

IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. S –994 of 2020

M/s Guidance Schooling System

Versus

Mst. Seema Mohsin and 02 others

Date of hearing & order : 05.01.2021

Mr. Muhammad Arif Afzal Khan, advocate for the petitioner.

M/s Moin Azhar Siddiqui, Ali Ahmed Turabi and Asif Waheed Korejo, advocates for the respondent No.1

ORDER

ADNAN-UL-KARIM MEMON, J. The instant petition has been filed impugning the Order dated 29.10.2020 passed by the learned XII Additional District Judge South Karachi in First Rent Appeal No.191/2018 (FRA) whereby, while upholding the order dated 24.5.2018 passed by the learned IVth Rent Controller Karachi South on application under Section 16(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO) in Rent Case No. 75/2012, the said FRA was dismissed and the appellant/petitioner (tenant) was directed to vacate the subject premises i.e. Press Wala Building consisting of the ground floor and the first floor to the fourth floor having covered area of 4000 sq. feet constructed on Plot survey No.1/20, sheet No.SR-13 (old survey No.B-16) POI measuring 158 sq. yards, Sarai Quarters, Karachi and hand over its possession to the respondent No.1 (landlord) within 60 days from the date of the above order.

2. Briefly stated the facts necessary for the decision of this lis are that respondent No.1 filed an application under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO) against the petitioner claiming to be the owner of the rented premises. She sought his eviction on the grounds of default in payment of rent and not complying with tentative rent order dated 27.02.2018 passed on application under section 16 (1)(2) SRPO 1979. The learned Rent Controller vide order dated 24.05.2018 allowed the aforesaid application and directed the petitioner to vacate the premises in question and handover the peaceful possession to respondent No.1 within 60 days. The petitioner being aggrieved by and dissatisfied with the above order impugned in FRA No.191/2018 before the learned XII Additional District Judge South Karachi, which was heard and decided against the petitioner vide order dated 29.10.2020.

The petitioner being aggrieved by and dissatisfied with the order dated 29.10.2020 has filed the instant petition on 12.12.2020.

3. The main thrust of the arguments advanced by Mr. Muhammad Arif Afzal Khan, learned counsel for the petitioner is that although default had been committed in compliance with the order for deposit of tentative rent, the said amount was ultimately deposited in consequence of which, in his opinion, the default stood cured; and, an order for payment of tentative rent under Section 16(1) of the SRPO could not have been passed, consequently, his defence could not have been struck off for non-compliance of the said order ; that the findings of the learned Courts below are arbitrary and perverse ; that both the learned Courts below have failed to appreciate the legal aspects of the matter and grossly erred in holding that the petitioner committed default. He lastly prayed for allowing the instant petition.

4. I have heard the learned counsel for the petitioner and considered his arguments.

5. I have repeatedly asked the learned counsel for the petitioner to explain the delay which occurred in compliance with the tentative rent order passed by the Rent Controller directing for payment of tentative rent. Learned counsel replied to the query and argued that at the first instance, petitioner assailed the order dated 27.02.2018 by filing review application, which was dismissed vide order dated 07.05.2018 and soon after its dismissal he deposited the alleged defaulted amount in Court, as such there was / is no default on his part, therefore, the impugned orders are liable to be set-aside. The aforesaid assertion of the petitioner belied from the record, therefore, cannot be accepted for the reason that petitioner was directed to deposit the aforesaid amount within three weeks vide order dated 27.02.2018, however, certain portion of amount was deposited on 09.05.2018 after considerable delay and in the meanwhile he resorted another litigation by filing review application which was ultimately dismissed vide order dated 07.05.2018 and he rushed to deposit the remaining amount in Court for which the learned trial Court did not accept his plea and rejected his case by directing him to vacate the premises in question.

