

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 824 of 2018

Date	Order with signature of Judge
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Petitioners : Dr. Sunil ahmed Hotwani, through
Mr. Iftikhar Jawaid Qazi advocate.

Respondent No.1 : Abdul Wakeel, through
Mr. Mohsin Qadir Shahwani advocate.

Date of hearing : 02.09.2022.

ORDER

NADEEM AKHTAR, J. – Rent Case No.602/2016 was filed by respondent No.1 / landlord against the petitioner / tenant for his eviction on the grounds of personal need and default in payment of the monthly rent. In the aforesaid case, a tentative rent order was passed by the Rent Controller on 18.01.2017 by directing the petitioner to deposit in Court an amount of Rs.2,490,000.00 being the arrears of rent for thirty-six (36) months from June 2013 to May 2016 within one month and future monthly rent at the enhanced rate mentioned in the said order. As compliance of the aforesaid order was not made by the petitioner, his defense was struck off by the Rent Controller through the impugned order dated 18.04.2017 with direction to him to vacate the demised premises within thirty (30) days. First Rent Appeal No.201/2017 filed by the petitioner against his eviction was dismissed by the appellate Court vide impugned judgment dated 21.11.2017. Through this 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. Learned counsel for the petitioner concedes that the petitioner did not comply with the tentative rent order passed by the Rent Controller. It is contended by him that the said order was without jurisdiction as the Rent Controller did not have the power or jurisdiction to give any direction to the petitioner to deposit the arrears of rent or future rent at the enhanced rate ; the calculation regarding the 10% increase in the monthly rent was made on his own by the Rent Controller which is not permissible under the law ; the tenancy agreement between the parties was originally for a period of eleven (11) months with effect from 01.10.2010 whereafter

the tenancy could be renewed only by mutual consent of the parties with 10% increase in the monthly rent at the time of each renewal ; and, since no further agreement for renewing the tenancy was executed by the parties, the petitioner was not liable to pay 10% increase in the monthly rent mentioned in the original agreement nor could the Rent Controller give any such direction. Learned counsel submits that as the tentative rent order was without jurisdiction, the petitioner was not obliged to comply with it, and the appellate Court has failed to appreciate this aspect.

3. Under Sub-Section (1) of Section 16 of The Sindh Rented Premises Ordinance, 1979, (**'Ordinance of 1979'**) where a case for eviction of the tenant has been filed, the Rent Controller, on the application filed by the landlord and after such summary inquiry as he deems fit, is required to determine the arrears of rent payable by the tenant and to direct him to deposit the same within the period specified in this behalf ; and, to further direct the tenant to deposit the monthly rent regularly on or before the tenth day of every month until final disposal of the case. The words "summary inquiry" used in this Sub-Section are significant as they imply that to pass a tentative rent order under this Sub-Section the Rent Controller is required to examine only the material before him, and not to make any in-debt inquiry. In the present case, the undisputed tenancy agreement and the pleadings of the parties were before the Rent Controller that were sufficient to draw a tentative conclusion upon a summary inquiry that there was a specific stipulation in the agreement regarding 10% increase in the monthly rent at the time of each renewal.

4. It is well-settled that a tenant becomes a statutory tenant if the agreement between him and the landlord expires but he still continues to retain the possession of the rented premises even after expiration of the agreement ; and, in such an event, the rights and obligations of the parties are governed on the same terms and conditions as stipulated in the agreement. It was held by the Hon'ble Supreme Court in Mrs. Zarina Khawaja V/S Agha Mahboob Shah (PLD 1988 SC 190) that the terms and conditions of an expired agreement continue in operation to the extent that are not repugnant to the rent law, and the same shall be enforceable whenever it is so required under the law. Similarly, in Abdul Latif and another V/S Messrs Parmacie Plus (2019 SCMR 627), the Hon'ble Supreme Court was pleased to hold that where the tenant continues to occupy the tenement after the expiry of the term mentioned in the

agreement, covenants of the agreement continue to apply except such covenants that conflict with the provisions of the applicable rent law. It may be noted that the stipulation in the agreement regarding renewal of tenancy with 10% increase in the monthly rent at the time of each renewal is not disputed by the petitioner nor was it denied by him in his written statement before the Rent Controller. It is not his case that upon expiration of the agreement the tenancy stood terminated or some other terms and conditions were agreed by the parties. Thus, upon expiration of the agreement the status of the petitioner became admittedly that of a statutory tenant and the parties were bound by the terms and conditions of the agreement. In view of the above, the contention that the 10% increase was only subject to fresh renewal by mutual consent of the parties is not tenable.

