

IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No. S-1144 of 2014**

Present

**Mrs. Justice Kausar Sultana Hussain**

Mst. Adeeba Begum.....Petitioner

Versus

Travel Corporation (PVT) Ltd & one another.....Respondents

Date of Hearing 16.04.2018

Date of Judgment 17.07.2018

Mr. Aminuddin Ansari, advocate for Petitioner

Mr. Naveed Ahmed Khan, advocate for respondent No. 1.

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**J U D G M E N T**

**Kausar Sultana Hussain, J.**:- Through this Constitution Petition under Section 199 of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has impugned a common judgment dated 26.07.2014, passed by learned Vth Additional District Judge South, Karachi, in First Rent Appeals No. 18 of 2014 and 23 of 2014, preferred by both the appellant and respondent, respectively, whereby modified the monthly rent of the premises in question fixed by the learned Rent Controller @ Rs. 30,000/- per month and reduced the fair rent of the premises in question to the extent of Rs. 20,000/- per month from the date of order with further direction that such increase shall remain operative for a period of three years, thereafter, it shall be increased by 10 % per annum as provided under section 9 of the Sindh Rented Premises Ordinance, 1979.

2. The necessary facts spelt out from instant petition are that appellant/landlady had filed rent application under Section 8 of the Sindh Rented Premises Ordinance, 1979 (Rent Case No. 704 of 2011) against the respondent/tenant, claiming herself to be landlady. According to her, respondent is her tenant in respect of showroom admeasuring about 850 sq.ft on the ground floor of building known as Central Hotel Building, Merewether Road, Civil Lines, Karachi and paying monthly rent of Rs. 11,564/- plus share of water and conservancy charges. It was alleged that in the prevailing circumstances, depreciation of Pak Currency, due to inflation, manifold increase in the cost of living, the rent of similar showroom/shop in the same and adjoining locality is much higher. It was also alleged that the cost of the construction has been increased to an exorbitant rate and also there is increase in property tax, which necessitated increase in the current month of the demised premises and the prevailing rate of rent of a single showroom admeasuring about 504 Sq.Ft situated in the Annexee of Central Hotel Building is Rs. 70,000/- per month. The appellant prayed for fixation of fair monthly rent of the tenant in question at the rate of Rs. 1,18,000/-.

3. Whereas, the respondent/tenant resisted the rent application by filing written statement, contending that the rent application has been filed by the appellant/landlady in breach of terms of the agreement between the parties. It was contended that the appellant received Pugri/goodwill amount from him and he is tenant in respect of demised premises for the last more than 20 years. As per respondent/tenant it is very much visible on the site that the sewerage lines are suffering severe leakages, gutter are over flowing, while wash of the building never made since 15 years, no sweeper is appointed from

the appellant/landlady; parking inspite of CDGK and KBCA rules is not available. It was further alleged that present monthly rent, which is being paid by the respondent is fair rent under the circumstances, as such, rent application required to be dismissed.

4. As per record, appellant/landlady got examined her attorney Muhammad Riaz Iqbal, who filed his affidavit in evidence at Exh-A and also produced Power of Attorney as Exh-A/1, photo copy of legal notice dated 18.06.2011 as Article "S" Reply of legal notice as Exh-A/2, attested copy of Tenancy Agreement as Article A-1 and A-2. The appellant/landlady also got examined a witness namely Khursheed Ahmed Bhutto. On the other hand, respondent/tenant also got examined its Chief Executive Officer Syed Jamshed Khalid through affidavit in evidence. All of the said witnesses were cross-examined by the learned counsel for the rivalry. Thereafter, the learned Rent Controller, vide order dated 24.01.2014 fixed the fair rent of the tenant in question to the tune of Rs. 30,000/-per month. Being aggrieved, both the parties preferred First Rent Appeals No. 18 of 2014 and 23 of 2014, respectively. After hearing both the sides, the learned Vth Additional District Judge South, Karachi dismissed F.R.A. No. 18 of 2014, filed by the appellant and while allowing F.R.A. No. 23 of 2014, preferred by the respondent/tenant, modified the monthly rent of the premises in question fixed by the learned Rent Controller @ Rs. 30,000/- per month and reduced to Rs. 20,000/- per month from the date of order with further direction that such increase shall remain operative for a period of three years, thereafter, it shall be increased by 10% per annum as provided under section 9 of the Sindh Rented Premises Ordinance, 1979, vide common judgment dated

