

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2501 of 2016

[Muhammad Umer Sharif and others v. Saeed Bakhsh (Pvt.) Limited]

Date of hearing : 22.01.2019.
Date of Decision : 22.01.2019.
Plaintiffs : Muhammad Umer Sharif and 5 others, through
Mr. Muhammad Abu Bakar Khalil, Advocate.
Defendant : Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J: - Present *lis* has been filed by the Plaintiffs against Defendant, *inter alia*, for recovery of outstanding rentals (as claimed) together with damages. Complaint contains the following prayer clauses_

- i) *“To direct the defendant to pay the outstanding rent from December 2011 to December 2013 (in the use of defendant) in respect of the demised premises with accrued interest, profit, mark-up, equalizer, etc at the rate of Rs. 15% per annum (ie 1.25% per month) from December 2011 to as of date of filing of suit cumulatively amount to Rs.15,718,372/- (Rupees Fifteen Million Seven Hundred Eighteen Thousand Three Hundred Seventy Two only) with future interest, profit, mark-up, equalizer, etc at the rate of 15% per annum (ie 1.25% per month) from the date of filing of the suit till date of realization.*
- ii) *To direct the defendant to pay the Security Deposit (held by the defendant) in respect of the demised premises with accrued interest, profit, mark-up, equalizer, etc at the rate of Rs. 15% per annum (ie 1.25% per month) from January 2014 (following month of eviction date) to as of date of filing of suit cumulatively amount to Rs.256,289/- (Rupees Two Hundred Fifty Six Thousand Two*

Hundred Eighty Nine only) with future interest, profit, mark-up, equalizer, etc at the rate of 15% per annum (ie 1.25% per month) from the date of filing of the suit till date of realization.

- iii) *To direct the defendant to pay the outstanding Conservancy & Water charges to the plaintiffs in respect of the demised premises with accrued interest, profit, mark-up, equalizer, etc at the rate of Rs.15% per annum (ie 1.25% per month) from January 2011 to as of date of filing of suit cumulatively amount to Rs.37,270/- (Rupees Thirty Seven Thousand Two Hundred Seventy only) with future interest, profit, mark-up, equalizer, etc at the rate of 15% per annum (ie 1.25% per month) from the date of filing of the suit till date of realization.*
- iv) *To direct the defendant to pay the last outstanding KESC Bills to the plaintiffs in respect of the demised premises with accrued interest, profit, mark-up, equalizer, etc at the rate of Rs.15% per annum (ie 1.25% per month) from the following month of eviction date upto the date of filing of suit cumulatively amount to Rs.78,018/- (Rupees Seventy Eight Thousand Eighteen only) with future interest, profit, mark-up, equalizer, etc at the rate of 15% per annum (ie 1.25% per month) from the date of filing of the suit till date of realization.*
- v) *To direct the defendant to pay Rs. 10,000,000/- (Rupees Ten million only) to the plaintiffs towards losses suffered by the plaintiffs, due to losing various profitable opportunities in Real Estate and other business avenues due to failure of the defendant to pay the rent on time.*
- vi) *To direct the defendant to pay a sum of Rs.5,000,000/- (Rupees Five Million only) to the plaintiffs towards mental loss suffered by the plaintiffs due to mental torture and threats as to the usurpation of their rent and immovable property due to the acts of omission and commission on the part of the defendant.*
- vii) *To direct the defendant to pay a sum of Rs.500,000/- (Rupees Five Hundred Thousand only) to the plaintiffs towards traveling, lodging and boarding expenses incurred by the plaintiffs for various visits to Lahore for recovery of rent.*
- viii) *To direct the defendant to and provide paid up copies of challans of advance income tax deducted at source to the plaintiffs.*

- ix) *To direct the Nazir of this Hon'ble Court and/or any other Officer of this Hon'ble Court to attach the moveable and immoveable properties of the defendant and its directors and subsequent sale of the same through auction or through any other mode as this Hon'ble Court may direct and pay the net sale proceeds to the plaintiffs for the settlement of the claim of the plaintiffs.*
- x) *Grant special costs and cost of this Suit; and*
- xi) *To grant any other relief(s), which this Hon'ble Court may deem fit and proper in the circumstances of the case.”*

2. Summons and notices were issued to the Defendant, however, despite service of notice as also apparent from A.R. Diary, the Defendant did not participate in the proceeding to contest the matter; eventually, on 27.11.2017, it was ordered that Defendant will be proceeded *ex parte*.

