

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-948 of 2014

Present

Justice Mrs. Kausar Sultana Hussain

Tayaba Jama Masjid Trust Saudabad, Karachi.....Petitioner

V e r s u s

Mst. Aqeela Begum and two others.....Respondents

Date of Hearing 05.11.2020.

Date of Judgment 22nd December, 2020.

Syed Zahir Hussain Chishti, advocate for Petitioner.

Mr. Nadeem Khan, Advocate for respondent No.1.

Mr. Javed Ahmed Kalwar, A.A.G Sindh/respondents No.2&3.

J U D G M E N T

Kausar Sultana Hussain, J. :- The petitioner/landlord has initiated ejectment proceedings by filing the Rent Case No. 407 of 2010 against the tenant/Opponent/respondent No.1, Mst. Aqeela Begum, under section 15 of Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as SRPO, 1979), who is in occupation of the demised premises i.e. Shops No. 33, 34, 35 (Old No. 31, 32 & 33) constructed in Jamia Masjid Trust, Saudabad, Karachi. Learned IVth Rent Controller, East Karachi, vide its order dated 23.05.2012, struck off the defence of the respondent No.1/tenant under Section 16(2) of SRPO, 1979 and allowed the ejectment application against the respondent No.1/tenant on the ground of noncompliance of order dated 08.03.2012 by her passed by the learned Rent Controller on an application under Section 16(1) of SRPO, 1979 filed by the petitioner/landlord, by holding the existence of relationship of landlord and tenant in between the parties.

2. The tenant/respondent No.1 has preferred FRA No. 96 of 2012, which was allowed by the learned Vth Additional District Judge Karachi East, vide its judgment dated 14.04.2014, on the ground that the learned trial Court has not passed the order in accordance with law and directed the learned trial Court to record the evidence of both parties and decide the case on merits.

3. Being dissatisfied with the impugned findings, the landlord/respondent/petitioner has approached this Court with the prayer to set aside the impugned judgment dated 14.04.2014 and maintain the order dated 23.05.2012 passed by the learned Rent Controller.

4. Arguments heard. Record perused.

5. Learned counsel representing the landlord/petitioner, at the very outset, submitted that the impugned judgment dated 14.04.2014 is arbitrarily, ab-initio, illegal, capricious based on conjecture and surmise and as such is liable to be set aside. The learned counsel for the petitioner has further argued that the learned Rent Controller has rightly passed the order dated 08.03.2012, under Section 16(1) of SRPO, 1979 for depositing tentative rent of the demised premises in the Rent case after withdrawing the rent amount deposited in MRC No. 70 of 2011, as the provision Section 16(1) of Sindh Rented Premises Ordinance, 1979 does not bind the Rent Controller to pass the tentative order for depositing rent in the rent cases filed on many grounds even other than a ground of default in payment of rent. The learned counsel for the petitioner/landlord has further argued that the learned appellate court has failed to consider while deciding the appeal (FRA No. 96 of 2012) the dictum laid down in the case of Muhammad Umer V. H.J Behrana Fire Temple Parse Trust (NLR

1995 AC 655, {before Mr. Justice Rana Bhagwan Das, J (Karachi) },
whereby it was decided that:

“learned Controller acted within the scope of his authority when he proceeded to pass an order in relation to deposit of rent due as well as future monthly rent. The only requirement for passing such order is that he shall hold a summary inquiry as deemed fit on receipt of an application from the landlord and would not act suo motu.”

6. Per learned counsel for the petitioner/landlord the learned trial court has rightly passed an order in result of non-compliance of the order passed under Section 16(1) of SRPO, 1979 by striking of the defence of the respondent / tenant under Section 16(2) of SRPO, 1979, as such there is no illegality in the Rent Controller's orders passed either on 08.3.2011 {under Section 16(1) of SRPO, 1979} or on 23.5.2012 {under section 16(2) of SRPO, 1979}, therefore, the order passed by the learned appellate court is liable to be set aside. The learned counsel for the petitioner/landlord has relied upon the following judgments of the Hon'ble Supreme Court in support of his contentions.

1. 2001 SCMR, 290/293-294
2. 1988 SCMR 427-431.
3. 1986 SCMR 1714, 1715-A+B
4. 1994 SCMR 154, 160-A.

7. Conversely, learned counsel for the respondent / tenant has argued that the learned appellate court has rightly observed that the petitioner / landlord has filed his Rent case against the respondent / tenant on the ground of personal bonafide need of the demised premises to the petitioner/landlord in order to shift Wazukhana at the place of the shops in question, addition and alteration in the demised premises by removing the middle walls of

these shops, while there was no ground for default in payment of monthly rent has been taken by the petitioner/landlord, hence no tentative rent order for depositing rent in court was required, likewise no order for striking of the defence under Section 16(2) of SRPO, 1979 should have been passed. Per learned counsel for the respondent/tenant, the learned appellate court therefore, by considering this aspect of the case has reached at the right conclusion, hence the present petition is liable to be dismissed. The learned counsel for the respondent/tenant has relied upon the following case laws in support of his arguments.

1. 1998 SCMR 970.
2. 2001 YLR 3014
3. 2001 SCMR 1888
4. 2000 CLC 1134.

