

**IN THE HIGH COURT OF SINDH, KARACHI**

IInd Appeal No.39 of 2010

M/s. Habib Industries (Pvt.) Ltd.

*vs.*

M/s. State Life Insurance Corporation of Pakistan

**Before: Mr. Justice Zulfiqar Ahmad Khan**

Date of Hearing : 04.10.2016.

Date of Announcement: 10.10.2016

Appellant : Through Mr. M. Azhar Faridi, Advocate

Respondent : Through Mr. Mukesh Kumar Khatri, Advocate

**JUDGMENT**

**Zulfiqar Ahmad Khan, J.:-** The instant appeal is probably sixth round of litigations between the parties which at one instance even reached to the Supreme Court in CPLA.

2. The brief facts, as highlighted by the learned counsel for the Appellant, are that the tenant was in possession of a 500 yards godown in respect of which rent was set at the rate of Rs.36.75 per month. The landlord filed case for fixation of fair rent before the rent controller, which was decided on 24.11.1994 where the controller fixed the rent at the rate of Rs.6,000/- per month. This determination was challenged by the tenant in FRA No.31/1995, where in its judgment, rent was reduced to Rs.4,000/- per month. The said finding still didn't satisfy the tenant who appealed it in the High Court, where the Court on 09.04.1997 reduced it and set the fair rent @ Rs.4,000/- per month. Still unsatisfied, the tenant filed a CPLA before the Hon'able Supreme Court, but it withdrew the same on 30.11.2000. However, while the war of litigation was still going on, the tenant left the premises on 08.09.2000 without paying the rent. Upon tenant having vacated the premises on 08.09.2000, the landlord filed a

suit for recovery of arrears of rents on 10.03.2001 for the period 09.04.1997 till 08.09.2000, at the rate of Rs.4,000/- per month.

3. Learned counsel for the Appellant submitted that suit for recovery of rent filed by the landlord on 10.03.2001 was time barred, since the tenant stopped paying rent on 09.04.1997, thus he is not liable to pay the claimed rent after the lapse of three years. The counsel drew Court's attention to Article 110 of the Limitation Act, 1908, where in respect of arrears of rent, limitation of three years is provided. In respect of the arrears having become due, the moot question became that whether the period of three years commenced from 09.04.1997 when the court finally fixed fair rent at the rate of Rs.4,000/- per month, or from 30.11.2000 when the Apex Court disposed of CPLA of the tenant. The learned counsel for the Appellant in support of his contentions relied upon the case *Mst. Saba and another v/s. Mrs. Patricia and 2 others* (1996 CLC 348).

4. The learned counsel's contention was that no suit for recovery of arrear of rent (under Article 110 of the Limitation Act) can be filed after the lapse of three years from the date when the rent became due, therefore, since the rent became due on 09.04.1997 (on the determination of the High Court), the landlord should have filed suit for recovery within three years from the said period and since the said suit is filed on 03.10.2001, it is time barred, therefore the tenant is not liable to pay any arrears of rent. The learned counsel for the Respondent challenged above averments and submitted that the suit for recovery of rent was well within time.

5. To start with, I find it prudent to discuss the case law (1996 CLC 348) heavily relied upon by the counsel of the Petitioner, which in my view can be very easily distinguished. In the said case, while there was an accumulation of rent payable by the tenant, however there was no dispute as to the quantum of the rent payable by the tenant, thus the matter as to

the very value of the indebted rent was not sub-judice. It was a straight forward case for the recovery of arrears of rents from the tenants for the period Nov-86 till Mar-89; but the suit was filed on 10.01.1993 after more than three years since the date when rent became payable. Thus the court came to the conclusion that the suit was time-barred as it was filed long after the three years' term specified under Article 110 expired. As mentioned earlier, in the case at hand, there was no definite and conclusive finding on the value of the rent payable until the disposal of the CPLA by the Apex Court on 30.11.2000. Thus the actual and final determination of amount of rent payable by the tenant was made definite on the said date.

6. As mentioned above, of critical importance in the case at hand is that an appeal against the orders of the High Court (of fixing fair rent @ Rs.4,000 per month) was pending in the Apex Court which was only withdrawn by the tenant (and disposed of accordingly) on 30.11.2000. Thus the landlord could not have filed a suit for recovery of rent when the matter was sub-judice as to the very quantum of rent payable by the tenant, as the order of the High Court was under appeal and the exact amount of rent legally recoverable was not ascertainable.

7. Of specific mention is the case of 1968 PLD SC 230, wherein the Apex Court held that the word 'due' would carry the connotation of "due in law or recoverable in an action in law", consequently a suit for recovery of rent can only be filed when the rent becomes legally recoverable and that is the point of time, when the cause of action to recover the arrears accrue. Which in the instant case only crystalized on the disposal of CPLA of the tenant on 30.11.2000, thus the suit filed for recovery of rent on 10.03.2001 was not time-barred. This view find supports from the findings given in the case of Attaullah Malik vs. Rashid & Another (1972 PLD Khi 273).

8. Similar issue as to the payment of arrears of rent has been seen from a totally different angle in the case of Nabin Chandra Ganguly vs. Munshi Mander (A.I.R. 1927 Patna 248) where it was held that the implied contract mentioned in Section 108 of the Transfer of Property Act, 1882 (the case was of a lease on rent) could be read to fall within Article 116 of the Limitation Act and a suit for compensation for breach of the covenant would be governed by the six years' rule of limitation. In the case of Tricomdas Cooverji Bhoja vs. Gopi Nath Jiu Thakur, (A.I.R. 1916 P.C. 182), the question arose whether where rent was payable under a registered document, the Article 110 of the Limitation Act which applied expressly to a suit for recovery of arrears of rent was to be applied, or Article 116 with the larger period of limitation was applicable? Privy Council held that Article 116 is to be applied to all cases in which the contract was in writing registered, although such cases may have been provided for in the earlier portion of Schedule-1 of the Limitation Act. This shows that a suit for compensation for breach of a contract of rent would fall within Article 116 rather than Article 110.

9. For the aforesaid reasons, I am entirely satisfied both on principle and on authority that the rent became legally recoverable as of 30.11.2000 when the Apex Court disposed of tenant's CPLA, thus the suit for recovery of rent filed on 10.03.2001 being within three years' time stipulated by Article 110 of the Limitation Act, 1908 was not time-barred.

10. The result is that the instant second appeal fails and it is hereby dismissed with cost of Rs.5,000.

Judge