

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

II-Appeal No.28 of 2021
(M/s. Wateen Telecom (Pvt.) Ltd.

Versus

IVth Additional District Judge Central Karachi & others)

Date	Order with signature of Judge
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Hg. of case/Priority

1. For orders on CMA No.1977/2024
2. For orders on CMA No.700/2021
3. For hg. of main case

19.08.2024.

Mr. Mohammad Mansoor, advocate for appellant
Mr. Saba Khan, advocate for respondent No.3
Mr. Miran Muhammad Shah, Addl: AG Sindh

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Respondent (Mujeeb-ur-Rehman), in the capacity of landlord filed a suit for recovery of arrears of rent amounting to Rs.4,17,500/- and removal of telecommunication equipment / tower No.8001 against appellant company from the roof of his property No.349, Street No.5, situated at new Mianwali Colony, Dafta Road, Qasba Colony, Karachi leased out to the appellant in terms of lease agreement dated 10.04.2008 against the rent of Rs.18000/- per month. It is stated that in August, 2009 appellant terminated the tenancy agreement by serving a notice upon the appellant, thereafter stopped paying rent to him. Hence, the respondent filed above suit in 2014 with the following prayers;

- i) To direct the Defendants to pay a sum of Rs.11,34,000/- (Rupees Eleven Lacs & Thirty-four thousand only) to the Plaintiff on account arrears of Rent since August, 2009 to till November, 2014 (i.e. Rs.18000 x 63 Rs.11,34,000/-), and the same be continued till removing the Tower NO.8001.
- ii) To further direct the Defendants to pay 25% Annual increase amount of Rs.2,83,500/-(Rupees Two Lac, Eighty-three thousand & Five hundred only) to the Plaintiff as per terms and conditions of Lease Agreement.
- iii) To direct the Defendants to remove Tower No.8001, "Green Field, measuring 30 x 40 Square feet for installation of Telecommunication Equipment and Telecommunication System, Open space as per Drawing for erection of 35 meter tower for the purpose of establishing a BTS Site alongwith associate equipment from the Immovable Property i.e. House/KESC No. 349, Street-5, situated at New Mianwali Colony, Dafta Road, Qasba Colony, Karachi or In alternate;

Nazir of this Honourable Court be Tower (mentioned above) as the directed to remove the premises in question is requires to the Plaintiff for his personal use of construction.
- iv) Any other relief or relives which may deems fit and consider may also be allowed.
- v) Cost of the Suit may also be awarded.

2. The appellant filed a written statement in response to the notices taking the stance that since tenancy was terminated in August, 2009 in black and white, the company was not liable to pay the rent thereafter. The company had approached the respondent so many times in order to remove the tower, but he refused to let them in or give necessary permission to do so. On the pleadings of the parties following issues were framed:-

- “Issue No.1. Whether suit of plaintiff is maintainable under the law?
 Issue No.2. Whether defendant is liable to pay a sum of Rs. 11,34,000/- to the plaintiff on account of rent since August 2009 to till November 2014 & the same be continued till removing the tower?
 Issue No.3. Whether defendant is liable to pay 25% annual increase amount of Rs.2,83,500/= to the Plaintiff as per terms and conditions of lease agreement ?
 Issue No.4. Whether the defendant has paid monthly rent up to January 2010 to the plaintiff & thereafter no rent was due to the plaintiff in view of the termination?
 Issue No.5. Whether plaintiff is entitled for the relief as claimed?
 Issue No.6. What should the decree be?”

3. After replying issues accordingly, in terms of issue No.6, the trial Court decreed the suit and directed the appellant to pay the rent up to March, 2018 when on its directions, under supervision of Nazir, the tower was removed from the property of respondent. The company impugned the said judgment in appeal but did not succeed. The appeal was dismissed vide impugned judgment dated 22.12.2020. The case of the company at best, as argued by its counsel, is that after termination of tenancy in August, 2009 between the parties, the company was not liable to pay any rent to the appellant, not the least when the company made efforts for removing the tower but the respondent did not permit it to do so.

4. On the other hand, learned counsel for respondent has drawn attention to the evidence of the representative of the company, who has admitted in his evidence that tower stayed installed over the roof of property of the respondent till it was removed in March, 2018 under the directions of the trial Court. He has further admitted in his evidence that company after 2009 did not pay any rent to the respondent.

5. Learned Addl: AG Sindh has supported findings of the impugned judgments and submitted that there are concurrent findings against the appellant, who has failed to show any material to establish the same based on

any miss-appreciation or non-appreciation of evidence, hence, the appellant has no case.

6. I have considered submissions of the parties and perused material available on record. Both the Courts below after appreciating the evidence of the parties have rightly concluded that the appellant is liable to pay the rent till March, 2018 when the tower was removed from the property of respondent. There is no evidence that the company after serving notice of termination of tenancy made any effort to remove the tower from property of the respondent. The tenancy agreement was in respect of presence (installation) of tower on the roof of property of the respondent, therefore, merely serving a notice of termination of tenancy would not absolve the company from paying the rent till the tower stayed put on the roof and was not removed by it.

7. It is an admitted position, as no contrary evidence has been shown that after serving the notice of termination of tenancy, the appellant did not make any effort to remove the tower and stayed oblivious of its obligation of removing the same. On the contrary, it was respondent, who filed the suit stating that the company/ appellant may be directed to remove the tower from roof of his property. Since the tower remained installed on the roof of the property, there was no question of limitation to assume that suit was barred by time in respect of recovery of arrears since 2009. Due to presence of the tower on the property, it was a recurring cause of action to the respondent to file suit. Therefore, findings of both the Courts below over the question of limitation taken by the appellant in the written statement are spot on and correct appreciation of merits of the case.

8. Consequently, I do not find any merits in this appeal. Learned counsel for the appellant at this juncture states that as per agreement 25% increase in the rent was to be made after three years, whereas the Courts below have granted such increase per year. This aspect of the case has been admitted by the learned counsel for respondent and has further stated that since the appellant has deposited the amount with Nazir, the Nazir may be directed to make calculation accordingly since 2009 with 25% increase every three years and give the same to the respondent, to which, learned counsel for the appellant and learned Addl: AG Sindh have recorded no objections.

9. Accordingly, this appeal in view of above discussion is dismissed along pending application(s).

10. Before parting with the judgment, it is necessary to direct the Nazir to calculate the amount due against respondent since August, 2009 till March, 2018 when the tower was removed with 25% increase in the basic rent of Rs.18,000/- per three years, and hand over the same amount to respondent on due verification and identification along with profit, if accrued, meanwhile.

The appeal is accordingly disposed of along with pending application(s).

JUDGE

Rafiq/P.A.