

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-586 of 2020

Present

Justice Mrs. Kausar Sultana Hussain

Pakistan Telecommunication Co.Ltd.....Petitioner

V e r s u s

7th Addl. District Judge, South Karachi and two others.....Respondents

For Direction.

1. For orders as to maintainability.

Date of Hearing 03.03.2021.

Date of Judgment 03.03.2021.

Mr. Sakhiullah Chandio, advocate for Petitioner.

Mr. Manzar Bashir Memon, Advocate for respondent No.3.

Mr. Javed Ahmed Kalwar, A.A.G Sindh.

J U D G M E N T

Kausar Sultana Hussain, J. :- The respondent No.3/landlord has initiated ejectment proceedings against the petitioner/tenant by filing the Rent Case No. 34 of 2010, under section 15 (2)(ii) of Sindh Rented Premises Ordinance, 1979 (**SRPO, 1979**), before the learned IVth Rent Controller, Karachi South, who vide order dated 21.12.2017 allowed the ejectment application against the petitioner/tenant on the ground of default in payment of monthly rent from 05th January, 2005 to October, 2009 with direction to petitioner/tenant to vacate the tenement premises in question and hand over its physical and peaceful possession to the respondent No.3/landlord within the period of sixty days from the date of passing of the judgment dated 21.12.2017.

2. The petitioner/tenant has preferred FRA No. 45 of 2018, against the impugned judgment dated 21.12.2017 passed by the learned IVth Rent Controller Karachi South before the learned VIIth Additional District Judge Karachi South, who after hearing

arguments of both the side, dismissed the said First Rent Appeal of the petitioner/tenant vide order dated 07.01.2020.

3. Being dissatisfied with the said impugned order and judgment of the learned appellate Court as well as Rent Controller dated 07.01.2020 & 21.12.2017, respectively the petitioner/tenant has approached to this Court with the prayer to set aside the said impugned order of learned Rent Controller and judgment of learned Appellate Court.

4. I have heard the learned counsel for the petitioner / tenant on the point of maintainability of the present petition. Record shows that at first date of hearing this Court vide order dated 17.8.2020 issued notice to the respondent No.3/ landlord subject to maintainability of this petition. After service of notice, the respondent No.3 has submitted its objection to the petition whereby, they have denied the contents of the petition.

5. On the point of maintainability of this petition, the learned counsel for the petitioner / landlord was asked by this Court to explain the reasons of delay in filing this petition for which he replied in detail by submitting that admittedly the impugned judgment was passed by the learned Appellate Court on 7.1.2020, while the petitioner / tenant filed present petition on 12.08.2020 after delay of more than seven months. The learned counsel for the petitioner / tenant has submitted that Respondent No.3 / landlord filed Rent Case No.34/2010 against the petitioner / tenant on the sole ground of default in payment of rent from January 2005; the petitioner / tenant in his written statement has categorically stated that they had vacated the demise premises in the year 2004 (wrongly mentioned in petition as 1994) and delivered the vacant possession of the same to the respondent No.3/ landlord hence, now there is no relationship of landlord and tenant between the

parties. The said Rent Case No.34/2010 was ultimately allowed vide order dated 19.9.2013; the petitioner / tenant filed FRA No.194/2013 against the said order dated 19.9.2013 before the learned District Judge Karachi South, who after hearing parties' counsel had allowed the said FRA of the petitioner / tenant vide judgment dated 10.11.2017 and remanded the matter to learned Rent Controller Karachi South with directions to decide this matter afresh after recording evidenced of the petitioner / tenant within one month's time; after receiving back of Rent Case, the learned Rent Controller Karachi South has issued Court Motion Notices to the respective parties and their counsel for their appearance before the Court by way of pasting on 25.11.2017 and 29.11.2017, Court Motion Notices could not be served upon the petitioner / tenant, however on 19.12.2017 through one Associate of petitioner's counsel, matter had come in their knowledge and they appeared befodre learned trial Court and filed undertaking on behalf of the petitioner/tenant for filing power but he could not file power in the trial Court till next date of hearing but by the such time on 06.12.2017, the learned Rent Controller, Karachi South had already closed the side of the petitioner / tenant and later on by the impugned order dated 21.12.2017 the said Rent Case No.34/2010 of Respondent No.3 was allowed against the petitioner / tenant; once again FRA No.45/2018 was filed by the petitioner / tenant against the order of Rent Controller dated 21.12.2017, the said FRA 45/2018 was dismissed on merits vide order dated 07.01.2020, wherein it was opined by the learned appellate Court that no Court motion notice was required to be issued in the matter as the order was passed by the appellate Court in FRA No. 194 of 2013 filed by the petitioner/tenant itself, whereby the petitioner / tenant was directed to lead its evidence before the trial Court within one month's time but they remained fail to comply

the order of the learned Appellate Court. The learned appellate Court was also of the view that the petitioner / tenant could not prove its version that they are no more in possession of the demise premises and vacated it in 2004 after handing over its possession to the Respondents No.3 / landlord.

6. The learned counsel for the petitioner / tenant could not satisfy this Court on the point of laches / delay of seven months in filing the present petition and further that when since 2004 they are no more in possession of the demised premise and handed it over to the Respondent No.3/ landlord then, why they remained failed to prove it before the trial Court or Appellate Court in spite of availing repeated opportunities to come forward in Witness Box and through leading their evidence prove it. Since the petitioner / tenant has failed to satisfy this Court on the point of maintainability of this petition and reasons of delay. I therefore, dismissed it in limine with no order as to cost.

These are the reasons of my short order dated **03.03.2021.**

J U D G E