

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-850 of 2022

[Arshad Iqbal & another.....v..... Muhammad Hanif & others]

Date of Hearing : 06.02.2023
Petitioners through : Mr. Irfan Aziz, Advocate.
Respondents through : Mr. Fayyaz Memon, Advocate for respondents.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails findings of the learned trial Court dated 17.05.2022 as well as those of the First Appellate Court dated 21.09.2022 which are against the petitioners.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.584 of 2018 before learned Rent Controller, South 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 24.04.2019 with directions to the petitioner No.1 to deposit rent at the rate of Rs.10,000/- per month alongwith arrears of rent from November, 2015 before the 10th date of each month. Owing to the non-compliance of the order dated 24.04.2019, 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 petitioners and eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 17.05.2022 and petitioner was directed to vacate the tenement within 60 days. The petitioners assailed the said order before the learned Appellate Court by filing FRA No.146 of 2022 and the learned Appellate Court having

heard the parties dismissed the said FRA vide order dated 21.09.2022, hence the petitioners are before this Court against such concurrent findings.

3. The petitioners' entire case was premised on the argument that the petitioners are owner of the tenement and not the tenant 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. 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 re-weigh 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:-

“12. Admittedly, the appellant No.1 is enjoying the rented premises since 2015 and it is settled law that question of disputed title and ownership in respect

of demised premises is to be determined by the Civil Court and such controversy does not fall within the jurisdictional domain of Rent Controller. Reliance in this respect is placed on 2009 PLD 453 Supreme Court and PLD 2009 Supreme Court 45, thus the arguments of learned counsel for the appellants carries no weight stands repelled.

14. Record shows, along with the counter affidavit of an application under section 16(2) SRPO, 1979, the appellant Muhammad Iqbal deposited the rent of Rs.5,00,000/- in Rent Case No.584/2018 on 07.12.2019, however, the interim order was passed on 24.04.2019. Perusal of order passed on an application 16(1) SRPO, 1979 shows there was no specific time for depositing the rent in the Court. For the sake of arguments, the contention of learned counsel for the appellant is given due weight that there is no default on the part of appellant, then the rest of finding with regard to the future monthly rent is to be looked into very consciously and the trial Court has given specific directions as under:-

“..directed to pay future monthly rent at the rat of Rs.10,000/- per month which is payable on or before of 10th of each English Calendar month next following the month for which rent is due till disposal of this rent matter...”

15. **AS per above directions, the time would start from the month when the order on 16(1) SRPO, 1979 was passed then the rent for the month of April 2019 was to be paid on or before 10th of May 2019 and the challan produced by the appellant shows that he paid the rent in rent case No.584/2018 on 07.12.2019. Best course with the appellant could have been to comply with the tentative rent order under section 16(1) of SRPO, 1979 and contest the matter for its logical conclusion. The provision of Section 16(2) of SRPO, 1979 is of penal nature and stipulate that where tenant fails to deposit arrears of rent or pay monthly rent as directed u/s 16(1) SRPO, 1979 his defece would be struck off and landlord would be put into possession of premises. In the case in hand, the appellants chosen not to comply with the tentative rent order in its letter and spirit, as such lost the right of defense.**

[Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the petitioner 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. 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).....”

6. 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”.

7. 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

8. In view of the rationale and deliberation delineated above, the petition at hand is dismissed along with pending applications.

Karachi

Dated: 06.02.2023.

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).