

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-1111 of 2018

Nafeesa Begum
Versus
State Life Insurance Corporation of Pakistan & others

Dates of Hearing: 22.01.2020 and 27.01.2020

Petitioner: Through Mr. Muhammad Siddiq Mirza
Advocate

Respondent No.1: Through Mr. Manzar Bashir Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The case in hand relates to a tenement in relation to which an application under section 12 of Sindh Rented Premises Ordinance, 1979 was filed by the petitioner. It pertains to repair of the demised premises. Petitioner is a tenant of a premises bearing Flat No.21, 2nd Floor, State Life Building No.5, Abdullah Haroon Road, Saddar, Karachi, whereas respondent No.1 is landlord. The application of the tenant/ petitioner for carrying out internal repair was declined by Rent Controller as well as by the appellate Court.

2. The trial Court while delivering the judgment on 13.05.2017 maintained that in some independent proceedings the fair rent was fixed by consent of the parties at the rate of Rs.4000/- per month. It is claimed that the said fair rent was applicable for a period of three years and thereafter it was to be increased automatically. The Rent Controller further held that the rent had to be increased at a specified rate per month, which has not been increased since June 2000 nor the petitioner/applicant in the Rent Case was willing and ready to increase the rent even if the opponent/respondent would agree to make internal repair. It is thus held by the Rent Controller that since the alleged rent

was liable to be “increased” as an automatic process of law, the petitioner/tenant has defaulted and as such not entitled for a favourable order on the application under section 12 of Sindh Rented Premises Ordinance, 1979. The appellate Court while disposing of the appeal maintained the same view.

3. I have heard the learned counsel for the parties and perused the material available on record.

4. Petitioner has filed affidavit-in-evidence of Sarwat Saleem, being daughter in law of the tenant/petitioner, and also as authorized attorney of the tenant. She was subjected to cross-examination. Mr. Muhammad Siddiq Mirza who was also the counsel and also claimed to have been occupying Flat No.14, First Floor, State Life Building No.5, Abdullah Haroon Road, Saddar, Karachi, also filed his affidavit-in-evidence and was also subjected to cross-examination. One Ashfaq Ahmed Shaikh, Manager Civil in the Real Estate Division of respondent/opponent/landlord filed affidavit-in-evidence and was also subjected to cross-examination.

5. Let us first examine provisions of Section 12 of Sindh Rented Premises Ordinance, 1979 to the effect as to whether the reasoning assigned by the Rent Controller as well as by the appellate Court could form a legitimate basis for declining the application for repair (be it internal or external). Section 12 of Sindh Rented Premises Ordinance, 1979, for the sake of convenience is reproduced as under:-

“12. Repairs.-(1) Subject to the agreement, if the landlord fails to make such repairs or white-washing as may be necessary to keep the premises in proper shape, the Controller may, on application made to him by the tenant and after such inquiry as the Controller deems fit to make, direct that such repairs or white-washing may be made by the tenant and the cost thereof may be deducted from the rent payable to the landlord.”

(2) Where any authority empowered by a law for the time being in force has required the landlord to make such repairs within such period as maybe specified by such authority and the landlord has made default in this behalf, such authority may require the tenant to make such repairs.

(3) Where the tenant has made the repairs as aforesaid the authority ordering the repairs shall after the verification of the details of the expenditure incurred by the tenant, certify the cost of repairs and the tenant may thereupon deduct the amount so certified from the rent payable to the landlord.”

6. This repair and/or white-washing, as required in terms of Section 12 of Sindh Rented Premises Ordinance, 1979, was never subjected to any increase in rent, be it fair rent or any automatic enhancement, as alleged. It is also not subject to periodical increase, either in terms of Section 9 of Sindh Rented Premises Ordinance, 1979 or otherwise.

7. Thus, it is a misapplication of mind and without following the spirit of Section 12 of Sindh Rented Premises Ordinance, 1979 that the two impugned judgments were passed. Section 12 provides that “subject to agreement” if the landlord fails to make such repair or white-washing, as may be necessary to keep the premises in proper shape, the Controller may on application followed by an inquiry, if deem fit and proper, direct such repair or white-washing, as may be necessary to be made by tenant and the cost thereof be deducted from the rent payable to the landlord. Perusal of this part of Section 12 totally excludes the consideration of rent, fair rent or any periodical increase while deciding the fate of repair and/or white-washing under section 12 of Sindh Rented Premises Ordinance, 1979.

