

IN THE HIGH COURT OF SINDH, KARACHI

IIInd Appeal No. 77 of 2013

Abdul Rasheed son of late Abdul Majid.....Appellant

Versus

Maqbool Ahmed son of late Abdullah.....Respondent.

ORDER

Date of hearing	:	16.03.2018
Date of Order	:	14 .06.2018
Appellant.	:	Ms. Darakhshan Jehan, advocate
Respondent	:	Mr. Amir Saleem, advocate

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Kausar Sultana Hussain, J:- This Second Appeal is directed against the judgment and decree dated 07.03.2013 passed by learned IVth Additional District Judge, Karachi (West), whereby Civil Appeal No. 06 of 2012 filed by the appellant/defendant was dismissed and judgment /decree dated 24.12.2011 of trial Court was maintained.

2. The facts of the case relevant for the purpose of disposal of this appeal, in brief are, that the respondent/plaintiff filed suit No. 389 of 2008 against the appellant/defendant for recovery of Rs. 4,28,340/-. According to the respondent/plaintiff, he let out first floor of House No. 10/500-A, Liaquatabad, Karachi to the appellant/defendant at a monthly rent of Rs. 2000/- excluding amenity/utility charges/taxes etc., from the month of June, 1999 against security/fixed deposit of Rs. 5000/-. It was alleged that the appellant/defendant paid the rent to him up to December, 1999, thereafter failed to pay the rent as well as amenity/electricity charges, which in fact constrained the latter to file ejectment application bearing No. 373 of 2007 alongwith an application under Section 16 (1) of the Sindh Rented Premises Ordinance, 1979,

which was allowed on 04.01.2008, but on failure of the appellant/defendant to comply with the tentative rent order, his defence was struck out and he was directed to handover the possession of the premises within 45 days. The respondent/plaintiff in his suit prayed for recoveries of rent at the rate of Rs. 2000/- per month up to April, 2007 accumulated to Rs. 72,000/- as per tentative rent order plus Rs. 26,000/- as rent from May, 2007 to May, 2008; Rs. 1,27,000/- on account of outstanding electricity charges; Rs. 1,00,000/- being damages on account of mental torture and agony; and Rs. 1,00,000/- being expenses borne in connection to court expenses and professional fees of lawyers.

3. The appellant/defendant inter alia pleaded that in the month of May, 2005, the respondent/plaintiff entered into agreement with him for selling of the house/premises in subject for a total consideration of Rs. 5,00,000/- under written agreement, prior to that he had been paying monthly rent regularly and nothing was due. It was further contended that as per sale agreement, he paid Rs. 2,00,000/- to the respondent/plaintiff being part payment, whereas balance of Rs. 3,00,000/- was to be paid at the time of transfer of the said property, as such there was no existence of relationship of tenant and landlord between him and respondent/plaintiff after May, 2005. It was stated that the order passed in Rent Case No. 373 of 2007 is not lawful, already challenged in appeal and he has also filed Civil Suit No. 509 of 2007 before IIIrd Senior Civil Judge, Karachi South for Specific Performance and Permanent Injunction, hence suit filed by the respondent/plaintiff is liable to be dismissed.

4. The trial court on this pleading of the parties framed as many as 5 issues as follows :-

1. Whether the defendant is liable to pay the arrears of rent of Rs. 2,25000/- besides the charges to the plaintiff?
2. Whether the plaintiff is entitled Rs. 2,00,000/- as damages on account of mental torture and agony?
3. Whether after May, 2005 there exists no relationship of landlord and tenant between the plaintiff and defendant as defendant made part payment of Rs. 2,00,000/- towards the sale consideration of suit property to the plaintiff and a sum of Rs. 3,00,000/- was to be paid on the time of transfer of suit property by the plaintiff?
4. Whether the plaintiff is entitled for the relief claimed in the suit?
5. What should the decree be?

5. Both the parties led their evidence. On the basis of evidence adduced before it, the trial court decreed the suit in favour of the respondent/plaintiff, to which, the appellant/defendant preferred Civil Appeal, which was also dismissed. Being aggrieved with the judgment and decree of trial court as well as appellate court, the appellant/defendant has moved this second appeal.