26.07.2014. Being dis-satisfied with the said judgment, the appellant/landlady has filed petition in hand.

5. The learned counsel for the appellant/landlord has emphasized on the fact that the impugned order has been passed by the learned appellate court in a slipshod manner and ignored the material facts, while elaborating his submissions, learned counsel referred rent agreement of other shop/showrooms located in the Central Hotel Annexee Building available on record. He has further argued that appellant through evidence established the prevailing rent of the similar premises at the rate demanded by her, but learned appellate court ignored the same and passed an arbitrary order contrary to law and case law cited before it, not considered at all. Lastly, learned counsel has prayed for recalling of impugned judgment and to fix the fair rent as prevailing in the same locality. In support of his arguments, he has relied on case laws 2009 YLR 204 Karachi, 2010 SCMR 1582 and 2012 SCMR 954.

6. Conversely, the learned counsel for the respondent/tenant has strongly opposed the submissions so agitated by learned counsel for appellant/landlord. Learned counsel while referring section 8 of the Sindh Rented Premises Ordinance, 1979 also pointed out the evidence led by the appellant/landlord's attorney and stated that she failed to establish a single ingredients required for fixation of fair rent as provided under the law. He has further pointed out that the tenancy agreements, referred by the learned counsel for the appellant/landlady being photocopy not admissible under the law, even otherwise, the same are in respect of shop and not for showroom and also same did not contain the descriptions of the tenant. He has further argued

that as per law, each case is required to be decided on the basis of its merits and the present case, the appellant/landlady failed to establish a single ingredients of section 8 *ibid*, same no lawful grounds have been urged in this petition under which the impugned order could be interfered by this court in its constitutional jurisdiction.

7. Considering the above submissions and perusal of entire material on record, it may be observed that there is divergent findings on record rendered by the Rent Controller and appellate court, therefore, the need emerges to look into and thrash out entire substance on record. Since the entire controversy appertaining and reveling on section 8(1) of the Sindh Rented Premises Ordinance, 1979, therefore, said proviso is being reproduced for ready reference :-

**Section 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 charges 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 to be determined or, as the case may be, revised after taking such changes into consideration.*

8. On analysis of evidence led by the parties in juxtaposition with ingredients as provided under section 8 of the Sindh Rented Premises Ordinance, 1979, it is revealed that the attorney of the appellant/landlady did not produce a single documentary evidence in order to establish any of the aforesaid ingredients. The entire claim of the appellant/landlady based upon oral testimony of her attorney and a witness namely Syed Jamshed Khalid, which has been seriously controverted by the rivalry. The attorney of the appellant during his cross-examination admitted certain material facts, reproduced as follows:-

"that no property tax has been enhanced by the Government for the last 8 years; that Rs. 11654/- was the rent since July, 2011; that before July, 2011, the rate of rent of the demised premises was Rs. 9000/-; that he is presently receiving the rent at the rate of Rs. 13,299/- per month; that no document has been filed to show that demised premises was maintained by them; that he has not produced original documents of Article A-1 and A-2; voluntarily further added that these documents not relevant to this case; that he has not mentioned the reference of such document i.e. Article A-1 and A-2 in the main rent application and also not annexed the same with it."