4. The prime controversy involved in the matter is recovery of outstanding rent from the Defendant in respect of the property situated on the ground floor of multistoried building built on plot No.18-C, Khayaban-e-Tanzeem, Phase-V, Pakistan Defence Officer Housing Authority, Karachi, measuring 2400 Square Feet. For the sake of reference, the premises in question will be referred to as “**Demised Premises**”.

5. The Demised Premises was rented out to Defendant by way of Tenancy Agreement dated 24.12.2010, produced by the Plaintiff's witness in the evidence as Exhibit P.W.-1/4, available at page-47 with the Affidavit-in-Evidence. The stipulations of this Tenancy Agreement show that it was for the period of Four Years starting from 1st January 2011 to 31st December 2014 and under clause-2, different rates of rent are mentioned corresponding to the period of tenancy. The rental from January 2011 to June is mentioned as Rs.4,25,000/- (Rupees Four Lacs Twenty Five Thousand only), whereas, the last rate of rent is mentioned as Rs.6,05,000/-

(Rupees Six Lacs Five Thousand only) from January 2014 to December 2014.

6. Mr. Muhammad Abu Bakar Khalil, learned counsel representing the Plaintiffs, has argued the matter at length. He has referred to various documents produced in evidence, which remained unchallenged / undisputed. Learned counsel has referred to the Notice dated 07.01.2012 (Exhibit P.W.-1/7) sent to the Defendant, calling upon the latter to render the rent for the month of November, December 2011 and January 2012. Per learned counsel, this is where the period of default started. The said notice is appended by the TCS receipts. Learned counsel then on specific query has referred to the order passed by the Court of learned Rent Controller in Rent Case No.46 of 2012, which had been filed by the present Plaintiffs against Defendant for the ejectment on the ground of default. In that rent proceeding the Defendant did not appear as apparent from the Order (dated 20.05.2013) of the learned Rent Controller which has been produced in the evidence as Exhibit P.W.-1/18 (at page-101 of the evidence part of the case file). Besides, allowing the ejectment proceeding and directing the Defendant to hand over the vacant physical possession of the Demised Premises, learned Rent Controller has determined the default in payment of rent for the period of December 2011 to June 2012, in addition to the default committed by the Defendant in payment of utility bills of different utility companies, which in terms of clause 10 of the above referred Tenancy Agreement was required to be paid by the Defendant.

7. Learned counsel for the Plaintiffs has submitted that not only the Plaintiff suffered monetary losses on account of illegal acts of Defendant but also suffered mental distress as the said Demised Premises could have been rented out to some other *bona fide* interested party on a higher rent.

He has referred to paragraphs-18 to 20 of the plaint and paragraphs-16 to 17 of the Affidavit-in-Evidence, in support of the above contention.

8. Arguments heard and record perused.

9. Though the matter has proceeded *ex-parte* but still it is necessary to consider the claim of Plaintiff and relief claimed in the light of available record and provisions of law.

10. The Court has to consider the following_

- i) ***Whether the present lis as instituted is maintainable?***
- ii) ***Whether the Plaintiff is entitled to recover the amounts towards outstanding rent(s)?***
- iii) ***Whether the Plaintiff is entitled for damages, as claimed?***
- iv) ***What should the decree be?***

11. The submissions of learned counsel for the Plaintiffs are based on the undisputed record, which has been referred to in the preceding paragraphs. After successful culmination of eviction proceeding in favour of present Plaintiffs, the Writ of Possession was issued by the Court of learned Rent Controller on 09.12.2013 (page-99); the said Writ of Possession document has been exhibited as P.W.-1/17 and bailiff's report has been exhibited as P.W.-1/16, wherein he has mentioned the fact that physical vacant possession was handed over to the Plaintiffs on 10.12.2013. Present *lis* was instituted on 5-4-2014, as the record shows, but, for want of compliance, it could not be registered earlier but eventually given the number later; thus, the present suit is filed within time, as arrears of rent are recoverable within three years as envisaged in the Article 110 of the First Schedule of the Limitation Act, 1908, from the date they are fallen due; that is, in the present case, when the learned Rent

Controller determined the default in payment of rentals by Defendant and handing over of possession of the demised premises on 10-12-2013, as already stated herein above; hence, point for consideration number (i) *ibid* is answered in affirmative.

