

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. S-964 of 2021

Petitioner : Hascol Petroleum Limited, through
Ms. Anna Salman, advocate.

Respondent No.1 : 3rd Senior Civil Judge/Rent Controller
Malir, Karachi

Respondent No.2 : Shahzaib Rind, through
Mr. Munim Masood, advocate.

Date of hearing : 11.04.2022
Date of order : 11.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- This Constt. Petition is directed against the order dated 09.11.2021, whereby the learned Rent Controller-III, Malir Karachi (*respondent No.1-“Rent Controller”*) dismissed the application filed by the petitioner/opponent under section 34, Arbitration Act, 1940 read with section 94, C.P.C. in Rent Case No. 03 of 2021.

2. Brief facts of the case are that the respondent No. 2/applicant filed Rent Case No. 03 of 2021, under section 15 of the Sindh Rent Control Ordinance, 1979 (**“Ordinance, 1979”**), before the Rent Controller against the petitioner, alleging therein that he and the petitioner executed a registered Lease Deed, dated 16.05.2017, in respect of a plot, admeasuring 11,049.225 sq. fts., out of an area of 1,227.69 sq. yds., bearing Plot No.1, Survey No.443, situated at Main National Highway, Deh & Tapo Landhi, Taluka Ibrahim Hyderi District Malir, Karachi, for *inter alia*, running a petrol pump/CNG station on rent @ Rs.150,000/- per month with increase at the rate of 10% after every four years, which would be paid in advance for the initial period of one year from the date of execution of the Lease Deed and on full adjustment of the advance rent so paid, the rent for the remaining period shall be paid on monthly basis by 10th day of every month, during the said lease period and renewal thereof. It is case of the respondent No. 2 that the petitioner paid the rent during the year of 2019, for the year 2018 and then it paid the

rent of February and March, thereafter, till filing of the rent case, it deliberately and intentionally failed to pay the rent of the last 22 months and made lame excuses on one pretext to another; therefore, the respondent No.2 filed aforesaid rent case seeking directions to petitioner to pay the previous 22 months' rent alongwith update rent, till the final disposal of the rent case and handover the physical and peaceful possession of the demised premises.

3. On being served with the notice of the rent case, the petitioner filed an application under section 34, Arbitration Act, 1940 r/w section 94, C.P.C before the Rent Controller, praying therein to stay the proceedings of the rent case and to refer the parties to arbitration in accordance with clause-11 of the Lease Deed. Respondent No.2 filed counter affidavit to the application. The Rent Controller after hearing the parties dismissed the said application, vide impugned Order. Being aggrieved, the petitioner has preferred instant Constt. Petition.

4. Learend counsel for the petitioner has contended that the Leased Deed executed between the parties is coupled with interest; that as per clause-11 of the Leased Deed, any dispute arisen between the parties would be referred to the Arbitrator; therefore, the Rent Controller has no jurisdiction to entertain the rent case filed by the respondent No. 2; that as per clause-7.4 & 7.5 of the Leased Deed, the respondent No. 2 had to give 30 days' notice prior to approaching the Court but no such notice was issued to the petitioner; that while passing the impugned Order, the Rent Controller failed to appreciate that, having failed to comply with the condition of clause-7.4 of the Lease Deed, the respondent No. 2 is barred from filing rent case; as such, the subject rent case could not have been instituted; that the Rent Controller failed to appreciate that while exercising function as a *persona designata*, it exercises authority as a Rent Controller and; therefore, it is not debarred from taking guidance

from the settled principles of law and justice incorporated in the C.P.C. In support of her contentions, learned counsel has relied upon the case of *Yezdiar Homi Kaikobad and another v. Ferozsons Ltd. through Chief Executive and 3 others* (2005 YLR 783), *Central Talkies Ltd., Kanpur v. Dwarka Prasad* (AIR 1961 Supreme Court 606) and *Musammat Dirji v. Srimati Goalin* [ILR 1940 (Vol. XX) Patna Series 373].