8. The expression “subject to agreement” is occasionally used in the correspondence exchanged between the parties during contract negotiations. These words denote that the document is not an offer or acceptance and negotiations are still going on. The expression, which may be found similar and closer to the term “subject to agreement”, is

“without prejudice”, which may not be a synonym but much closer to the essence of expression “subject to agreement/contract.”

9. In the present case, perusal of the evidence shows that there was no agreement in writing as to sharing the responsibility of repair and/or white-washing. In the absence of such agreement as to who would perform such repair and/or white-washing, the law would have taken its effect and that is that a landlord is under obligation under the law to carry out repair and/or white-washing, if required in terms of the inquiry to be conducted by the Rent Controller. The two impugned judgments are thus out rightly liable to be set aside on misapplication of mind, non-reading of evidence and misapplication of a defence of landlord, which was not provided as defence under the law in terms of Section 12 of Sindh Rented Premises Ordinance, 1979.

10. Section 9 of Sindh Rented Premises Ordinance, 1979 was considered as valid defence for not allowing application under section 12 of Sindh Rented Premises Ordinance, 1979. Firstly, an order under section 8 is not an automatic grant of periodical enhancement under section 9 of Sindh Rented Premises Ordinance, 1979. Fair rent is not denied and is being paid by petitioner, however, it is alleged that periodical increase under section 9 is denied. The order under section 8 is not produced by landlord however such enhancement is always independent as the quantum of increase is not a “fixed factor”, rather it could be to the extent of 10% per annum, first being after three years. It is not the case of landlord/respondent that their application was under section 8 and 9 of Sindh Rented Premises Ordinance, 1979 and the Rent Controller apart from fair rent also considered the aspect of future periodical increase to any specific percentage.

11. The Rent Controller under the law is vested with the powers to direct the landlord to carry out repair or white-washing of the premises

in question and/or in the alternate to direct the tenant to carry out such exercise subject to adjustment of cost, which is liable to be deducted from the future rents, payable to the landlord till it is fully adjusted. Such powers could be exercised by the Rent Controller in the absence of an agreement, which may demonstrate a responsibility on either party, whereas in the absence, it becomes the responsibility and obligation of landlord to keep the tenement fit for human dwelling.

12. The structure and premises is owned by the landlord and it has provided the same to the tenant for its use. If the tenement/premises is not fit for human dwelling or human consumption/use, the landlord would render its responsibility of providing a premises fit in all respect, undischarged. The premises reached to a dilapidated conditions with the passage of time and it was not the case of the landlord that the petitioner/applicant took it as it is. It is only the existence of an agreement, contrary to the theme and essence of Section 12 of Sindh Rented Premises Ordinance, 1979, which may prevail and be given effect to and not otherwise.

13. Insofar as the question of work is concerned, the ceiling of bathroom was the main subject of such repair. It is quite obvious that the seepage at the ceiling of the bathroom of the subject premises may have been caused by a bath room of a flat over it i.e. third floor. Be that as it may, the repair of the subject roof/ceiling by repairing bathroom of above floor would not amount to repair of other premises or a premises which is not in occupation of petitioner/ tenant. The root cause of such impairment had to be remedied and it is immaterial that the seepage is being caused by the bathroom of third floor.

14. Section 12 of Sindh Rented Premises Ordinance, 1979 provides that the order under section 12 would be followed by an inquiry as the Controller deems fit to make, direct that such repair or white-washing

may be made. I have not observed that such exercise was carried out either by the Rent Controller or the appellate Court. In order to determine cause of such seepage on account of which plaster is shading, the inquiry is inevitable, which may include a technical and financial assistance. However, the landlord has not denied such damage being caused to the roof of bathroom and other internal structure of the premises. The only defence came and as could be seen is that the rent was/is not being increased by the tenant. Enquiry is also essential as in case the landlord fails to carry out such repair then there has to be an enquiry to the extent of “financial expenditure” so that there may not be any dispute at the time of its deduction by tenant.

15. In view of above, I set aside the two judgments of the Rent Controller and appellate Court, impugned in this petition, and case is remanded to Rent Controller for an enquiry both technical and financial, to be conducted before directing landlord and/or tenant to carry out such repairs.

16. Petition stands disposed of in the above terms.

Dated:

Judge