9. It may be observed that the said attorney as well as witness along with their evidence appended photocopy of tenancy agreement (Article A-1 and A-2), in fact not produced with eviction application through the same pertaining to 14.03.2011 and 08.12.2006, prior to filing of such application on 27.7.2011. Being photocopies, such documents are inadmissible in evidence and even did

not exhibit by the learned Rent Controller, while saying so, reliance is placed to the case of Abdul Rahman & another V. Zia-ul-Haque Makhdoom & others (2012 SCMR 954) and Altaf Hussain V. Arifa Farooqui & 7 others (PLD 2013 Lahore 95). Nonetheless, a glance at the said tenancy agreement (Article-A-1 and A-2), it appears that these are relating to the shop premises situated in Central Hotel Annexee Abdullah Haroon Road, Karachi and not showroom premises; besides, said tenancy agreement do not contain the area/measurement of the said shops. If for the sake of arguments said tenancies are taken as admissible, nevertheless, in the stated circumstances, when there is no dimension or size of the shops, how, the same could be used for asserting the similarity viz a viz quantum of rent with the demised premises which is a showroom. As such, these tenancies in the above scenario could not be relied on safely and completely for the purpose of determining fair rent of the premises in question firstly owing to the reason that the same are relating to shop premises and not for showroom; secondly, the said tenancy agreements are missing the size/measurement of the premises. It may be observed that not a single instance brought on record by the appellant/landlady concerning the rent of the similar premises in the similar or adjoining locality as required under section 8 (1) (a) of the Sindh Rented Premises Ordinance, 1979. Likewise, no documentary evidence whatsoever, brought by the appellant/landlady under which assessment of fair rent could be made in connection to rest of the ingredients as provided under Section 8(1)(b)(c) and (d) of the Sindh Rented Premises Ordinance, 1979. However, it is open fact that cost of construction has been raised to manifold while property taxes has also been enhanced. It can also be judged that while fixing the fair rent location of the property and environmental value so also

attraction of general public is to be seen as well as held in the case of *Mukhtara Omar V. M/s State Life Insurance Corporation of Pakistan & two others, (2009 YLR 204 Karachi)*. The demised premises is situated in the heart of city and business area as admitted by the witness examined by the respondent/tenant. In the attending circumstances, it is seen that the respondent/tenant has been paying monthly rent to the appellant/landlady by enhancing time to time, even after institution of the rent application, and in absence of any substantive proof in support of ingredients (a), (b), (c) and (d) of Section 8 (1), Sindh Rented Premises Ordinance, 1979 the judgment/order passed by the learned First Appellate Court found to have been passed after consideration all the relevant facts of the case and rightly modified and reduced the fair rent fixed by the Rent Controller. The rate of fair rent fixed by the learned First Appellate Court to tune of Rs. 20,000/- from the date of order with further directions that such increase shall remain operative for a period of three years, thereafter, it shall be increased by 10% per annum as provided under section 9 of the Sindh Rented Premises Ordinance, 1979, found to be justified and lawful on account of prevailing circumstances, in absence of proof from the appellant/landlady, even the such rate has been challenged by the respondent/tenant.

10. As regards, the case law relied by the learned counsel for the appellant/landlady viz; 2010 SCMR 1582, same is distinguished as there was concurrent findings of both the Courts below are different to each other. It is interesting to note that the another case law reported in 2012 SCMR 954, to which the learned counsel for the appellant referred its placitum (b) thereto, under which it was observed that all such factors as provided under



section 8(1) of the Ordinance would not be construed and considered as integrated or composite whole, rather as independent of each other. I may say that there is no two view to the extent of above observation and such a spirit has also been fully applied in the impugned judgment. However, in the same case law, placitum (c) fortified the opinion found by the learned First Appellate Court to the inadmissibility of the photocopy of tenancy agreements which was neither appended with the rent application nor their original were produced.

12. For the reasons, recorded above, I do agree with the findings of the learned appellate court and dismiss this Constitution Petition accordingly.

J U D G E

Faheem Memon/PA