

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

Suit No. 566 of 2013

Tariq Rafi

Versus

Topgen Health Care/T.G. Pharma and others

Dates of hearing : **23.01.2017**

Date of Decision : **27.04.2017**

Plaintiff : **Through Mr. Abdul Wajid Wyne, Advocate.**

Defendant No.2 : **Through Mr. Chaudhary Atif Rafiq,
Advocate.**

Case law cited by the Plaintiff's counsel.

1. 1994 CLC Karachi Page-602
*(Noor Timber Importers, Karachi Versus
Haji Deen Muhammad and Sons Karachi).*
2. PLD 1993 Karachi Page-181
(Muhammad Ismail Versus Abdul Habib).
3. PLD 1994 Karachi Page-11
(Mrs. M.J. Hemani Versus Abid Ali)
4. 2004 SCMR 1934 [Supreme Court of Pakistan]
(Mst. Amatul Begum Versus Muhammad Ibrahim Shaikh)
5. **1985 SCMR Page-955**
*(Bashir Ahmed Versus Additional District Judge, Gujranwala and
others)*

Case law relied upon by Defendants' counsel.

PLD 2016 Supreme Court Page-730
(Combind Investment [Pvt.] Ltd Versus Wali Bhai and others)
[Hotel Palace Case]

- Law under discussion:
- (1). Sindh Rented Premises Ordinance, 1979 (SRPO).
 - (2). Code of Civil Procedure, 1908 (CPC).
 - (3). The Constitution of the Islamic Republic of Pakistan, 1973.

ORDER

Muhammad Faisal Kamal Alam, J: CMA No.8436 of 2015 (under Order VII Rule 11 Read with Section 151 of CPC) has been preferred by Defendant No.2, with the prayer that nature of the present cause falls within the purview of the Sindh Rented Premises Ordinance, 1979 (**SRPO**) and thus, the concerned Rent Controller has jurisdiction to decide the matter and not this Court.

2. The Plaintiff has filed the present action at law against the Defendants, *inter alia*, for possession of the factory premises, recovery of arrears of rent and other reliefs, which have been reproduced herein under_

“The Plaintiff above named prays for the Judgment and Decree in his favour and against the Defendants as under: -

- a) **Direct the Defendants to handover the peaceful immediate possession of Industrial Factory at Plot No.E-30, Sector 15, Korangi Industrial Area, Karachi, to the Plaintiff along with all fittings, fixtures, manufacturing license of T.G. Pharma, all registrations of products each and every thing and desist from removing anything from premises without Court permission and also return all belongings with factory along with correspondence with M.O.H Inspection ?Register, Batch, Records and all other assets, fixtures, machines, batch, retaining sample production and sale record etc.**
- b) **Direct the Defendants to pay outstanding rent Rs.45.00 Million plus delay surcharges.**
- c) **Direct the Defendant No.2 to henceforth deposit rent from 1st January of 2012 in Court @ Rs.11,71,875/- per month.**

- d) Direct the Defendants to deposit in Court the cost of goods left at factory worth Rs.3,880,000/- with profits as now the value of goods is almost to Rs.10 Million.**
- e) Direct the Defendants to provide this Hon'ble Court all monthly utility bills copies i.e. also included in the meanings of rent being conservancy charges.**
- f) Direct the Defendant No.2 to issue pay orders for Rs.8.75 lac in favour of ORIX leasing and Rs.9.00 lac in favour of Tariq Rafi as per Annexure C to C/22 signed by Defendant No.2 (Dr. Waseem).**
- g) Either the Defendant No.1 as per his promises restore license to UNICORN and registration or leave T.G manufacturing license and present registration till alludes are paid and also pay all surcharges/late payment surcharges as per Agreement.**
- h) Grant damages, recovery of Rs.100 Million as the cheques of Orix also dishonored, Plaintiff has lost his great goodwill and Defendant No.2 created the main cause.**
- i) Grant permanent injunction in favour of the Plaintiff restraining the Defendants not to alter the position on the factory as it is the Plaintiff has great fear that Defendant No.2 will remover the fixtures or assets of tenements factory owned by the Plaintiff manufacturing license and registration of products, the Defendants may further be restrained from issuing threats or abuses or try to involve Plaintiff in any civil/criminal suit.**
- j) Direct the Defendant No.1 and Drug Regulatory Authority to suspend production immediately as rent has not been paid and notice to vacate on 30.09.2012 has been given to the Plaintiff.**
- k) Appoint Nazir to make list of all inventory and ensure nothing is received.**
- l) Allow the owner to visit the factory t will and to post his guards to avoid things being removed.**

m). Any other relief or reliefs which this Hon'ble Court may deem think fit and proper in the circumstances of the case may also be awarded to the Plaintiff."

3. The claim of Plaintiff has been resisted by Defendant No.2 by filing a Written Statement as well as other applications including the one under consideration.

