

**IN THE HIGH COURT OF SINDH, AT  
KARACHI.**

Const Petition No.S-300/2016

Petitioner : Ali Habib Mohammad & others  
through Syed Hassan Ali, Advocate.

Respondent No.1 : Mohsmmad Ikram Qureshi through  
Mr.Zahoor Ahmed, Advocate.

Date of hg : 11-04-2017.

Date of Judgment :

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

**YOUSUF ALI SAYEED, J:-** In terms of this Petition under Article 199 of the Constitution, the Petitioner has impugned the Order dated 18.01.2016 (the “**Impugned Order**”) made by the First Additional District Judge, Karachi (South) in F.R.A No.137/2015 (the “**FRA**”), whereby the learned ADJ allowed the FRA and set-aside the Order dated 13.11.2014 (the “**Rent Order**”) made by learned VIth Rent Controller, Karachi (South) in Rent Case No.317/2014 (the “**Rent Case**”).

2. The only point that arises for consideration in the matter at hand is whether or not the Appellate Court correctly decided an issue of limitation which has been raised by the Petitioner with reference to the maintainability of the FRA.
3. In order to appreciate the matter in its proper perspective, the following points are of relevance:

- (a) The Petitioner filed the Rent Case against under S.15 of the Sindh Rented Premises Ordinance 1979 (the “**SRPO**”), seeking the ejectment of the Respondent No.1 (from premises bearing Rooms Nos. 21 and 22, 3<sup>rd</sup> Floor, Muhammadi Building, situated on Plot No.6/74, Mazar Wali Gali, M.A. Jinnah Road, Karachi (the “**Rented Premises**”) on the ground of default.
- (b) Following the issuance of process through bailiff, courier, pasting and publication, the Respondent No.1 entered appearance in the Rent Case through counsel on 19.05.2014. However, thereafter, no one appeared on his behalf on subsequent dates, and due to such continued non-appearance, on 10.09.2014 the Respondent No.1 was firstly debarred from filing a written statement, and then subsequently, vide the Rent Order, was directed to vacate the Rented Premises within 60 days.
- (c) On 09.04.2015, the Respondent No.1 filed an Application under S.12(2) CPC, seeking that the Rent Order be set aside on the ground that he had not been served and hence had no notice of the Rent Case, and had not issued a vakalatnama to any counsel.
- (d) The Application under S.12(2) CPC was dismissed vide Order made on 10.07.2015, wherein it was recorded, inter alia, by the learned Rent Controller that on enquiry the counsel concerned had confirmed issuance of the vakalatnama by the Respondent No.1 and, furthermore, that the signature on the vakalatnama corresponded with signature of the Respondent No.1 on the Application under S.12(2).

- (e) On 19.10.2015, the Respondent No.1 filed the FRA, in terms of which he assailed the Order of 10.07.2015 whereby the learned Rent Controller had dismissed his Application under S.12(2). The FRA was accompanied by an Application made under S.5 of the Limitation Act, 1908, wherein it was prayed that the delay of 2½ months in filing of the FRA be condoned.
- (f) The FRA was allowed vide the Impugned Order notwithstanding the objection raised that the same was barred by limitation, and it was ordered that the Application under S.12(2) be decided afresh.

4. Learned counsel for the Petitioner submitted that the FRA was evidently filed beyond the period of limitation prescribed under the SRPO, which is evinced by the very Application under S.5 of the Limitation Act. He submitted that the Appellate Court fell into error in overlooking the fact that the SRPO is a special law and a self-contained statute, in respect of which the provisions of the Limitation Act, including S.5 thereof, do not apply, and hence the delay in filing the FRA could not have been condoned. He placed reliance on the Judgments of the Honourable Supreme Court in the cases reported as Abdul Ghafar and others Vs Mst. Mumtaz PLD 1976 SC 572, and Hafeez Muhammad Khan v. Saleem and others 1988 SCMR 1863, as well as single-bench Judgments of this Court in the cases reported as Leno Rozario v. Ghulam Muhammad Dossul 1996 MLD 821, Messrs Pak Libya Holding Company (Pvt) Ltd v. Bashir Ahmed Memon 1999 MLD 2132, Muhammad Ibrahim v. Abdul Haseeb Khan 1982 CLC 2025, and Syed Muhammad v. Mazhar Ali Khan PLD 1981 Karachi 76.

5. He also submitted that the Appellate Court further erred in considering the Application under S.12(2) to have itself been dismissed on the point of limitation rather than on merits. He contended that the underlying premise of the Application of the Respondent No.1 under S.12(2) CPC was specious, and the learned Rent Controller had correctly dismissed the same. He submitted that the contention of the Respondent No.1 that he had not issued the vakalatnama was completely baseless, as determined by the learned Rent Controller, and pointed out that no complaint had been filed against the concerned advocate before the bar council. He submitted that the Respondent No.1 had notice of the Rent Case and was obliged to maintain proper vigil in order to ensure that his interests were being preserved.
  
6. Learned counsel for the Respondent No.1 did not contravene any of the submissions as to the delay in filing of the FRA, but merely sought to explain away the same on the grounds that the Respondent No.1 had been unwell at the relevant point in time and thus could not take the requisite steps for availing the appellate remedy in a timely manner. He pointed out that the FRA was ultimately filed by the Respondent No.1 through his son and attorney, and that he then expired subsequent to the filing of the instant Petition, which was now being contested by his legal heirs. He contended that the delay in filing the FRA could be condoned and placed reliance on the Judgments of the Honourable Supreme Court reported as Muhammad Bashir and another v. Province of Punjab 2003 SCMR 83, and Board of Governors v. Ms. Farah Zahra PLD 2005 SC 153, as well as the Judgment of a learned Division Bench of the Lahore High Court reported as Nasir Ali vs Umar Draz PLD 2011 Lahore 599.

7. Having examined the Impugned Order and considered the submissions made by learned counsel, it is apparent that the cases cited by learned counsel for the Petitioner are clear on the point that S.5 of the Limitation Act is inapplicable to the SRPO, and thus could not have been invoked for the purposes of the FRA. Accordingly, I am fortified in my view that the FRA, having clearly been filed after the lapse of the period of 30 days prescribed for filing of an Appeal under S.20 of the SRPO, was thus barred by limitation. Whilst the Judgments cited by learned counsel for the Petitioner are squarely applicable, those cited on behalf of the Respondent No.1 pertain to cases where the question of limitation arose in the context of an Intra-Court Appeal or proceedings in revision under S.115 CPC, and are hence clearly distinguishable and of no avail in the present circumstances.
  
8. Even otherwise, it is evident from a plain reading of the Affidavit filed by the son of the Respondent No.1 in support of his Application under S.5 that the delay in filing the FRA is sought to be explained on the basis that the Respondent No.1 was seriously ill and unable to rise from his hospital bed. This has to read in juxtaposition with paragraph 2 of the FRA, where it is submitted that the Appellant (i.e. the Respondent No.1 fell seriously ill and was admitted to hospital in the month of February 2015. The argument sought to constructed on this basis is effectively set at naught by the fact that the Application under S.12(2) CPC was subsequently filed on 09.04.2015 by Respondent No.1 personally, as is evident from his Affidavit filed in support thereof. Needless to say, this belies the claim of disability.

9. In view of the foregoing, this Petition is hereby allowed with the result that the FRA stands dismissed and the Impugned Order stands set aside.

JUDGE

Karachi.

Dated:\_\_\_\_\_