6. Learned counsel for the appellant has contended that impugned judgment and decree of both courts below are absolutely illegal, contumacious and arbitrary so much so outcome of violation of statutory provisions and the pronouncements of the superior courts. During course of arguments, learned counsel entirely emphasized on the point of limitation, arguing that learned trial court did not fulfil its duty as given under Section 3 of the Limitation Act, 1908, under which it was prime duty of the court to look into the point of limitation without there being objection of any party. It was also argued that not only the trial court, but also the learned lower appellate court ignored and not considered this important point of limitation and completely ignored the objection so raised, in the appeal and passed a cyclostyle judgment and

decree contrary to provision or order XLI Rule 31 CPC. In this regard, he has referred the case of Almas Ahmed Fiaz Versus Secretary Government of the Punjab Housing and Physical Planning Development, Lahore and another (2006 SCMR 783) and Zahir Hussain and 4 others Versus Bashir Muhammad and 5 others (2012 CLC 377 Peshawar). The main thrust of the arguments of learned counsel is that both the learned counsels did not take into consideration the Article 110 of the Limitation Act, 1908, which provides limitation for filing the suit for arrears of rent as three years from the date when the arrears become due. Learned counsel pointed out that in the suit filed on 31.5.2008, the respondent/plaintiff claimed arrears of rent from January, 2000, which is barred by limitation. It was further argued that learned courts below also failed to apply judicial mind and failed to appreciate that section 9 of the Act clearly provides that once the time has been begun to run, no subsequent disability or inability to sue will stop it. In support of above contention learned counsel has relied on case laws 1996 CLC 348 (Karachi) and 2013 CLC 980 (Sindh).

7. Conversely, learned counsel for the respondent/plaintiff has strongly opposed the above contentions and while supporting the findings of the learned courts below, argued that the point of limitation was not raised by the appellant/defendant in his written statement filed before the learned trial court, as such, it cannot be agitated subsequently. While replying to the contention as to the time barred claim, it was argued that learned counsel has misinterpreted the provision of Article 110 of the Act, as it was held in the case of Attaullah Malik Versus Rashid and another reported in PLD 1972 Karachi 273, that word "due" in Article 110 of limitation Act, 1908 means "due in law or recoverable in an action at law", limitation begins to run from date when cause of action to recover arrears of rent accrues. Learned counsel

highlighting such observation, pointed out that in the ejectment application, the tentative rent order in pursuance to section 16 (1) of the Sindh Rented Premises Ordinance, 1979 was passed on 04.01.2008, on failure of the appellant/defendant to make compliance, his defence was struck out under Section 16 (2) of the Ordinance through order passed on 08.04.2008 and the limitation begun from the date of such order of striking of the defence, therefore, the suit filed by the respondent/plaintiff in the year 2008 did not let under Limitation Act. In this regard, learned counsel further relied upon the case law reported in PLD 1993 Karachi 308.

8. Submissions put forward by the parties have been considered, the judgments passed by the courts below have been examined, in perspective of the law laid down by the superior courts, including the citations referred by counsel for the parties. Much emphasized is placed on Article 110 of the Limitation Act, 1908, which read as follows.

Description of suit	Period of limitation	Time from which period begins to run.
110. For arrears of rent	(Three years)	When the arrears became due.

9. A bare reading of the above provision, it appears that it provides three years limitation for suing arrears of rent reckon when the arrears become due. The learned counsels for the parties have interpreted the applicability of sentence "when the arrears became due" of the article in two divergent ways. The learned counsel for the appellant argued that the cause of action would be started and granted when the rent was due and payable at the relevant point of time, on the contrary the contention of respondent's counsel is that such time would be started from the date when due in law or recoverable in the active of

law and for such reason in the present case the limitation period started from the order dated 04.01.2008, when the defence of the appellant was struck off by the learned Rent Controller. Now question remains to be answered is whether right to sue or recover arrears of rent will remain suspended during final determination of the rent case before the Rent Controller. According to Article 110 of the Limitation Act, the period of limitation for claiming "arrears of rent" is three years "when the arrears become due" means the date on which the rent becomes payable and not includes any other subsequent event. Thus, as far as the point to begin limitation for claiming arrears of rent is to be counted from the date when it becomes due, owing to the reasons, section 9 of the Limitation Act, 1908 implies an express condition that when the time under limitation is started it will not be stopped by subsequent disability or inability. The case relied upon by the learned counsel for the appellant viz; PLD 1972 Karachi 273 is distinguishable as in that case an evacuee property was purchased its sale was mandatorily required to be confirmed by the custodian under section 16 of the Pakistan (Administrators of Evacuee Property) Ordinance, 1949 and for this reason the rents of the property become due after confirmation of the sale and determination of the rents, whereas in the present case there is no dispute regarding induction of the appellant/defendant in the demised premises as tenant and the premises is governed by the provisions of Sindh Rented Premises Ordinance, 1979, whereby the tenant was under obligation to make payment of the rent not later than the 10th of the month next following the month for which it is due as there is no written tenancy instrument. As regards, the case law 1996 CLC 348 (Karachi) and 2013 CLC 980 (Sindh), relied by learned counsel for the appellant/defendant are distinguishable on the factual controversy from the case in hand owing as in the reported cases the starting and ending month of the rents were beyond 3 years as

envisaged by Article 110 of the Limitation Act, 1908, whereas in the case in hand, major period of rents comes within three years prescribed by the law as the claim of the respondent/plaintiff is based upon month to month basis and cause of action was being accrued on every month continued till filing of the suit. However, the observation of the respective courts in the said case laws on the legal points that the limitation under Article 110 of Limitation Act, 1908 is to be reckoned from the date when the rent become due and not from any subsequent event, is being applied and followed.

