

ORDER SHEET

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1028 of 2024

(City School (Pvt.) Ltd. -vs- Muhammad Tariq & Ors.)

Date Order with signature(s) of Judge(s)

Hg:/Priority.

Date of hearing & Order: 06.08.2026.

Petitioner: Through M/s. Rajesh Kumar and,
M/s City School Sandeep Kumar, Advocates

Respondent : Through Mr. Riaz Alam Khan, Advocate
Muhammad Tariq

ORDER

Nisar Ahmed Bhanbro, J. This petition is directed against the conflicting findings of the courts below, whereby the learned Additional District Judge-IV (Central), Karachi, (**Appellate Court**) vide judgment dated 18.05.2024 (**impugned judgment**) allowed the First Rent Appeal No.35 of 2022 (re: *Muhammad Tariq v. City School Pvt. Limited*), filed by Muhammad Tariq (Landlord and respondent herein), and fixed the fair rent at Rs.800,000/- per month with effect from November 2018, subject to an annual increase of 10%, and set aside the order dated 17.02.2022 (**impugned order**) passed by the learned Ist Rent Controller (Central), Karachi, in Rent Case No.531 of 2018 (re: *Muhammad Tariq v. City School Pvt. Limited*), whereby the learned Rent Controller dismissed the rent application for want of jurisdiction and directed the parties to resolve the

dispute through arbitration in terms of Clause 20 of the lease agreement executed between them.

2. Learned counsel for the petitioner (Tenant) contended that the Learned Appellate Court failed to properly appreciate the provisions of law, as the rent agreement executed between the parties required them to resort to arbitration in case of any dispute arising out of the said rent agreement. He submits that the learned Trial Court rightly exercised its jurisdiction by holding that the rent agreement, being binding upon both parties, required the parties to seek redress of grievance through arbitration in terms thereof. He, therefore, prayed that this petition may be allowed and the impugned order passed by the Appellate Court may be set aside and that of the Trial Court may be maintained.

3. Learned counsel for the Landlord controverting the submissions contended that the petitioner is a tenant and, by virtue of the lease agreement, the provisions of the Sindh Rented Premises Ordinance, 1979, were applicable. He contended that an application for fixation of fair rent was filed which was declined by Learned Trial Court, however Learned Appellate Court after appraisal of evidence of parties and material on record allowed the rent case and fixed the fair rent as Rs.8,00,000/- per month, which, according to him, is the minimum fair rent. He contended that Lease Agreement did not provide for resort to arbitration in case of fixation of fair rent. He, therefore, prayed to dismiss the petition.

4. Heard arguments and perused the material available on record.

5. The short lived facts of the case are that the Tenant entered into a lease agreement dated 12.05.2010 for a period of five years to let out the demised premises viz. Bunglaow No F - 102 Block F North Nazimabad with its previous vowner Zohra Begum. The premises were purchased by the Landlord, such an intimation was furnished to the Tenant. Consequently, Tenant retained the possession of tenements as a Tenant of new owner. Landlord filed a rent case on 26.10.2018 under section 8 of the SRPO, seeking fixation of Fair Rent of Rupees 12,00,000 per month with an increase of 10 % per annum. On notices, Tenant appeared before Learned Trial Court, filed written reply and controverted the claim of Landlord. Tenant in its reply asserted that on change of ownership, notice under section 18 was given by Landlord and tenancy agreement with previous owner was kept intact wherein monthly rent of Rs 165,000 was fixed with 10 % increase per annum. It was further contended that the abrupt increase of about one million in rental was not warranted under the law, hence prayed for dismissal of rent case. Learned Trial Court framed points for determination and allowed the parties to lead evidence. In support of its claim Landlord examined himself and produced record including the rent agreement of House No F -11 Block F ad-measuring 980 square yards with M/s Beacon house School System to establish the factum of rent prevailing in the vicinity. Tenant also filed an affidavit in evidence of authorized person. After hearing the parties Learned Trial Court allowed the rent case and fixed fair rent of Rs 750,000 per month vide its order dated 20.09.2019. Landlord and Tenant being dissatisfied with the decision filed FRA No 114 of 2019 & FRA No 117 of 2019 before Learned District Judge Central Karachi, which was assigned to Learned Appellate Court for disposal in accordance with law. FRA was decided vide judgment dated 29.11.2019 and case was remanded back to trial court as a

consent between the parties evolved. On remand, Learned Trial Court heard the arguments of parties and again allowed the rent case vide order dated 12.12.2020 by fixing fair rent of Rs 750,000 with an annual increase of 10 % per annum from the date of the institution of rent case. Tenant and Landlord preferred FRA No 17 of 2021 and FRA No 26 of 2021 before Learned District Judge Central Karachi, which was assigned to Learned Appellate Court for disposal in accordance with law. However the case was again remanded back to trial court vide judgment dated 03.05.2021 in FRA No 19 of 2021 filed by Tenant for decision afresh and FRA No 26 of 2021 filed by Landlord was dismissed being timed barred. On remand, in the third round Learned Trial Court dismissed the rent case vide order dated 17.02.2022 for want of jurisdiction and in FRA filed by Landlord Learned Appellate Court allowed the appeal and fixed a fair rent of Rs 800,000 per month with an increase of 10 % Per annum, which hurt the Tenant to file instant petition.