4. The relevant and undisputed facts for deciding the present application are that the lease agreement dated 20.07.2009 (at Page-65; Annexure "B" with the Plaint) was entered into between the Plaintiff and Defendant No.1 through Defendant No.3 (S. Sajid-ur-Rehman), under which, a factory premises together with manufacturing facility, built on Plot No.E-30, Sector 15, Korangi Industrial Area, Karachi, was leased out to Defendant No.1. It is also mentioned under Clause-1 of the above lease agreement that possession of the entire premises including machines and fixtures was also handed over to the Defendants for a period of five (05) years and the tenancy shall commence from Ist November, 2009 and will end on 31st October, 2014.

5. The other relevant facts, which have been pleaded by the Plaintiff, but are denied by Defendant No.2, are that cheques issued towards payment of rentals were not cleared and thus Defendants committed default in payment of rent for which a Summary Suit No.60 of 2012 is *sub judice* in the Court of learned Additional District and Sessions Judge, Karachi (East), whereas, the stance of Defendant No.2 is that actually the Defendant No.3 has committed fraud with various persons including Defendant No.2 and it was the above named Defendant No.3, who was looking after the affairs of Defendant No.1. The Defendant No.2 further states that he has absolved of any legal obligation as the aforementioned lease agreement was executed by Defendant No.3 and not by him.

6. Mr. Choudhary Atif, the learned counsel for the Defendant No.2, who is the Applicant of aforementioned application, has argued in favour of his stance that the present dispute exclusively falls within the domain of the concerned Rent Controller and not this Court. He has relied upon the reported decision mentioned hereinabove and laid much emphasis on the language of Section 3 of **SRPO**, that only that/those premises can be excluded for which Government issues a Notification. He has further argued that latest majority view of the Hon'ble Supreme in the aforementioned **Palace Hotel Case** has settled all the controversy.

7. The above arguments of Defendants' counsel was refuted by Mr. Abdul Wajid Wyne, the learned counsel representing the Plaintiff by drawing the Court attention to the earlier order of learned Rent Controller, which was passed in Rent Case No.Nil of 2012, who came to the conclusion that since the main controversy in question pertains to a factory premises, therefore, the Rent Controller does not have jurisdiction to try the Rent Case and for reaching this conclusion, the learned Rent Controller has followed the dicta of the three reported cases, which are already mentioned in the title of this case and also now relied upon by learned counsel for Plaintiff.

8. In rebuttal, Mr. Choudhary Atif, the learned counsel for Defendant No.2 has attempted to distinguish one of the reported cases-1985 SCMR Page-955.

9. I have given my thoughtful consideration to the submissions of both learned counsel of respective parties and with their able assistance the present case record is perused.

10. It would be advantageous to reproduce herein under few of the provisions of **SRPO**, which are relevant for the present case_

“SECTION 2.

- (a). **“building”** means any building or part thereof, together with all fittings and fixtures therein, if any, and includes any garden, garage, outhouse and open space attached or appurtenant thereto;
- (e). **“Land”** means land or open space, not being agricultural land or land or open space attached or appurtenant to any building;
- (h). **“premises”** means a building or land, let out on rent, but does not include a hotel;
(underling for emphasis)
- (k). **“Urban Area”** means an area within the jurisdiction of a Town Committee, Municipal Committee, Municipal Corporation or Metropolitan Corporation.

Section 3. Applicability.—(1) Notwithstanding anything contained in any law for the time being in force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated within an urban area, shall be subject to the provisions of this Ordinance”

11. It is a consisting view of this Court, which can be seen by the above mentioned reported decisions that a factory premises or a Flour Mill installed onto a land have been excluded from the purview of **SRPO**. In all these reported cases (supra), a Judgment given in **Bashir Ahmed Versus Zubaida Khatoon**, reported in **1984 CLC Page-390** has been followed, wherein, the ratio and dictum of earlier case handed down by the Hon’ble Supreme Court and published in **PLD 1976 SC Page-781** was relied upon. In another decision of **Mst. Amtul Begum** (Supra), the Hon’ble Apex Court while holding that a Flour Mill does not fall within the ambit of **SRPO**, yet the eviction of tenant was ordered, on the ground that he changed the use of premises from Flour Mill (Chakki) to that of business of furniture manufacturing, besides, the period of tenancy had expired long time back and the Apex Court vested with a special jurisdiction under our Constitution of 1973, for doing the complete justice, moulded the relief. The other factor that weighed with the Hon’ble Supreme Court was the

agony of the parties, as litigation consumed more time than the term of tenancy and for this reason the appeal / case was not remanded and their lordships themselves decided the entire controversy at the Appellate stage.

12. That most recent view is mentioned in the **Palace Hotel Case** (*ibid*), which in fact is the present and prevailing enunciation of principle of law on the subject, in terms of the Article 189 of the Constitution, 1973.