8. After hearing arguments of both the sides, perusal of record, judgments of Hon'ble Supreme Court and the relevant laws, I am of the view that the learned appellate court has passed the judgment on the basis of following observations:-

“It is matter of record that ejectment application has been filed on the grounds of addition and alteration in the demised shops as well as on personal bonafide need of applicant/respondent. Nowhere in the ejectment application it is ever pleaded that there was default on the part of appellant/tenant in payment of monthly rent, however the appellant/tenant clearly stated that he is depositing monthly rent in MRC No70/2011. The applicant/respondent (landlord) has filed an application under Section 16(1) S.R.PO, 1979, which is beyond pleadings as no arrears and date of default have been shown in the main application. The respondent/applicant cannot be allowed to go beyond the pleadings. During the course of arguments the learned counsel for the respondent relied upon case laws viz; 2010 CLC 1277 (Karachi) and 1994 SCMR

159. In both cases the ground of default has been discussed, which are missing in this case, therefore, same is not helpful in this case. Trial Court was required to give proper findings on merits on the ground of personal need; addition and alteration on the basis of evidence procure by the parties. The impugned order passed by the learned trial court is not in accordance with law, therefore, same stands set aside with directions to record the evidence of both parties and decide the case on merits.”

9. While going through the contents of the ejectment application No. 407 of 2010 filed by the petitioner/landlord against respondent/tenant on 16.11.2010 before learned IIIrd Rent Controller, Karachi East, it reveals that for the purpose of seeking remedy of ejectment of the respondent/tenant from the tenement in question the petitioner/landlord took following grounds :-

i. The respondent/tenant has made addition and alteration in the shops in question by removing the middle wall in between the shops so as to make the said 3 shops as one unit and also extended the shops by raising illegal and unauthorized height of the additional construction up to the level of window of the residence of the Pesh Imam of the Masjid and fixed a new sign board on the wall of the Masjid;

And

ii. The petitioner/landlord requires the shops in question in good faith for the personal bona fide need of the petitioner/landlord for shifting of Vazukhana from the inner part of the Masjid to the place of shops in possession of the respondent/tenant.

10. Now the question arises that as to whether the petitioner/landlord could have filed an application under Section 16(1) of SRPO, 1979 dated 10.08.2011 for depositing rent in this Rent Case from January, 2010 to August, 2011, while the respondent/tenant was already depositing rent in MRC No.70 of

2011 as record shows and no plea for default in payment of monthly rent had been raised by the petitioner/landlord in its Rent Case. The petitioner/landlord had claimed rent from January, 2010 through filing application under Section 16(1) of SRPO, 1979 while he had filed Rent Case on 16.11.2010, if there was any default in payment of rent prior to filing Rent Case why the petitioner/landlord had not raised such plea of default in payment of monthly rent in his Rent Case No.407 of 2010. However, the legal aspect of filing an application under Section 16(1) of SRPO, 1979 in spite of raising no plea of default in a rent case is that the law of SRPO, 1979 permits landlord, who files a case for eviction of the tenant from tenement on any ground, to file an application under Section 16(1) of the Ordinance against the tenant for depositing arrears of rent as well as monthly future rent in the rent case. The law of SRPO, 1979 directs the Rent Controller that on receiving the application under Section 16(1) of SRPO, 1979 make summary inquiry as he deems fit to make, determine the arrears of rent due and order the tenant to deposit the said arrears within such period as the Controller may fix in this regard. Besides this, the Rent Controller under Section 16(1) of SRPO, 1979 may direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case.

11. The relevant law of depositing rent in Court provided in Section 16(1) of SRPO, 1979 says clearly that the landlord in every case of eviction filed by him/her can make an application in terms of this section irrespective of the grounds taken in the case. Likewise there is no legal embargo on passing an order either for depositing arrears of rent or monthly future rent. If there are no arrears due against the tenant when the landlord approached to the rent Controller for eviction of the tenant, the Rent Controller

can pass an order for depositing future rent alone. In instant matter although the petitioner/landlord for eviction of respondent/tenant has taken no ground of committing default by the respondent/tenant in payment of monthly rent, but during pendency of the Rent Case the petitioner/landlord has filed an application under Section 16(1) of SRPO, 1979, as he was allowed to file such application for obtaining tentative rent order for depositing monthly future rent as well as arrears of rent in Rent Case, hence in my view the learned Rent Controller has rightly issued directions to the respondent/tenant to withdraw the rent deposited in MRC No. 70 of 2011 and deposit the same in instant Rent Case and also deposit monthly future rent in the same Rent Case. In the circumstances discussed above, I maintained the order passed by the learned IVth Rent Controller, Karachi-East (Ms. Shagufta Siddiqui) and set aside the judgment dated 14.04.2014 passed by the learned Vth Additional District Judge, Karachi East and consequently the respondent No.1/tenant is directed to vacate the demised premises and hand over vacant possession to the petitioner/landlord but in view of commercial nature of the business and old tenancy of the respondent/tenant, I would allow her 120 days to vacate the shops subject to payment of monthly rent and other charges, if any, failing which a writ of possession shall issue against her without any notice.

12. Eviction upheld.

J U D G E