6. Perusal of record revealed that Learned Trial Court dismissed the rent case for want of jurisdiction by referring to para 20 of rent agreement, which provided that in case of any dispute arising out of or in connection with the lease agreement, it was to be referred and settled through arbitration. For the sake of convenience para-20 of lease agreement is reproduced below:-

“20. If any dispute or difference arises from this agreement or on the interpretation of any provision of this agreement, the matter shall be referred to two arbitrators, one from each party, appointed by mutual consent of both the parties and both parties agree not to seek recourse from any court including the Rent Controller and may resolve the dispute or

*difference through arbitration under the Arbitration Act,
1940. The venue of the arbitration shall be Lahore."*

7. A perusal of Clause/Paragraph 20 of the lease agreement reveals that in the event of any dispute or difference between the parties regarding the interpretation of any provision of the agreement the matter could be referred to arbitration only and parties were precluded from approaching any court including Rent Controller. A further perusal of agreement shows that per Clause/Paragraph 17 of the agreement parties agreed to increase the rent at the rate of 5% per annum after the completion of each year. However, the lease agreement did not contain any clause relating to the fixation of fair rent. Consequently, the question of fixation of fair rent could not have been referred to arbitration, as not being the part of agreement and the determination of fair rent fell exclusively within the domain of the learned Rent Controller, therefore the matter ought to have been decided on merits.

8. Regarding fixation of fair rent, Section 8 of the SRPO, being relevant, is reproduced as under:-

"8. Fair rent. (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. From bare perusal of the above provisions of law, it is deduced that while determining the fair rent four factors must be taken into consideration. It is not necessary that all these four factors must co-exist, rather one or two grounds are sufficient for fixation of fair rent. In order to get fixation of fair rent of the rented premises, a rent case can be filed by both Landlord and Tenant under Section 8 of the SRPO, before the concerned Rent Controller, who has the statutory duty to fix the fair rent of the rented premises after taking into consideration the parameters articulated under section 8 of the SRPO. It is noticeable that the legislature has allowed a remedy under Section 8 of the SRPO for making an application not only by the landlord for determination of fair rent of the premises but also by the tenant to safeguard the interest of the tenant against the exorbitant or unrealistic demand of rent by the landlord. Sanguine to the fulfillment of consideration required to be fulfilled before fixation of fair rent by the Rent Controller, it is clearly provided under Section 9 of the Ordinance that where the fair rent of any premises has been fixed, no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of the Ordinance, whichever is later. While

sub-section (2) of Section 9 envisaged that the increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

10. A proper determination of fair rent helps in avoiding the occasion of charging the rent too high or too low, therefore multiple parameters and benchmarks have been fixed in the SRPO for the assistance of the Rent Controller which he must watch out for and consider at the time of fixing fair rent of any rented premises in its jurisdiction. There is no standardized formula of "one-size-fits-all" or any other orthodox method which can be applied across the board or universally for every rented premises but each rented premises has its own features such as its location, property category and size, parallel rent statistics, and distinctiveness, therefore, the Rent Controller is obligated to follow, with a conscious approach, the yardstick/indicators provided under Section 8 of the SRPO for determination of fair rent with regard to such particular rented premises for which an application has been made for determination of fair rent before him. As discussed supra, it is not the intent of the legislature that at the time of fixing fair rent by the Rent Controller for any premises, the litmus test of all constituents and characteristics provided under Section 8 of the SRPO should be present in unison or conjointly, but such conditions are provided as a yardstick which are required to be considered by the Rent Controller. The opposing party cannot claim that all conditions should work together or be congregated with strict proof on the touchstone of conditions word by word, if one or two grounds are proved satisfactorily and others are not, even in that set of circumstances, the Rent Controller may fix the fair rent proportionately and equitably, being mindful to the proven

grounds; but cannot decline the application on the ground that the applicant has failed to prove or substantiate all preconditions as sine qua non for fixation of fair rent as provided under Section 8 of the SRPO.

11. It is incumbent upon the Rent Controller while dealing with the matter of fixation of fair rent of tenement premises to examine the witnesses necessary to attract the provisions of section 8 of SRPO. For this purpose Rent Controller is empowered to summon and examine any witness as elucidated in Section 20 of the SRPO that empowers the Rent Controller and the appellate authority for the purpose of deciding any case under SROP with the same authority to that of a Civil Court under the Code of Civil Procedure, 1908 ("C.P.C.") in respect of only (a) summoning and enforcing the attendance of any person and examining him on Oath; (b) compelling production or discovery of documents; (c) inspecting the site; and (d) issuing commission for examination of witnesses or documents.

12. Since in the present case, the learned Rent Controller did not decide the rent case on its merits and dismissed the same solely on the ground of lack of jurisdiction, the appellate court, instead of adjudicating upon the issue of fair rent itself, ought to have remanded the matter back to the trial court for a decision afresh after proper appraisal of the evidence adduced by the parties. As the learned trial court had not examined the evidence on record and had dismissed the rent application for want of jurisdiction, the fixation of fair rent by the appellate court was beyond its scope, an exercise ought to have been undertaken by the trial court in the first instance.

13. For the foregoing reasons, a case for interference by this Court to exercise the powers of judicial review conferred under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973, has been made out. Accordingly, the impugned judgment 18.05.2024 passed by the learned Appellate Court and the impugned order dated 17.02.2022 passed by the learned Rent Controller are hereby set aside. The matter is remanded to the learned Rent Controller, to decide the rent case afresh on its merits on the basis of the evidence already available on the record, or if necessary to summon and examine any witness essential to arrive at a just and fair conclusion of fair rent envisaged under section 8 *ibid*. Learned Rent Controller shall decide the case within a period of Two Months from the date of receipt of this order. The learned Rent Controller shall not grant any adjournment to either side and shall proceed with the matter expeditiously preferably on day to day basis as rent case pertains to year 2018. The parties are directed to appear before the learned Rent Controller on **17.08.2026**.

14. The instant petition stands disposed of in the above terms. A copy of this order shall be facsimiled to the learned Rent Controller for compliance. Learned MIT-II shall ensure compliance.

JUDGE

Approved for reporting.