10. Taking into consideration the above position of law, I have examined the record of present case, wherein the respondent/plaintiff sought recovery of monthly rents to the tune of Rs. 72,000/- up to April, 2007 i.e. for the period from April, 2004 to April, 2007 plus Rs. 26,000/- for May, 2007 to May, 2008 at the rate of Rs. 2000/- per month. It is noted that the respondent/plaintiff filed the suit on 31.5.2008. It may be observed here that, in fact the respondent/plaintiff in eviction application (Rent Case No. 373 of 2007) had alleged the default in payment of rent w.e.f January, 2000 onwards, however, in application under section 16(1) of the Sindh Rented Premises Ordinance, 1979, available on record, curtailed his claim for arrears of rent on the ground that a rent controller could only give direction for arrears of rent for not more than three years from the date of application. In present case, the respondent/plaintiff in para 10 of plaint, pertaining to cause of action stated that same was accrued firstly in January, 2000 when appellant/defendant stopped paying the rent, secondly when tentative rent order was passed in eviction application and subsequently on failure of appellant/defendant to deposit arrears of rent as well as future rent on every month and lastly it was accrued day to day till filing of the suit. The cause of action as shown in para 10 explicitly gives a definite view

that the claim of the respondent/plaintiff is on month to month basis. Since the claim of the respondent/plaintiff for recovery of rents based upon month to month basis, therefore, the plaint was very much maintainable for the purpose of recovery of rent for the period from May, 2005 to May, 2008 at the rate of Rs. 2000/- accumulated to Rs. 72,000/- comes within three years from the date when the same was due, however, the rent pertained to the period from April, 2004 to April, 2005 fell beyond the limitation period under Article 110 of limitation act. In these circumstances, both the courts below ought to have deducted the rental amount for the period, referred above, which comes within the clutches of Article 110 of the Act. As regards, utility charges, the appellant/defendant admitted that he had not paid any bill from 1999 to 2008 and also admitted that when possession was taken from him by the court, the dues of Electricity were Rs. 127,900/- and Gas charges were Rs. 2440/-. It is pertinent to mention here that the appellant/defendant did not able to bring on record any iota of substance under which it could be spelled out that such utility charges were included in the monthly rent, as alleged, thus he has been under obligation to pay the same. In view of above, the contention of the learned counsel for the appellant/defendant for declaring the whole claim of the respondent/plaintiff as time barred, find with no substance and legal conscience. As far as, the findings of the learned courts below regarding grant of a decree in favour of the respondent/plaintiff for damages to the tune of Rs. 1,00,000/- on account of mental agony as well as Rs. 1,00,000/- being costs of litigations. I have vetted the entire available record and it is revealed that the appellant/defendant during his cross examination admitted that he had filed appeals against orders of Rent Controller before the High Court as well as Hon'ble Supreme Court of Pakistan and he lost before said forums. He also admitted that due to his claim, the respondent/defendant had to contest the matter

up to the Hon'ble Supreme Court of Pakistan and paid the fees of Advocates. To a specific questionnaire, he shows his lack of knowledge whether respondent/plaintiff had spent Rs. 1,00,000/- to fight the cases up to Hon'ble Supreme Court of Pakistan. It is also matter of record that the appellant/defendant also filed a suit for specific performance against respondent/plaintiff, which was also dismissed. In view of these facts, it is abundantly clear that the appellant/defendant lost the cases at all the forums and it is the respondent/plaintiff, who has been running pillar to post to recover/get his legitimate legal rights and constrained to incur expenses thereon either on initiation of proceeding or defending the so called case/claims of the appellant/defendant, which the later failed to prove at any forum. It may be observed here under the state of affairs mentioned above, causing of mental agony is obvious to a common sense. Thus, the findings of the learned courts below on these account required no interference.

11. For the reasons, recorded above, the judgment and decree passed by the learned trial court, concurred by the appellate court stands modified to the extent of recovery as prayed in prayer clause (a) is curtailed to the tune of Rs. 2,02,340/-, however, rest of the relief(s) granted by both the courts below will be remained intact. Resultantly, appeal in hands, stands disposed of accordingly.

J U D G E