

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 1660 of 2015

[Askari Bank Limited versus Hafiz Ghulam Murtaza]

Plaintiff : Askari Bank Limited through M/s. Lubna Aman and Irfanullah Khan, Advocates.

Defendant : Hafiz Ghulam Murtaza son of Ghulam Mustafa, through Muhammad Ilyas Waraich, Advocate.

Dates of hearing : 31-10-2023 & 30-11-2023

Date of decision : 11-03-2024

## JUDGMENT

**Adnan Iqbal Chaudhry J.** - The prayer in the suit is for possession of factory premises on Plot No. 133, Sector-15, Korangi Industrial Area, Karachi [**Demised Premises**] by evicting the Defendant; for recovery of arrears of rent; and for compensation from the Defendant. It is not disputed by the Defendant that he was put in possession of the Demised Premises by Malik Ali Zain under a tenancy agreement dated 27.06.2006 which expired on 21.07.2009.

### Case set-up by the parties:

2. It was pleaded by the Plaintiff that it had bought the Demised Premises from Malik Ali Zain *vide* conveyance deed dated 22.06.2009; that thereafter, Malik Ali Zain had given notice dated 19.09.2009 to the Defendant to attorn to the Plaintiff; that the Defendant failed to pay rent to the Plaintiff despite undertaking to do so; that on the expiry of the tenancy agreement, the Plaintiff did not renew the same; that eventually by notice dated 28.05.2015 under sections 106, 109 and 111 of the Transfer of Property Act, 1882 the Plaintiff called upon the Defendant to vacate the Demised Premises and pay the arrears of rent; and that when he failed to do so, the Plaintiff filed suit.

Earlier, the Defendant had filed Suit No. 738/2011 before the Civil Judge to restrain the Plaintiff and Malik Ali Zain from dispossessing the Defendant from the Demised Premises, which was disposed of on 25.11.2014 with the order that the Defendant shall not be dispossessed without adopting due course of law.

3. By written statement, the Defendant raised the objection that the suit was barred by the provisions of Sindh Rented Premises Ordinance, 1979; and that the claim for arrears of rent beyond three years was time-barred. Though the Defendant admitted the tenancy agreement with Malik Ali Zain, he pleaded that he had no notice of the conveyance of the Demised Premises to the Plaintiff.

4. Given the *prima facie* relationship between the parties as landlord and tenant under the Sindh Rented Premises Ordinance, 1979 which bestows jurisdiction on the Rent Controller, this Court had at the preliminary stage called upon the Plaintiff's counsel to address that aspect of the matter. Reply of the Plaintiff's counsel was that the Demised Premises was a factory and thus did not fall within the purview of said Ordinance. The orders recording the said question and reply are dated 06.10.2017, 01.10.2018 and 05.11.2018. However, the question remained pending without determination.

Issues settled (recast below):

5. On 13.02.2020, the following issues proposed by the Plaintiff's counsel were settled by the Court :

1. *Whether the Plaintiff is the owner of the suit property vide Registered Conveyance Deed dated 22-06-2009?*

2. *Whether the Defendant had knowledge about transfer of ownership to the Plaintiff since the service of the notice dated 19-09-2009 upon him, issued by the Advocate of previous owner and subsequent visits and correspondence of the Defendant with the Plaintiff? (Annexures "IP" to "I" to the Plaintiff).*

3. *Whether there was any written Rent Agreement between the Plaintiff and the Defendant?*

4. *Whether the Plaintiff has served the Legal Notice dated 28.05.2015 under sections 106, 109 and 111 of the Transfer of Property Act, 1882 upon the Defendant?*

5. *Whether the Defendant is bound to pay arrears of the monthly rent to the Plaintiff from 22-06-2009 till date for possession/occupation at the rate of Rs.210,000/- per month till handing over the possession of the suit property to the Plaintiff?*

6. *Whether the Defendant is liable to deliver peaceful, vacant and physical possession of the suit property to the Plaintiff?*

7. *Whether the Defendant is liable to pay the compensation amount of Rs.1,000,000/- to the Plaintiff for filing false and frivolous Suit No. 738/2011 before XIX Civil Judge Karachi (East)?*

8. *What should the judgment and decree be?*

6. Since the above issues did not cover the question to the maintainability of the suit before this Court, an additional issue was settled on 30.11.2023 as follows :

*Whether the suit property being a factory does not fall within the definition of 'premises' in section 2(h) of the Sindh Rented Premises Ordinance, 1979 and therefore a civil suit for eviction is maintainable ?*

Submissions of counsel:

7. Learned counsel for the Plaintiff submitted that the Rent Controller has no jurisdiction in the matter inasmuch as the Demised Premises is a 'factory' which does not fall within the purview of the Sindh Rented Premises Ordinance, 1979 [SRPO], and hence the Plaintiff gave notice of eviction under section 106 and 109 of the Transfer of Property Act, 1882. He submitted that upon conveyance of the Demised Premises to the Plaintiff, the previous owner had given notice dated 19.09.2009 to the Defendant to pay rent to the Plaintiff; and that there were a series of letters on the record written by the Defendant to the Plaintiff acknowledging that the latter was landlord and that rent was payable to it.