6. Coming to the legal position of the case, a plain reading of the SRPO 1979, depicts that section 10 deals with the payment of rent by the tenant to the landlord and provides that in the absence of any date fixed between the landlord and tenant by mutual agreement, rent shall be paid not later than 10th of the month

next following the month for which it is due. The language of this section makes it abundantly clear that a tenant is not expected to make any advance payment of rent to the landlord, except when mutually agreed between them under the same agreement. Section 15(2) (ii) of the Ordinance, 1979 deals with the question of default in the payment of rent by the tenant, as one of the grounds for his eviction. It provides two eventualities for this purpose i.e. where the time for payment of rent is fixed by mutual agreement between the tenant and landlord, the rent is payable within 15 days after the expiry of said period, otherwise within 60 days when the rent has become due for payment. The next provision of law referred to above i.e. section 16, deals with the powers of the Rent Controller to pass an order after holding summary inquiry for determining the arrears of "rent due" directing the tenant to deposit the same within such period as the Controller deems fit in this behalf. It also empowers the Rent Controller to direct the tenant to deposit future monthly rent regularly on or before the 10th of every month till the final disposal of the case. The proviso to subsection (1), added by Ordinance, XIV of 2001, further empowers Rent Controller to pass an order regarding payment of arrears of rent and approximate rent to the landlord; subsection (2) to section 16 deals with the penal consequence of non-compliance of rent order passed in terms of subsection (1) passed by Rent Controller and empowers the Rent Controller to Strike off the defence of the tenant and pass an order in favour of landlord to put him in possession of rented premises within the specified period on that account. Further subsection (3) empowers the Rent Controller to deal with the disbursement of the rent deposited by the tenant in the office of the Rent Controller in the manner he deems fit on this behalf. An important feature of similarity in the above provisions of Ordinance of 1979, is that the question of default in payment of rent is to be gauged on the payment or otherwise of "rent due" and not the advance rent, which is alien to these provisions of law, except under a mutual agreement, keeping in view this legal position, it is noted that the learned Rent Controller had not adverted to the controversy involved in the case in its true perspective, as for this purpose he did not care to apply his judicial mind to go through the provisions of section 10 and section 16(1) and (2) of the Ordinance of, 1979, applicable to the case.

7. There is no cavil to the proposition of law that unless strict compliance of the order of the Rent Controller passed under section 16 (1) of the Sindh Rented Premises Ordinance, 1979 is made by the tenant, he makes his defence liable to be struck off, subject to his right to challenge the same before the fora provided in law. In the instant case, the order for deposit of rent passed by the Rent

Controller was challenged and upheld up to the appellate stage. As such, the petitioner has nobody but himself to blame if his defence was struck off on account of his admitted failure to comply with the order leading to an order for his ejectment from the rented premises. As far as the argument of the learned counsel that delay in compliance of the order was condoned or stood cured, I am unable to subscribe to the same for the simple reason that on the subject, the legal position is very clear. According to subsection 16(2) of SRPO 1979, if the tenant fails to deposit the amount of rent before the specified date, or, as the case may be, before the 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory and even one-day delay in making the deposit would be default within its meaning and Rent Controller has no power to extend the time and condone the same. It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence, the defence of the tenant can be struck off and eviction can be granted. On the aforesaid proposition, reliance can be placed upon the cases of Muhammad Yousaf vs. Muhammad Bashir and others (1990 SCMR 557), Ibrahim Trust Karachi Versus Shaheen Freight Services (PLD 2001 SC 331), M.H. Mussadaq vs. Muhammad Zafar Iqbal and another (2004 SCMR 1453) and Mushtaq Ahmed Kiani Vs. Bilal Umair and others (2009 SCMR 1008).

8. Mr. Moin Azhar Siddiqui, advocate for respondent No.1 stated that writ of possession has already been issued vide order dated 05.12.2020 by the learned Executing Court and compliance has been made by the concerned official of the Court.

9. In view of the above, no illegality is found to have been committed by both courts below. Writ of certiorari against the order passed in rent jurisdiction can be exercised only if the order is beyond the jurisdiction or patently illegal, which is not the present case. Accordingly, the petition is dismissed in limine along with listed applications with no order as to costs.

J U D G E

Shahzad*