

IN THE HIGH COURT OF SINDH, KARACHI

SUIT NO.1223/2006

Plaintiff : Pakistan Industrial Development Corporation (Pvt) Limited,
Defendant : Pakistan Handicrafts, Sindh Small Industries Corporation, through Mr. Iqbal Khurram, advocate.
Date of hearing : 05.12.2014.

JUDGMENT

NAZAR AKBAR, J: Briefly stated, this is primarily a case for the recovery of the arrears of rent and the plaintiff has claimed that he had filed an application under section 8 of the Sindh Rented Premises Ordinance 1979 before the Rent Controller against the defendant for enhancement of the rent, which was allowed on 14.06.2001. However the case was remanded by the Appellate Court to the Rent Controller and even at the time of filing of this suit for recovery of arrears of rent the actual rent to be paid by the defendant to the plaintiff was undetermined and that is why on 28.01.2010 the proceedings of this were adjourned sine-die on the ground that First Rent Appeal filed by the defendants is pending before the Additional Sessions Judge. However prior to sine-die adjournment the defendant had already been declared exparte on 31.08.2008.

2. That suit for recovery of arrears of rent was filed on 12.11.2005 and the office has raised the following objections:-

“(i). It appears that the claim for recovery of rent from April 1987 till 11.11.2002 is barred under Article 110 of the Limitation Act (Para8 of the

plaint) and the plaintiffs shall only claim of the recovery of rent amount, from the defendants, from the period of three years immediately preceding the institution of the suit and not from April 1987 till 11.11.2002 as it was out of limitation.

(ii). Let section 79 CPC to be complied.”

The plaintiff counsel did not reply office objections and repeatedly sought time on 19.12.2005, 23.01.2006, 20.02.2006, 20.03.2006, 27.03.2006 and finally on 19.04.2006 he persuaded the Court to defer the decision on office objections till the same is taken up by the defendants as objections to the suit in their defense. Therefore these objections remained pending and despite the fact that the defendant was declared exparte on 31.03.2008 the plaintiff's counsel has not addressed the Court on above objections on this suit.

3. The plaintiff has filed affidavit in exparte proof on 26.11.2008. On 20.09.2009 this Court enquired from the counsel for the plaintiff that whether there was any “rent agreement” executed between the parties to which the learned counsel sought time to seek instructions and till date the answer is awaited. I have examined the plaint, no rent agreement was filed alongwith the plaint. Be that as it may, the question of maintainability is obviously the one which should have been replied by the plaintiffs. The learned counsel for plaintiff has not complied even the requirement of **section 79** of the Civil Procedure Code, 1908, since 2005 and the claim of the plaintiff for recovery of arrears of rent was hit by the law of Limitation.

4. The other aspect of this case is that there was hardly any cause of action in 2005 to file the present suit. The plaint shows that the rate of rent was not determined rather it was disputed as the application for determination of fair rent was pending. Therefore, the question of recovery of arrears of rent through this suit could not

have been arisen until and unless the rate of monthly rent has been determined finally. The total amount of arrears of rent claimed is based on the monthly rent calculated on the basis of an order in the rent case No.568 of 1987 as the order of Rent Controller was upheld in appeal. However, High Court in CP No.82/2007 set-side the appellate order and therefore the rate of rent became undermined, consequently “the cause of action to recover the arrears turned out to be non-existent since 1987 as the arrears of rent cannot be “due” and payable unless determined and found payable by the tenant. In this view of the matter the suit was even otherwise filed prematurely as there was no cause of action to claim a particular amount of rent as arrears of rent. Therefore the suit was liable to be dismissed not only in terms of the objections raised by the office rather it is also liable to be dismissed for want of “cause of action” as the cause of action had not accrued for recovery of arrears of rent since the rate of rent had not been finally determined on the date of filing of this suit. The suit for recovery of rent is to be filed only when the rent becomes “due” and payable and not before that.

5. In view of above facts and circumstances this suit is dismissed as not maintainable and pending applications are also dismissed as having become infructuous.

J U D G E

Karachi
Dated:19.12.2014

IK/PA