Learned counsel for the Defendant conceded that the Plaintiff had become landlord of the Demised Premises upon conveyance of the Demised Premises to it. He submitted that though the Defendant did not dispute the Plaintiff's title to the Demised Premises, the

dispute was on the quantum of rent being claimed by the Plaintiff. He submitted that part of the claim for arrears of rent was also time-barred.

8. Heard learned counsel and perused the record.

Additional issue re maintainability of the suit:

9. I first take up the additional issue settled by the Court on 30.11.2023 as that goes to the jurisdiction of this Court and will determine the scope of this suit.

The precise submission of learned counsel for the Plaintiff was that the Demised Premises was a 'factory'; that the definition of 'building' and 'premises' in sections 2(a) and 2(h) of the SRPO do not cover a factory; and therefore the Rent Controller had no jurisdiction in the matter. Reliance was placed on *Bashir Ahmad v. Zubeda Khatoon* (NLR 1983 Civil 225) and *Amatul Begum v. Muhammad Ibrahim Shaikh* (2004 SCMR 1934).

10. The definition of 'building' and 'premises' in sections 2(a) and 2(h) of the SRPO, as well as the definition of 'building' and 'rented land' in sections 2(a) and 2(f) of the preceding West Pakistan Urban Rent Restriction Ordinance, 1959 [WPURRO], do/did not expressly exclude a 'factory' from their purview. That a factory is so excluded, was held by the Supreme Court in the case of *Rahman Cotton Factory v. Nichimen Co. Ltd.* (PLD 1976 SC 781), a case dealing with the provisions of the West Pakistan Urban Rent Restriction Act, 1957, more or less identical to the WPURRO that followed. The exclusion of a factory was held in the following circumstances :

“Clause (j) of section 2 of the Act defines 'urban area' as 'any area administered by a Municipal Corporation, a Municipality, a Municipal Committee, a Town Committee or a Notified Area Committee'. The ginning factory leased to the appellant is stated to be situate in Mandi Buhauddin. But there is nothing whatever to show that the factory is situate within the territorial limits of the local authority in Mandi Bahauddin. Moreover, the Act applies to 'residential building, non-residential building' and 'rented land' as defined in section of the Act and situate within an urban area. It is

common ground that the lease in the instant case was of a running ginning factory equipped with machinery for processing and ginning cotton and not merely of a 'non-residential building'. Therefore, it did not fall under any of the above three categories of the properties to which the Act applied. The statement in the preamble of the Act, that it applied 'to certain premises' within the limits of urban area is also not without significance. Reading these qualifying words with definitions of the above-stated three specified kinds of property defined in section 2, leaves no manner of doubt that the Act did not apply generally to all manner of properties in an urban area; else it was otiose to particularize the properties to which the Act applied. A fortiori, the Act excluded from its operation what were property known as a factory equipped with machinery requisite for a particular manufacturing process. In essence in all such cases, the lease is for the use of the machinery which is permanently fixed in certain defined premises and not of the premises simpliciter." (Underlining supplied for emphasis)

In *Bashir Ahmad v. Zubeda Khatoon* (NLR 1983 Civil 225 = 1983 CLC 390), Justice Ajmal Mian speaking for this Court, compared the definitions of types of 'building' and 'rented land' in the WPURRO with 'building', 'land' and 'premises' in the SRPO, and concluded that the difference was not as much so as to distinguish the case of *Rahman Cotton Factory* for the SRPO. He therefore held that a factory was excluded also from the purview of the SRPO. *Bashir Ahmed* was then followed by other learned single judges of this Court in *Muhammad Ismail v. Abdul Habib* (PLD 1993 Karachi 181) and *M.J. Hemani v. Abid Ali* (PLD 1994 Karachi 112).