12. In compliance of the order dated 11.12.2018, today the Statement (dated 21.01.2019) has been filed by the Plaintiffs' side, in which they have undertaken that the security deposit of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) lying with the Plaintiffs may be adjusted or deducted from the claim of the Plaintiffs. To a specific query, learned counsel for the Plaintiff has referred to the afore-mentioned Rent Agreement in which this amount of Rs.2,50,000/- as fixed deposit is mentioned in clause-3.

13. Total amount claimed towards outstanding rent in the present proceeding is mentioned in the plaint and particularly paragraph-14 of the Affidavit-in-Evidence as Rs.13,050,000/- (Rupees Thirteen Million Fifty Thousand only); that is, the default committed by the Defendant towards payment of monthly rent from December 2011 up till such time when the physical vacant possession was handed over to the Plaintiffs by the Court of learned Rent Controller; which date is 10.12.2013 as already mentioned in the afore-mentioned paragraphs. It is vehemently argued by the Plaintiffs' side that the *mala fide* acts of the Defendant and their over all conduct has caused not only monetary losses to the Plaintiffs but also mental anguish for which they have raised separate claim(s) of rupees ten and five millions, respectively, besides, a separate claim of rupees five hundred thousand towards travelling, boarding and lodging expenses, because, as averred, Plaintiff No.1 on occasions had to travel to Lahore and visited the head office of Defendant in order to get the dispute of outstanding rentals settled.

14. As far as the default in payment of monthly rent is concerned, it is a proven fact that the Defendant has committed a default not only towards monthly rents but also utility charges, as the entire evidence of the Plaintiffs has gone unchallenged. In the decision of learned Rent Controller (*supra*) default was determined from December 2011 to June 2012. But, Plaintiffs are entitled to the payment of rentals up to 10-12-2013, when admittedly, the possession was delivered to Plaintiffs through Court orders (as discussed above). Consequently, the Plaintiffs are entitled to claim the amount of Rs.1,3050,000/- towards outstanding rentals, which the Defendant is liable to pay, after deducting the amount of fixed / security deposit already lying with the Plaintiffs. Point for consideration number (ii) is also answered accordingly.

15. Now adverting to the claim of damages of the Plaintiff.

16. Broadly, damages are of two kinds; general and special. Special damages are awarded only when a party successfully proves actual losses suffered by him / her. In the present case, the Plaintiffs' side has failed to adduce evidence with regard to their claim of rupees fifteen million towards compensation and damages, which fall within the category of special damages. Similarly, no evidence is led in support of traveling expenses, for instance, the Plaintiff witness has not produced air tickets and hotel invoices to corroborate the Plaintiffs' claim of rupees five hundred thousand under this head. Notwithstanding this aspect of the case, the Superior Courts have held in number of decisions, *Abdul Majeed Khan v. Tawseen Abdul Haleem* [2012 C L D page-6], being one of the leading cases, that if circumstances so warrant, general damages can be awarded by invoking the rule of thumb; particularly where violation of legal rights exists. In the present case, it is a proven fact that Plaintiffs (being landlords) were not only deprived of a

handsome rental income for a considerable period stretching over three years, but also to pursue their remedy and get their property vacated in order to utilize the same for their benefit, they also underwent a prolong litigation. In these circumstances, I am of the considered view that the Plaintiffs are also entitled for general damages to the tune of Rs.300,000/- (Rupees Three Hundred Thousand only). Point number (iii) {*ibid*} is also answered accordingly.

17. The upshot of the above is that the suit of the Plaintiffs is decreed to the extent of Rs.12,800,000/- (Rupees One Crore Twenty Eight Lacs only); that is, after deducting Rs.250,000/- (Rupees Two Lacs Fifty Thousand only) from the rent claim and for Rs.300,000/- (Rupees Three Hundred Thousand only) towards general damages. **Defendant is liable to pay the amount of Rs.13,100,000/-** (Rupees One Crore Thirty One Lacs only) to the Plaintiffs together with 10% markup from the date of decision till realization of the amount.

18. In view of the above, the Plaintiffs are also entitled to the cost of the proceedings.

Judge

Karachi,
Dated: 22.01.2019.

Riaz / P.S.