

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-339 of 2023

Dated: _____ Order with signature of Judge(s)

1.For orders on CMA No.2725/2023.

2.For orders on CMA No.2726/2023.

3.For hearing of Main Case.

Date of Hearing : 02.06.2023

Petitioner : Darya Khan, through M/s Muhammad
Ramzan and Ghulam Fareed Khosa
Advocates

Respondent(s) : District & Sessions Judge Karachi (Malir)
& Others.

ORDER

MOHAMMAD ABDUR RAHMAN, J., The Petitioner has maintained this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, impugning the Judgment dated 28 January 2023 passed by the learned District & Session Judge, Malir Karachi in First Rent Appeal No. 36 of 2022 upholding the order dated 2 April 2022, passed by the IVth Rent Controller Malir Karachi in Rent Case No. 04 of 2022 on an application under Section 8 of the Sindh Rented Premises Ordinance, 1979 for fixation of fair rent.

2. Pakistan Steel Mills (Private) Limited i.e. Respondent No.2 is the owner of House No.G-44/04 Steel Town Bin Qasim Karachi (hereinafter referred to as the "Said Property") which is an official accommodation for employees of Pakistan Steel Mills (Private) Limited. The Petitioner instituted Rent Case No. 04 of 2022 contending that, the Petitioner had been allotted the Said Property by the Respondent No. 3 through the

Respondent No.4. Clause 4 of the terms of the allotment of the Petitioner describe the Petitioner as a "Licensee" and not as a "tenant".

3. The Petitioner has on 14 March 2022 retired from the service of the Respondent No. 3 and contends that he has various amounts that are payable by the Respondent No.2 in terms of his post retirement dues and other allowances. He stressed that as per the policy decision of the Respondent No. 2 and the Respondent No. 3 bearing No.ECM-SEC/447/2014 dated 7 February 2014 clause 13 has clarified that:

" .. 13. While discussing the Township allotment issues, ECM has allotted retention of PSM accommodation to retired employees on annual rent beyond their normal entitlement till they had not been paid gratuity / dues, Exercise in such cases would be granted on quarterly basis till the payment of gratuity dues, ECM noticed APEO/A&P for all such allotment/sanctions "

He further contended that a Petition bearing C.P No.S-298 of 2022 along with C.P No.S-187 of 2022 and C.P No.S-116 of 2022 had been heard by a learned Single Judge of this Court and who had been pleased to dispose of the Petition in the following terms:

" .. 1. Petitioners and Respondent No. 2&3 shall enter into the fresh tenancy agreement on the quantum of rate of rent as decided as per policy of Pakistan Steel Mills, they shall sign the rent agreement with Respondent No. 2 & 3 may be under protest preferably within six months and subsequently petitioners would be at liberty to challenge the same before the appropriate forum.

2. Needless to mention that amount as deposited in MRC shall be considered as fresh rent and earlier occupation by the petitioners over the Quarters of Pakistan Steel Mills would be considered as employee of Pakistan Steel Mills, accordingly, Pakistan Steel Mills shall not charge that amount from the outstanding of Petitioners or pending against the employer.

3. In case Petitioners failed to enter into the fresh agreement within six months, Petitioners will hand over their respective Quarters to the Pakistan Steel Mills."

4. The Petitioner states that he has now received a letter dated 31 May 2021 whereby he has been called upon to pay rent to the Respondent No. 3 under the new policy from December, 2020 to June, 2021 at the rate of Rs. 20,360 per month for a period of seven months amounting to Rs.142,520. He therefore maintained the application being Rent Case No. 04 of 2022 before the IVth Rent Controller, Malir, Karachi under Section 8 of the Sindh Rented Premises Ordinance, 1979 for a downward revision of the rent that is payable by him alleging that until all his dues have been cleared by the Respondent No. 3 no increase in rent could be made by the Respondent No. 3 in terms of the policy decision dated 7 February 2014.

5. The matter was heard and considered by the IVth Rent Controller Malir, Karachi, who by the order dated 2 April 2022 passed in Rent Case No. 04 of 2022 was pleased to hold that as per the allotment order issued by the Respondent No.3 in respect of the Subject Tenement the Petitioner was described as a licensee and not a tenant and was as such not able to maintain the application under Section 8 of the Sindh Rented Premises Ordinance, 1979 for fixation of fair rent and which was consequently dismissed.