The case of *Amatul Begum v. Muhammad Ibrahim Shaikh* (2004 SCMR 1943) cited by learned counsel does not shed light on the topic. Though it was observed that "Technically the Controller and the High Court may be correct that the premises having been let out for establishing a flour mill, ejection proceedings before the Controller were not competent ....", but nonetheless the Supreme Court set-aside those orders and ordered eviction to do complete justice under Article 187 of the Constitution in circumstances where the parties had been in litigation for 12 years and eviction was inevitable. Thus, there was no categorical finding that a flour mill or factory was excluded from the purview of the SRPO.

11. It is to be noted that in *Rehman Cotton Factory* the premises that was leased was a running factory equipped with machinery. For this reason, that the lease was in essence for the use of machinery permanently fixed at the premises, it was held that it could not be termed a lease of a building simpliciter. This distinguishing feature of *Rahman Cotton Factory* was noted by the Supreme Court in *Ahmad Hassan v. Abdur Rauf Khan* (1986 SCMR 494) as follows:

“Before us, the grounds taken before the High Court are reiterated. On the point of ouster of jurisdiction of the Rent Controller, reliance is placed on Messrs Rahman Cotton Factory v. Messrs Nichimen Co. Ltd. PLD 1976 S C 781. The authority cited by the petitioner is clearly distinguishable because, in that case, a ginning factory equipped with machinery for processing and ginning cotton was leased out as a factory, whereas in the present case, it is established as a fact that the petitioner was a tenant of the rented land and some superstructure thereon without any machinery. He is, therefore, tenant at the most of either rented land or non-residential building which comes within the ambit of the Ordinance and the Rent Controller would have jurisdiction in the matter.”

12. The case of *Ahmad Hassan* therefore clarifies that *Rahman Cotton Factory* would not apply where a premises intended for a factory is let without machinery affixed thereat. Such a premises continues to be ‘rented land’ or ‘non-residential building’ within the purview of the WPURRO in jurisdictions where still applicable, and a ‘premises’ within the purview of the SRPO, and thus within the jurisdiction of the Rent Controller. That has remained the accepted legal position through out as illustrated below.

In *Nisar Hussain v. Haji Abdul Fateh* (2001 CLC 1162), Justice Ejaz Afzal Khan speaking for a learned Division Bench of the Peshawar High Court held that:

“In order to oust the jurisdiction of the Rent Controller and to take a property out of the purview of the expression building as defined by the Ordinance it has to be established that at the time of lease, it was an Industrial Unit or a Factory. If the property leased or let out was a piece of land or a vacant site at the time of creation of its lease, it would essentially be covered by the expression building as defined by the Ordinance. .... “

The same view was taken by the Lahore High Court in *Muhammad Sharif v. Saeed Akhtar Hussain* (PLD 1985 Lahore 365); *Muhammad Ilyas v. Muhammad Younas* (1992 CLC 526); *Turner Smith & Company v. Additional District Judge Lahore* (1988 MLD 521); and *Ali Muhammad v. Ghulam Muhammad* (1988 CLC 318).

In *Muhammad Sabir v. Jehangir* (1987 MLD 872), Justice Saleem Akhtar speaking for this Court also held that the fact that the plot was situated in an industrial area did not oust the jurisdiction of the Rent Controller under the SRPO unless the industrial plot was let with machinery. The same view was taken by this Court in *Muhammad Yasin v. Abdul Lateef Issani* (1986 CLC 632) while noticing the case of *Ahmad Hassan*. These cases however do not disagree with *Bashir Ahmad* but only distinguish it, for in *Bashir Ahmed* the subject matter was not a building or land simpliciter, but a saw-machine that was let with a piece of land and therefore in line with the case of *Rahman Cotton Factory*.

13. Coming to the facts of the present case, the tenancy agreement described the Demised Premises as “*factory premises*” let to the Defendant for use “*as commercial trading or services and for manufacturing of any kind of goods commodities*”. Though the agreement indicates an existing ‘*structure*’, but no machinery along with that, and that is why clause-2 stipulated that on termination of the tenancy the Defendant shall deliver ‘*vacant possession*’. It is also not the case of either of the parties that the Demised Premises had been let with machinery. It is apparent that what was let to the Defendant was a vacant building without any machinery, and it was for the Defendant to install machinery as per the nature of trade, service or manufacturing intended thereat. Therefore, the Demised Premises in this case does not attract the case of *Rahman Cotton Factory* and it remains a ‘*premises*’ within the meaning of section 2(h) of the SRPO. It is not the case of the Plaintiff that the Demised Premises falls outside an ‘*urban area*’. Consequently, to the extent of the prayer for

eviction, the Plaintiff's remedy is before the Rent Controller under the SRPO. The additional issue stands answered in the negative.