13. The question was that whether a premises in which a hotel is being run, falls within the ambit of **SRPO** or not, as under Section 2(h) reproduced hereinabove hotel is specifically excluded. The Hon'ble Supreme Court applying the purposive rule of interpreting the statute has come to the conclusion that a building which itself is being used as a hotel and was given on tenancy to a party by the owner of the building, is not excluded from the applicability of **SRPO**, but what is excluded is the actual hotel business and not the hotel building itself; which means that a guest/traveller hiring a room in a hotel is covered by the term hotel and to this type of relationship **SRPO** does not apply. It would be advantageous to reproduce the relevant portion of the Judgment as follows: -

“After looking to these definitions/meanings of word "Hotel", now the question arises as to why the phrase "does not include a hotel" is used in section 2(h) of the Ordinance. Reason being that this phrase is only meant to exclude from the purview of the Ordinance, the dealings between the proprietor/manager of the hotel business and the customer who hires a room in the hotel so that such customer may not take any undue advantage of the provisions of the Ordinance of 1979 by seeking its applicability. In other words, it does not aim to exclude or cease the relationship of landlord and tenant that is created between the owner of the

building and its tenant, which has nothing to do with Hotel business as in the instant case.” (Page-756-L)

“Thus the very nature of hotel business necessitates exclusion of 'hotel' from the application of rent laws. This was the only reason to exclude the term 'hotel' from the definition of premises under Section 2(h) of the Sindh Rented Premises Ordinance, 1979. One cannot visualize any other reason for such exclusion, which is acknowledgment of the fact that a hotel guest is merely a licensee and not a tenant that enjoys protection under rent law. When rent law excludes any kind of premises from its application, then by doing so it in fact lifts the umbrella of protection that is otherwise enjoyable by a tenant of rented premises. Such exclusion was never intended to be applied to a premise that is obtained by a person on rent in which he subsequently establishes 'hotel' as his business. If exclusion is also applied to such premises then that would amount to treating the person who runs his hotel business in a rented premises to be merely a licensee of the landlord, depriving him the protection of his tenancy rights. Such an interpretation would cause insecurity amongst all operators of hotel business established in rented premises and will contribute towards defeating the purpose of protecting tenancy rights under the rent laws. Section 2(h) of the Sindh Rented Premises Ordinance, 1979 was never intended to achieve such an object.

6. In the present case, the respondent No.1 is not a temporary occupant of the accommodation like a guest of a hotel. It is an admitted position that respondent No.1 under a written agreement of tenancy obtained the premises in question from the predecessor-in-interest of the appellant on monthly rental basis way back in June, 1974 and is enjoying its exclusive occupation for the past 42 years. The respondent No.1 by pleading that the provisions of the Sindh Rented Premises Ordinance, 1979 are not applicable to the premises in question is in fact stating that he is occupying the premises in question as a licensee. This amounts to saying

that the appellant as owner can deny him the enjoyment of the premises in question in the same manner in which a proprietor of a hotel can deny to his guests. In the present case, as the respondent No. 1 acquired interest in the rented premises on monthly rental basis in his capacity as tenant, his status cannot be converted from a tenant to that of a guest of a hotel. This being the legal position, the only legal remedy to seek eviction of respondent No.1 that was available to the appellant was to file eviction application under the provisions of Sindh Rented Premises Ordinance, 1979, which path was rightly taken by the appellant in the present case. The whole object of respondent No.1 in interpreting the definition of 'premises' in a different context was nothing but to subject the appellant to another round of litigation with the sole object to gain further time, otherwise no tenant would take the stand that the protection of rent laws should not be made available to him and his status as a tenant be relegated to that of a mere licensee.” (Page 761-V and W).

14. Taking into account the above discussion, I am of the considered opinion that after going through the aforementioned definition of land, building, premises, Urban Area and Section 3 of **SRPO**, any premises whether land or building situated in an Urban Area, which has not been excluded by the Government under a Notification as envisaged under Section 3 of **SRPO**, falls within the purview of **SRPO**. However, this will not apply to licence agreements or other relationships, which are created under various statutes, in particular, but not limited to, cases which are covered by the Federal Government Lands and Buildings (Recovery and Possession Ordinance 1965; Ordinance LIV of 1969). This view is necessary in order to avoid confusion about invoking jurisdiction of a proper forum. If a special statute-**SRPO** has given a forum to adjudicate rent disputes then through a purposive interpretation the intent of the legislature should be given effect to.

15. If the controversy at hand is examined together with the reliefs claimed, then a settled legal principle has to be applied for deciding the present controversy, that is, a party can seek more than one remedy simultaneously at different *fora*. Hence, except the relief mentioned in prayer Clauses (a), (b), (c) and (e) relating to ejection of Defendants from the premises in question and payment of outstanding / arrears of rent, including utility charges, the other reliefs including that of seeking damages cannot be granted by the concerned Rent Controller and for such relief that falls outside the jurisdiction of Rent Controller, the present cause should survive. It is further clarified that rent means what has been defined in **SRPO** and which definition has been expounded by various judicial pronouncements.

16. The upshot of the above is that for seeking relief of eviction / ejection of Defendants from the premises in question, the Plaintiff shall file the ejection proceeding. Consequently, the instant application (CMA No.8436 of 2015; under Order VII Rule 11 Read with Section 151 of CPC) is disposed of and the present suit survives only to the extent mentioned hereinabove. The concerned Branch is directed to delete the prayer Clauses (a), (b), (c) and (e) from the Plaint with red Ink.

Dated: 27.04.2017

M.Javaid.P.A.

JUDGE