5. I shall now deal with the question raised by learned counsel for the petitioner that the Rent Controller had no jurisdiction to direct the petitioner to pay the monthly rent at the enhanced rate mentioned in the expired agreement. In this context, I may refer to Abdul Latif supra wherein a tentative rent order was passed by the Rent Controller under Section 17(8) of The Cantonment Restriction Act, 1963, (**'Act of 1963'**) directing the tenant to deposit the rent with 7% increase therein in terms of the agreement. As the said order was not complied with by the tenant, his defense was struck off by the Rent Controller under Section 17(9) of the Act of 1963 and he was directed to vacate the rented premises within sixty (60) days. The appeal filed by him was allowed by this Court by holding that default had not been constituted as the provisions of Section 7(5) of the Act of 1963 prohibit increase in rent beyond what is determined under the tenancy agreement unless a period of three years has elapsed. It may be noted that in the cited case the tenancy agreement was for a period of eleven (11) months and under the agreement the rent was to be increased by 7% after every eleven (11) months. It was held, *inter alia*, by the Hon'ble Supreme Court in the above-cited authority that parties are free to agree to a fixed rate of rent or a rate that is variable to be increased either by a certain amount or by a certain percentage of the existing rent after a specified period of time to which there is no prohibition in law ; the periodical increase agreed by the parties under the tenancy agreement has to be regarded as the rent determined by an agreement between them ; an increase, which is not unilateral but is with the mutual consent of both the parties, cannot be subsequently disputed by the tenant unless it is called in question through an application made

for fixation of fair rent ; only unilateral increase in rent or where fair rent has been fixed by the Rent Controller cannot be increased unless a period of three years has elapsed ; and, if the tenant does not file any application for fixation of fair rent, the consequence of non-payment of the agreed rent within the period prescribed by law would amount to commission of default in the payment of rent and would make him liable for eviction. The appeal filed by the landlord was allowed by the Hon'ble Supreme Court by setting aside the order of this Court and maintaining the order of eviction of the tenant passed by the Rent Controller.

6. It would be advantageous to discuss here the provisions of Sections 7, 8 and 9 of the Ordinance of 1979 briefly as they are relevant to the case at hand. Section 7 provides that no landlord shall charge or receive rent of the rented premises at the rate higher than that mutually agreed upon by the parties or the fair rent determined by the Rent Controller, as the case may be. Under Section 8, the Rent Controller, on the application of the landlord or the tenant, has the power to determine fair rent of the rented premises after taking into consideration the factors specified in the said Section. Like Section 7(5) of the Act of 1963, Sub-Section (1) of Section 9 of the Ordinance of 1979 provides that where the fair rent of any premises has been fixed no further increase therein shall be effected unless a period of three years has elapsed from the date of such fixation. It may be noted that Sub-Section (2) of Section 9 *ibid* provides that the increase in rent shall not, in any case, exceed ten percent (10%) per annum on the existing rate. The provisions of Section 9 *ibid* clearly show that the fair rent determined by the Rent Controller cannot be increased before three years, but in any other case the rent can be increased up to ten percent (10%) per annum as permitted by and envisaged in Sub-Section 2 *ibid*.

7. The facts of the instant case and those of the above-cited authority are strikingly similar except that the present petition has arisen out of proceedings initiated under the Ordinance of 1979, whereas those in the cited authority were initiated under the Act of 1963. In the present case also the tenancy agreement was originally for a period of eleven (11) months containing a stipulation for increasing the rent periodically ; the said agreement had expired ; the tenant / petitioner had not filed any application before the Rent Controller for fixation of fair rent ; and, the Rent Controller had passed a tentative rent order directing the petitioner / tenant to deposit the rent with periodical increase therein as stipulated in

the expired agreement. In these circumstances, the petitioner could not subsequently dispute such periodical increase demanded by respondent No.1 and or ordered by the Rent Controller. Moreover, the above stipulation for a periodical increase in the monthly rent, not being unilateral and or in conflict with any of the provisions of the Ordinance of 1979 but in fact being in line with Section 9(2) thereof and the admitted tenancy agreement, had to be regarded as the rent determined by the agreement between the parties and was enforceable as held by the Hon'ble Supreme Court in Abdul Latif supra. Thus, the tentative rent order passed by the Rent Controller was not illegal and or without jurisdiction.

8. It is well-settled that once a tentative rent order is passed in accordance with law, compliance thereof must be made by the tenant. It is an admitted position that compliance of the tentative rent order was not made by the petitioner. Therefore, the Rent Controller had no option, but to strike off his defense and to order his eviction as held by the Hon'ble Supreme Court in Safeer Travels (Pvt.) Ltd. V/S Muhammad Khalid Shafi through legal heirs, **PLD 2007 S.C. 504**. The impugned orders are in accord with the law laid down by the Hon'ble Supreme Court. The petitioner has not been able to point out any illegality or infirmity in the concurrent findings of the learned Courts below calling for any interference by this Court under its constitutional jurisdiction. In the above circumstances, the petition, being misconceived and not maintainable, is liable to be dismissed.

9. Foregoing are the reasons of the short order announced by me on 02.09.2022 whereby this petition was dismissed with no order as to costs.

J U D G E