6. Being aggrieved and dissatisfied by the order of the IVth Rent Controller, Malir, Karachi the Petitioner preferred First Rent Appeal No. 36 of 2022 before the District Judge Malir, Karachi, who reaffirmed that as the petitioner was merely a licensee, he was not competent to maintain an application under Section 8 of the Sindh Rented Premises Ordinance, 1979. The District Judge, Malir, Karachi also held that the reliance on the orders of this Court in C.P No.S-289 of 2022, S-187 of 2022 and S-298 of

2022 was misplaced as the Petitioner was not a party to these proceedings.

7. Mr. Muhammad Ramzan, Advocate and Mr. Ghulam Fareed Khosa, Advocate who appeared on behalf of the Petitioner agitated that as the Petitioner pays “rent” to the Respondent No.3 he must be classified as a “tenant” and not a “licensee” and both the IVth Rent Controller Malir, Karachi, in Rent Case No. 04 of 2022 as well as the District Judge Malir Karachi in First Rent Appeal No. 36 of 2022 have incorrectly exercised their jurisdiction in holding that the Petitioner was a “licensee” and not a “tenant”. He further contended that a Rent Controller under Section 8 of the Sindh Rented Premises Ordinance, 1979 is competent to act on the basis of the policy decision No.ECM-SEC/447/2014 dated 7 February, 2014 and to make a downward revision in the rent payable by the Petitioner to the Respondent No. 3 on that basis. They did not rely on any case law while presenting their arguments.

8. I have heard learned counsel for the Petitioner and perused the record. The jurisdiction of the Rent Controller to fix fair rent is prescribed in Section 8 of the Sindh Rented Premises Ordinance, 1979 as under:

- “ ... 8 (1) The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:
- (a) the rent of similar premises situated in the similar circumstances, in the same or adjoining locality;
 - (b) the rise in cost of construction and repair charges;
 - (c) the imposition of new taxes, if any, after commencement of the tenancy; and
 - (d) the annual value of the premises, if any, on which property tax is levied.
- (2) Where any addition to, or improvement in, any premises has been made or any tax or other public

charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration.

9. This Section has come to be interpreted by the Supreme Court of Pakistan In **Messrs Olympia Shipping and Weaving Mills Limited and Another vs. State Life Insurance Corporation Of Pakistan**¹ wherein it was held that:

“ ... 15. Besides the above decision of this Court, there are a number of reported as well as unreported judgments of this Court and the Sindh High Court in which it has been held that it is not an invariable rule of law that for determination of fair rent, all the four factors postulated in section 8 of the Ordinance must co-exist. A reference may be made to Shakeel Adilzada v. S.M. Rafi (1995 MLD 181) decided by one of us (Rana Bhagwan Das; J.) in the Sindh High Court holding that it was not at all necessary that all the four grounds must co-exist in each and every case for fixation of fair rent. In this case apart from referring to the judgments passed by this Court in C. P.L.A. No. 180-K of 1988 and in the case of Mst. Muneera Kaleemuddin (supra), an unreported judgment by Dr. Tanzilur Rehman, J. (as-he then was) in F. R. A. No.275 of 1986, M/s. Eastern Automobiles (Pvt.) Ltd., Karachi v. Pakistan National Shipping Corporation, Karachi (PLD 1993 Karachi 9) and Mst. Aqila Khatoon v. Abu Bakar Khan (PLD-1987 Karachi 541) were also taken into consideration. There is yet another unreported judgment from the Sindh High Court in Messrs Kadvavi Company v. Mian S.M. Yousuf Baghpati (F.R.A. No.610 of 1998, decided on 9-2-2000) by Sabihuddin Ahmed, J., taking the view that all the four factors enumerated in section 8(1) of the Ordinance have to be cumulatively taken into consideration for determination of a fair rent. Nevertheless they are only required to be taken into consideration for the purpose of exercising judicious discretion and cannot be applied mechanically. Identical view was expressed by Nazim Hussain Siddiqui, J. in the Sindh High Court in Noori Trading Corporation (Pvt.) Ltd. v. Abdul Ghafoor (1997 CLC 205) observing that no doubt section 8, of the **Ordinance reveals that in case of fixation of fair rent four factors are to be taken into consideration, but it is not necessary that all the four factors would be available in each and every case.**

16. Viewed in the light of the language employed by the Legislature and the earlier precedents it may be observed that four factors incorporated in law are in the nature of guiding principles for the Rent Controller for determination of fair rent. The cumulative effect of all these factors being quite relevant and helpful in arriving at a just conclusion must be given due weight. Nevertheless, common ground available in most of cases would

¹ 2001 SCMR 1103

be the prevalent market rent of the similar premises situated in similarly circumstances in the same or adjoining locality. It may thus, be made clear that existence of all the four conditions is not the invariable rule of law and presence of all factors in a case might lead to appreciation in determining rate of rent for the purpose of fair rent. Absence of any of the factors would not, in any case, prejudice the case of the applicant before the Rent Controller.”

