Rent Restriction Act, 1963

- i) summoning and enforcing attendance of any person and examining him on oath;
- ii) compelling the discovery and production of any document and other material evidence; and
- iii) issuing a commission for the examination of witnesses;
- iv) summoning and enforcing attendance of any person and examining him on oath;

Therefore, it would never be acceptable to allow all the provisions of the *Code* because same might result in frustrating the object of the *special enactment*. The *Controller*, needless to clarify, may allow certain requests even not provided by the *laws* if same appear to be for cause of *justice* without prejudicing the *confined / limited* competence / jurisdiction of the *Controller*. Such requests need not be with reference to section / order of *Code* but referral thereof may guide the *Controller* in deciding such requests which the *legislature* (including Superior Courts) defined and detailed for such particular situations through relevant procedural law or through interpretation thereof.

9. Having said so, it would be conducive to see whether the procedures, so provided in both *laws*, has any *specific* direction for framing of the *issue(s)* or *otherwise?* When it comes to *SRPO*, the proposition shall stand satisfied with referral to Section 19(5) of the Ordinance which reads as follows:-

(5) The Controller shall, instead of formally framing issues arising between the parties, state them briefly in the judgment and shall record findings on each such issue separately;

The above provision is sufficient to *safely* answer the proposition with reference to *SRPO* that in such proceedings the Controller shall not be obliged to **frame issues** , as required by the **Order XIV** of the Code (CPC), but shall be obliged to state them (issues / controversies) in judgment so as to determine them by recording *legal* findings. However, the position in matters, relating to CRRA, appears to be different because the provision of Section 17(8) thereof reads as follows:-

(8) On the first hearing of proceeding under this section or as soon thereafter as may be but before the issues are framed, the Controller shall direct the tenant to deposit in his office before a specified date.....

The aforesaid provision gives an *impression* that proceeding under the said **section** shall require framing of the *issues*. Since, it, *prima facie*, appears to be the commandment of procedural law *itself* therefore, the Controller, in matters relating to CRRA, would not be at liberty to determine issues / controversies at time of *writing* judgment as the Controller, in matters relating to *SRPO*, does enjoy but would require to frame *issues*. The proposition is answered, accordingly.

10. Having answered the *moot* question, the perusal of the record shows that the matter, *undeniably*, pertains to *Cantonments Rent Restriction Act, 1963* therefore, the learned Controller was justified in framing the *issue* first. Needless to add that purpose of framing issue is nothing but to put parties onto notice as what are the *controversies* between them (*parties*) which require an answer (*adjudication*) in *judicial proceedings*. This, in short, is a notice to parties to prove or disprove the respective claims (*controversies*) through

evidence. It is held in the case of Farman Ullah v. Latif-ur-Rehman (2015 SCMR 1708) as:-

“.... It may be pertinent to mention here that the purpose of framing issues in a civil litigation is that the parties must know the crucial and critical factual and legal aspects of the case **which they are required in law to prove or disprove through evidence in order to succeed in the matter on facts and also the points of law.**

Thus, if the parties never had a notice of *issues* (controversies) there shall always be possibility of *prejudice* to *fair-trial* which, being commandment of Constitution, shall have applicable in every proceedings where rights and liabilities of parties are *conclusively* adjudicated by a legal *fora/ authority*.

11. At this point, it would also be relevant that *issues* are, by law, would either be of **law** or **fact**. When it comes to issue of **law** the evidence may not *necessarily* be needed but when it is either *solely* of **fact** or mixed one then the evidence would be required before determination of the same as *proved* or otherwise. In the instant matter, the *sole* framed issue was of **law** hence in such eventuality the possibility of being not aware of requirement of **leading proper evidence** would always be there. I would further add that instant matter is not one of non-framing *proper issues* but is that of **non-framing issues** at all which the Controller has answered in the impugned order. This, *prima facie*, is a departure to requirement of law which has been pressed to have caused prejudice to guaranteed right of *fair-trial* therefore, I find it in all fairness as well to avoid any such prejudice to remand the case to the Controller. The matter to be processed from the stage of framing of issues which (issues framed while writing judgment) shall remain same unless *legally* sought to be amended. The legal issue, so framed, however was rightly answered as matter, *undeniably* is maintainable.

J U D G E