

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1001 of 2021

[Syed Moazzam Hamidv..... Amir Noman & others]

Date of Hearing : 24.02.2023
Petitioner through : Mr. Muhammad Akbar Awan, Advocate.
Respondents through : M/s. Ahmed Ali Hussain, Saif Suhail & Muhammad Usman Ahmed, Advocates for the respondent No.1

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails findings of the learned trial Court dated 02.08.2021 as well as those of the first Appellate Court dated 11.12.2021 which are against the petitioners.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.286 of 2020 before learned Rent Controller, East at Karachi and pending adjudication of the said Rent Case, the respondent No.1 preferred an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 (“SRPO”) beseeching therein for arrears of rent, which application was allowed vide order dated 08.02.2019 with directions to the petitioner to deposit arrears of monthly rent @ of Rs.100,000/- per month w.e.f. September, 2017 with further directions to deposit future monthly rent at the same rate. Owing to the non-compliance of the order dated 08.02.2029, the respondent No.1 preferred an application under Section 16(2) SRPO in the said Rent Case praying for striking off the defence of the petitioner and eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 02.08.2021 and petitioner was directed to vacate the tenements within thirty days. The petitioner assailed the said order before the learned Appellate

Court by filing FRA No.81 of 2021 and the learned Appellate Court having heard the parties dismissed the said FRA vide Judgment dated 11.12.2021, hence the petitioner is before this Court against such concurrent findings.

3. The petitioner's entire case was premised on the argument that he had complied with the tentative rent order passed under Section 16(1) SRPO which is evident from the concurrent findings, therefore, no ground of striking off the defence of the petitioner arises but both the courts below failed to appreciate such fact and order of eviction from the tenement has been rendered without going through the record and proceedings.

4. Mr. Ahmed Ali Hussain, Advocate set forth the case of the respondent No.1/landlord stating that the petitioner being a tenant is required to comply the tentative rent order passed under Section 16(1) SRPO but he failed to do so, therefore, concurrent findings of the courts below are against him and the same findings cannot be disturbed in the constitutional jurisdiction of this Court.

5. I have heard learned counsel and have also considered the record to which surveillance of this Court was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law that the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to reweigh the evidence or make an attempt to judge the credibility of

witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Rent Controller went on to hold as under:-

“Once after passing tentative order, the appellant started to deposit the future monthly rent, he under the law was required to deposit the same regularly but **from perusal of payment history, the last future monthly rent was deposited by the appellant on 11.03.2020, with delay of one day, as such committed default. Thereafter, he stopped to pay the future monthly rent for four months and lastly he deposited such amount for defaulted period on 20.07.2020 through cheque bearing No.82983592 amounting to Rs.9,17,000/- therefore, by depositing such future monthly rent in lump sum tantamount to commit the default in payment of rent. Besides, after last payment of future monthly rent stated supra, the appellant/opponent stopped to pay the future monthly rent and in this context, learned counsel for the appellant during course of arguments admitted that no future monthly rent has been deposited by the appellant/opponent. Therefore, I feel no hesitation to hold that appellant/opponent has committed willful default in payment of arrears of rent in compliance of tentative order.**”

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the petitioners failed to comply with the order of the learned Rent Controller passed on application under Section 16(1) SRPO whereby he was directed to pay rent, which act is in complete defiance of the order of the learned Rent Controller. Not only so, the petitioner also failed to pay the arrears of rent as directed earlier. The prescriptions

of Section 16(2) SRPO are very clear that when the tenant fails to comply with the order of the learned Rent Controller passed under Section 16(1) SRPO, his defence is to be struck off and the landlord is to be put into possession of the tenement. It is considered pertinent to reproduce Section 16(2) SRPO which is delineated hereunder:-

“16. Arrears of rent.-(1).....

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.

(3).....”

7. The statutory prescriptions are very clear that where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises. The striking of defense in rent case is not mere technically as there is use of the word “shall” in Section 16(2) SRPO, 1979 that leaves no room to deny, defer or camouflage a statutory right accrued to respondent No.1 after acknowledging that the purpose of Section 16(2) SRPO, 1979 is to struck off the defence and the learned Rent Controller. The Appellate Court in my view rightly passed the impugned order against the petitioners. My lord Mr. Justice Mushir Alam, (as his lordship then was as Judge of the Hon’ble Supreme Court) in the case of Syed Asghar Hussain v. Muhammad Owais & others¹ held that *“when a tenant fails to deposit arrears of rent his defence must be struckoff. Hon’ble Supreme Court held that best course for the tenant could*

¹ 2018 SCMR 1720

have been to comply with the tentative rent order under S. 16(1) and to have contested the matter to its logical conclusion thereafter”.

8. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or

misreading of evidence is made out or gross illegality is shown to have been committed.²

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending applications.

Karachi
Dated: 24.02.2023.

JUDGE

Aadil Arab

² Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).