Effect of the finding above:

14. The question now is whether this Court can or should consider the suit for recovery of arrears of rent when section 16(1) of the SRPO also empowers the Rent Controller to make an order for deposit of arrears of rent. But then, rent for the period sought to be recovered here may be time-barred before the Rent Controller in view of Article 110 of the Limitation Act which prescribes a period of 3 years from the date "when the arrears become due".

15. While dealing with section 13(6) of the WPURRO, the pre-cursor to section 16(1) of the SRPO, it was held by a 5-member Bench of the Supreme Court in *Ashfaq-ur-Rahman v. Muhammad Afzal* (PLD 1968 SC 230) that "recovery of rent is not the primary object of the Ordinance"; and that a Rent Controller acting under section 13(6) "cannot direct the tenant to deposit rent in respect of which the legal remedy to recover has become barred under the statute of limitation."

In *Pervaiz Akhtar v. Additional District Judge, Rawalpindi* (PLD 1990 SC 681) again it was held that :

"The Ordinance [WPURRO] is not a statute for the recovery of rent. A landlord who wants to recover the rent without seeking the eviction of his tenant has to file a suit for recovery of rent in the Civil Court. In case eviction is sought on the ground of default then he has to apply to the Rent Controller. The 'rent due' includes time-barred rent. The recovery of rent and eviction of tenant are two distinct cases. It is a different matter that a landlord cannot recover the amount due to lapse of time but the liability would not be extinguished. An action to recover rent in a Court of law may not be available but eviction of tenant on the ground of default will still be available to the landlord. The contention that an eviction application is not entertainable on the ground of default of time-barred rent cannot be accepted."

That case of *Pervaiz Akhtar* was then followed by the Supreme Court in *Muhammad Amin Lasania v. Ilyas Marine and Associates* (PLD 2015 SC 33), which was a case emanating from the SRPO.



16. The proposition that the SRPO is not intended as a statute for recovery of rent is borne out from the statute itself. Firstly, an order of deposit of arrears of rent under section 16(1) of the SRPO can follow only “Where a case of eviction of the tenant has been filed ....”. Secondly, the consequence of non-deposit provided in section 16(2) of the SRPO is summary eviction, not a decree for arrears of rent. Therefore, section 16 of the SRPO can neither be interpreted to oust a civil suit for recovery of arrears of rent, nor to defer that cause of action until an order for deposit is made by the Rent Controller thereunder.<sup>1</sup> Therefore, notwithstanding that the remedy for eviction lies before the Rent Controller, the suit is maintainable for recovery of arrears of rent. Needless to state that as and when the Plaintiff files an ejectment application before the Rent Controller and invokes section 16(1) of the SRPO, the Rent Controller will take into account any decree passed by the civil court for recovery of rent.

Issues re-casted:

17. Having concluded as above, the matter under Issue No.6 is not within the domain of this Court but before the Rent Controller. Issue No.2 is a question falling under section 18 of the SRPO, which in turn goes to the question of default for the purposes of ejectment under section 15(2)(ii) of the SRPO, and therefore also falls within the domain of the Rent Controller. With that, Issues No.s 1, 3 and 4 will have to be recast. Therefore, in exercise of Order XIV Rule 5 CPC, the issues are recast as follows:

1. *Whether the suit property being a factory does not fall within the definition of ‘premises’ in section 2(h) of the Sindh Rented Premises Ordinance, 1979 and therefore a civil suit for eviction is maintainable ? (already answered above)*
2. *Whether the Plaintiff is entitled to rent of the Demised Premises from the Defendant ?*

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<sup>1</sup> However, a suit for recovery of ‘fair rent’ determined by the Rent Controller under section 8 of the SRPO is on a different footing. See *State Life Insurance Corporation of Pakistan v. Plastic Rafters (Pvt.) Ltd.* (2013 SCMR 1623).