(Emphasis is added)

As is clear, the jurisdiction of the Rent Controller under Section 8 of the Sindh Rented Premises Ordinance, 1979 arises where an application is made by either the “landlord” or the “tenant” to fix the “fair rent” of a tenement. While making such a adjudication the Rent Controller can **only take into consideration the four factors listed** in clauses (a) to (d) of Sub-Section (1) of Section 8 of the Sindh Rented Premises Ordinance, 1979 and **no other factors**. The language of the Section when read clearly implies that the list of factors prescribed are exhaustive and aside from the factors listed, no other factor can be considered by the Rent Controller while determining the fair rent. While it is open for the Rent Controller to **not** consider all of the factors at the time of determining the fair rent, the decision that he makes must include at least one of the factors enumerated in clauses (a) to (d) of Sub-Section (1) of Section 8 of the Sindh Rented Premises Ordinance, 1979, but **cannot** include any factors not listed in in clauses (a) to (d) of Sub-Section (1) of Section 8 of the Sindh Rented Premises Ordinance, 1979.

10. The Petitioner is asking the Rent Controller while determining the fair rent, to take into account clause 13 of the policy No. ECM-SEC/447/2014 dated 7 February 2014 of the Respondent No. 3, which he says should form the basis of a downward revision on the rent determined by the Respondent No. 3 as per the letter dated 31 May 2021 whereby the rent was settled at Rs. 20360 per month. I am clear that such a document

cannot be interpreted to come within the description of any of the four factors indicated in clauses (a) to (d) of Sub-Section (1) of Section 8 of the Sindh Rented Premises Ordinance, 1979 and would therefore be asking the Rent Controller to exercise a jurisdiction that the Rent Controller would not possess, rendering Rent Case No. 04 of 2022 that was presented before the IVth Rent Controller Malir Karachi as not being maintainable.

11. That in addition and as has been correctly pointed out by both the IVth Rent Controller Malir, Karachi in Rent Case No. 04 of 2022 and by the District Judge Malir, Karachi in First Rent Appeal No. 36 of 2022, the Petitioner status in the Said Property has been described as being a “licensee” and not a “tenant”. While this fact is disputed by the Petitioner, it is to be noted that the jurisdiction of the Rent Controller to determine as to whether the Petitioner is a tenant or a licensee as has correctly been held by the IVth Rent Controller Malir, Karachi in Rent Case No. 04 of 2022 and by the District Judge Malir, Karachi in First Rent Appeal No. 36 of 2022, can only be determined by a court of competent civil jurisdiction and not by a rent controller under the provisions of the Sindh Rented Premises Ordinance, 1979. Reliance in this regard may be placed on the decision of this Court in **Messrs Sign Source vs. Humayun H. Baig Muhammed**². In this case where there was a dispute regarding the termination of a right to use the roof of a building for the placement of a hoarding it was held that:³

“ ... None of the provisions of the Sindh Rented Premises Ordinance, clothes the Rent Controller to grant declaration, injunction of the nature claimed in the suit. Section 13 of the Ordinance, 1979 only provided protection to the tenant from dispossession otherwise than as provided under the Ordinance, 1979. Declaration of the nature and injunctive relief could only be granted by Civil Court under its plenary jurisdiction. None of the cases

² 2007 YLR 2287

³ *Ibid* at pg. 2294

cited at bar by Mr. Anwer, supports his contention that the section 13 of the Ordinance, 1979 gives jurisdiction to the Rent Controller to assume jurisdiction to grant declaration as to tenancy or licensee.

Rent Controller indeed in ejectment proceedings initiated at the motion of landlord, may incidentally examine the existence of relationship of the parties, before assuming jurisdiction to pass ejectment order. It does not mean that Rent Controller may act as a Civil Court and pass declaratory judgments and decree and issue injunctive order till determination of such controversy, as urged by Mr. Anwer Mansoor."

12. I am therefore clear that neither the Judgment dated 28 January 2023 passed by the learned District & Session Judge, Malir Karachi in First Rent Appeal No. 36 of 2022 nor the order dated 2 April 2022, passed by the IVth Rent Controller Malir Karachi suffer from any illegality or infirmity and are in consonance with law and for which reason I had dismissed this Petition on 2 June 2023 and the foregoing are the reasons for that order.

Dated: 27 June 2023.

JUDGE

Nasir P.S.

