THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 1042 of 2012

Petitioner	:	Muhammad Raheel Kamran through Mr. Amar Naseer advocate
Respondent No.1	:	Muhammad Shoaib in person
Date of hearing	:	18.05.2023
Date of judgment	:	**17th July2023**

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 29.02.2012 passed by learned V-Additional District Judge Karachi East in FRA No. 62 of 2011 and judgment dated 01.02.2011 passed by learned I-Rent Controller Karachi East passed in Rent Case No. 36 of 2005, whereby, ejectment application filed by the petitioner was dismissed.

2. Concisely relevant facts are that father of the petitioner rented out the shop No. 1, constructed on plot No.C-59 & C-60, PECHS, Karachi (hereinafter referred to as the demised shop) to the respondent No.1 in the year 1993 vide Tenancy Agreement dated 01.02.1993, which was later on gifted to the petitioner, who also executed fresh Tenancy Agreement dated 30.06.1994 with the respondent No.1. According to the petitioner, the respondent No.1 violated clause-3 of Tenancy Agreement by constructing locker room underground of the demised shop without permission of the petitioner, which fact came into the knowledge of the petitioner on 26.01.2005, as such the petitioner filed a complaint before KBCA as well as Rent Case, which was ultimately dismissed by learned Rent Controller and appeal against such judgment was met the same fate, hence this petition.

3. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned judgments without taking into consideration the material brought before them; that illegal construction of locker room raised by the respondent No.1 is violation of clause-3 of the Tenancy Agreement but his such act has not only weakened the structure of the building but also impaired material value and utility of the building; that the evidence brought before the Rent Controller has proved the case of the petitioner but the Rent Controller and learned Appellate Court

have not applied their mind judiciously while pa ssing the impugned judgments. It is lastly prayed that impugned judgments Rent Controller/ Appellate Court may be set aside. In support of his contentions he relied upon case laws reported as **2000 CLC 997. Karachi, 1999 SCMR 54, 2010 MLD 665-Karachi, 1995 MLD 456, 1987 MLD 2973- Karachi, 1999 MLD 1166, 2007 YLR 1224-Karachi, 2015 YLR 1714 and 2017 YLR Note 270.**

4. On the other hand respondent No.1 has refuted the arguments advanced on behalf of the petitioner and has submitted that basement was in existence since 1993 prior to the execution of Tenancy Agreement, hence no violation of any clause of the Tenancy Agreement has been violated by him; that both the judgment passed by learned Rent Controller and learned Appellate Court are well-reasoned and the same are based on cogent findings and do not require any interference by this Court.

5. Heard and perused the record.

6. Now, before proceeding further, it needs to be reiterated that this Court, *normally,* does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie,* appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened.* It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

> "Heard and perused, perusal of record shows that the applicant/appellant has filed application under section 15(iv) & (v) of SRPO, 1979 in order to get vacate the Shop No.1 built on Plots No.59-C & 60-C, Block 2, PECHS, Karachi, and the same be handed over to him vacant peaceful possession. It is further revealed from the perusal of record that mainly eviction of the respondent/ tenant was sought on the ground primarily that the respondent tenant impaired the material value of the demise premises by constructing the locker room underground of the demised premises without prior permission of the applicant/ landlord and secondly because of the alleged construction of said locker room nuisance has been caused to the neighbours and to the landlord. It is further revealed from the perusal of record that admittedly tenancy agreement was made between the parties on 30.06.1994. Perusal of record further shows that the claim of appellant/ applicant against respondent/ opponent that he had

> drigged the shop from inside/ basement and have built an underground room in violation of approved plan and without consent of the landlord. However, appreciation of evidence shows that the alleged basement was already in existence at the time of tenancy agreement which was as per record came into existence on 1994 and since it has been rightly observed by the learned trial court after going through the deem appreciation of the evidence and witnesses on the record came to the right conclusion that the alleged basement was in existence prior to the tenancy agreement, therefore, no question does arise in respect of the nuisance to the landlord and the neighbours."

7. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:

> "From bare reading of the above evidence, it came to field that the alleged basement was very much present at the time of inception of tenancy, otherwise, according to Structural Engineer such construction of basement is not possible without breaking the wall of neighboring shop and it is also not possible that neighboring shop keepers did not observe the construction thereof, which requires heavy machinery, many laborers and material, so it is not possible that opponent has raise such construction without knowledge and consent of applicant though there is no such complaint from any of the neighbourers. The report of Engineer further reveals that the construction of said basement, if looked with necked eyes, it is as old as several years, therefore, it cannot be said that the opponent has illegally constructed the basement, without permission & knowledge of the applicant.
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> The issue before this Court whether the said construction of basement caused any damage to the building or has impaired its value and utility and in view of above discussion it can safely be said that the opponent has not impaired the material value and utility of the demised premises but in fact has enhanced the same with prior permission & consent of the applicant. The reports of relevant contractors, meson and other observations favours the case of opponent. I am of the view that it is not possible for the tenant to use such heavy machinery in the building without prior consent of the owner or landlord. The applicant has deposed that he does not know as to when and how the opponent has constructed the basement, which supports the contention of opponent that prior to tenancy, the applicant's father has allowed him to construct the basement/locker room and at the relevant time he was very much present there. The evidence of applicant is so weak, which cannot be considered, while deciding these issues. From the cross-examination of applicant, it is proved that he himself has impaired the value and utility of the building by cutting the roof of ground floor, while raising the construction of 2nd and 3rd floor. Moreover, admittedly there is an old enmity between the parties and series of litigation remains pending between them in the past, which may result filing of this case.
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> It is also very important aspect of the issue that the persons (Contractor & Meson), who have constructed the locker-room have been examined in Court and they both have categorically deposed before the Court on oath that they have done it in the year 1992, which further supported the case of opponent that the locker-room was in existence in the demised premises prior to the opponent's induction as tenant therein, therefore, the question of constructing the same without permission does not arise.

> Since the applicant has failed to bring on record any such material, which may prove his contention and he has failed to prove the illegal construction of said basement by opponent without prior permission, therefore, the question of impairment of value and utility of the premises does not arise. The point is, therefore, answered as not proved."

8. I have gone through the evidence brought on record minutely. It is surprising to note here that though the petitioner is claiming that basement was dugout by the respondent No.1 which came to his knowledge after considerable delay, however, according to structural engineer, construction of basement was not possible without breaking the wall of neighbouring shop. However, neither any neighbourer shopkeeper noticed such construction nor any such complaint has been made by any neighbourer shopkeeper. Record reflects that according to report of Engineer the construction of basement was old as several years. Further the evidence of Contractor and Meson shows that they constructed the locker room in the year 1992, therefore, the findings of both the courts below appear to be well-reasoned and are not calling for any interference by this Court. The case law relied upon by the learned counsel for the Petitioner is not helpful in the present case. Accordingly, petitioner has failed to make out his case to interfere in the findings recorded by both the courts below; hence, the instant petition is dismissed.

J U D G E

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