3. *Whether the Defendant is liable for arrears of rent @ Rs. 210,000/- per month w.e.f. 22-06-2009 till date of delivering possession of the Demised Premises to the Plaintiff?*

4. *Whether the Plaintiff is entitled to compensation of Rs.1,000,000/- from the Defendant for filing false and frivolous Suit No. 738/2011 before XIX Civil Judge Karachi (East)?*

5. *What should the decree be?*

Issue No.2:

18. It was admitted by the Defendant in his written statement that he was a tenant at the Demised Premises under a tenancy agreement dated 27-06-2006 (Exhibit 5/11) with Malik Ali Zain, who was the owner of the Demised Premises at the time. In para 3 of his written statement he also admitted that after expiry of said tenancy agreement he became a statutory tenant under the SRPO. The Plaintiff had then produced as Exhibit 5/3 a registered conveyance deed dated 22-06-2009 of the Demised Premises executed by Malik Ali Zain in the Plaintiff's favor. The preceding title documents were also produced as Exhibit 5/4, 5/5, 5/6 and 5/8. No objection was taken to the admissibility of said documents. In fact, the Defendant had not denied execution of said conveyance deed, rather his case was only that he was not given notice of such conveyance. Therefore, the Plaintiff had proved that upon execution of the conveyance deed dated 22-06-2009, it had become owner of the Demised Premises and had stepped into the shoes of the previous owner as landlord.

19. The Plaintiff had also produced letters dated 01.02.2010, 02.03.2010, 15.04.2010, 07.06.2010, 23.07.2010 and 18.10.2020 (Exhibits 5/12, 5/13, 5/15 to 5/18) written by the Defendant to the Plaintiff whereby he acknowledged the Plaintiff as landlord and was negotiating rent with the Plaintiff. Therefore, even if the Defendant was not served with the notice of change of ownership dated 19-09-2009, he had otherwise acquired knowledge of the conveyance of the Demised Premises to the Plaintiff and was bound to pay rent to the Plaintiff.

20. The upshot of the above evidence is that the Plaintiff is entitled to recover rent from the Defendant. Issue No.2 is answered in the affirmative.

Issue No. 3:

21. As per clause 2 of the tenancy agreement dated 27-06-2006 (Exhibit No. 5/11), the rent payable by the Defendant was Rs. 200,000/- per month. On the other hand, the Plaintiff seeks to recover rent @ Rs. 210,000/- per month, presumably because the Defendant had offered to pay such rent *vide* letters dated 01-02-2020 and 15-04-2010 (Exhibit No. 5/13 and 5/15). But that offer by the Defendant was conditioned on an extension in the tenancy. Admittedly, the Plaintiff did not accept that offer. Therefore, arrears of rent are recoverable @ Rs. 200,000/- per month, not Rs. 210,000/- per month. Though clause-2 of the tenancy agreement records a security deposit of Rs. 1,200,000/-, that cannot be taken into account at this stage as the refund thereof is conditioned on vacating the Demised Premises.

22. I advert now to the period for which arrears of rent are recoverable. The prayer in the suit is for recovery from 22-06-2009, whereas the suit was filed on 02-09-2015. As per Article 110 of the Limitation Act, the limitation prescribed for a suit for recovery of arrears of rent is three years from the date "when the arrears become due". Therefore, recovery for the period prior to 01-09-2012 is time-barred. In view of clause-10 of the tenancy agreement, specifying that monthly rent was payable in advance by the tenth of every month, the rent for the month of September 2012 would be included. The Defendant's witness had admitted on cross-examination that no rent whatsoever was ever paid to the Plaintiff. It was also not the case of the Defendant that he paid rent for September 2012 or for any month thereafter to the previous owner. Therefore, there is no adjustment that needs to be considered.

23. In view of the foregoing, the arrears of rent recoverable by the Plaintiff are computed from 01-09-2012 to 29-02-2024, being 138 months @ Rs. 200,000/- per month, a total of Rs. 27,600,000/-. Since the scope of the suit is restricted to recovery of 'arrears' of rent simpliciter i.e. without eviction, the rent that is not due as yet cannot be recovered in this suit.

Issue No. 4:

24. The compensation of Rs. 1,000,000/- sought by the Plaintiff against the Defendant is for filing "*false and frivolous Suit No. 738/2011*". The disposal order of that suit shows that the Plaintiff (defendant in that suit) did not make any prayer to the Court to award costs or compensatory costs under sections 35 and 35-A CPC. In any case, learned counsel for the Plaintiff did not demonstrate how that suit was false and/or frivolous, nor was any evidence led by the Plaintiff to show what loss was suffered by it specifically as a result of that suit. Apparently, that suit did not prevent the Plaintiff from taking legal action against the Defendant for eviction and/or recovery of rent. Therefore, Issue No.4 is answered in the negative.

Issue No. 5:

25. The suit is decreed in favor of the Plaintiff and against the Defendant for a sum of Rs. 27,600,000/- (Rupees Twenty Seven Million Six Hundred Thousand only) as arrears of rent with costs of the suit.

**JUDGE**

Karachi  
Dated: 11-03-2024