5. On the other hand, learned counsel for the respondent No. 2 has maintained that the Rent Controller is competent to try the rent case; that as per clause-11 of the Lease Deed, the dispute arising between the parties would be referred to the Arbitrator, whereas the rent case was filed under clause-7.4 of the Lease Deed; that the petitioner was given notice prior to filing of the rent case but despite that it committed default in payment of rent; that as per Lease Deed, the petitioner was under contractual obligation to pay the rent; however, it committed breach of obligations leaving the respondent No.2 at no option but to file the subject rent case and the petitioner after delaying the rent proceedings for one baseless ground or the other, moved an application under section 34 of the Arbitration Act, 1940 which was rightly dismissed by the Rent Controller, vide impugned Order. In support of his contentions, learned counsel has relied upon the case of *Ch. Naseer Ahmed and another v. Rent Controller and others* (2018 YLR 29)

6. Heard the learned counsel for the parties and perused the material available on record with their assistances.

7. For the sake of convenience, Clauses-7.4, 7.5 and 11 of the Leased Deed are reproduced herein under:

Clause-7.4 *“If any rent shall be sixty (60) days in arrear the Lessor shall be on the expiry of sixty (60) days give notice thereof to the Lessee in writing to pay the arrears in rent to the Lessor within thirty (30) days of the receipt of notice and*

notwithstanding of the receipt of notice of the Lessee, the Lessee still fails to tender the rent, the Lessor shall be entitled to seek redress through Court of Law for payment of rent or any other remedy available under the law.”

Clause-7.5 *“If the Lessee shall omit to perform or observe any covenant or condition on the part of the Lessee herein, contained and shall continue for ninety (90) days after notice in writing thereof to the Lessee, the Lessor shall be entitled to seek redress through Court of Law for the performance of observance of such covenant or condition by the Lessee.”*

Clause-11 *“If any question, difference or objection whatsoever, or any other dispute of whatsoever cause and nature shall arise in any way connected with or arising out of this Deed or the meaning or operation of any part thereof or the rights, duties or liabilities of either Party, then every such matter shall be referred for arbitration to the Company's General Manager Retail or his nominee or such other officer of the Lessee may designate and his decision shall be final and binding on both Parties. Arbitration under this Deed shall be conducted under the Arbitration Act 1940, and shall be held at Karachi.”*

8. It appears *prima facie* that under clause-7.4 of the Lease Deed, the respondent No. 2 is entitled to seek redress through a Court of law for delay in payment of rent if rent is due for 60 (sixty) days and he serves upon the petitioner a notice in writing and the petitioner fails to tender the rent within 30 (thirty) days of such notice. The above clause is not in contravention of section 28 of the Contract Act, 1872, for it does not restrict the respondent No. 2 absolutely from enforcing his rights, rather implements a mechanism for redress of the said respondent's grievances; however, imposes a condition of serving 30 days' notice upon the petitioner. The petitioner claims that the respondent No.2 has failed to comply with said condition, which respondent No.2 denies. Hence, due to divergent pleadings of the parties, the said factual issue is required to be determined by the Rent Controller after recording pro and contra evidence of the parties.

9. It may be observed that clauses-7.4 and 7.5 are independent clauses of the Lease Deed, that provide remedy to respondent No.2 to seek redress through Court of Law for payment of rent or through any other remedy available under the law in case the petitioner fails to pay arrears of the rent upon service of requisite notice, and/or the petitioner omits to perform or observe any covenant or condition on his part and continues for ninety (90) days after notice in writing thereof, the respondent No. 2 is entitled to seek redress through Court of Law for the performance of observance of such covenant or condition by the petitioner.

10. It may also be observed that expression "*arbitration agreement*" within the contemplation of section 2 (a), Arbitration Act, 1940 means a written agreement to submit present or future differences to arbitration. The dispute between the parties must be one which is covered by the arbitration agreement. In the instant case, the nature of disputes which are to be referred to arbitration have been specified under clause-11 of the Lease Deed in general terms that in the event of arising any question, difference or objection or any other dispute in any way connected with Lease Deed or the rights, duties or liabilities of either party, every such matter shall be referred to arbitration to the petitioner's Company's General Manager Retail, etc. However, in view of clauses-7.4 and 7.5 of the Lease Deed, the dispute of arrears of rent between the parties appears to be a matter excluded from disputes referable to Arbitrator.

11. Section 13 of the Ordinance, 1979 provides that "*no tenant shall be evicted from the premises in his possession except in accordance with the provisions of this Ordinance.*" Sections 14 and 15 of the Ordinance postulate the grounds for the eviction of the tenant. There is, thus, no manner of doubt that a tenant cannot be ejected except in accordance with provision of section 13 (*ibid*) and since said provision does not

permit a Rent Controller to order or disallow ejectment of a tenant in terms of an award given in pursuance of an arbitration agreement, clause 11 of the Lease Deed relied upon by the petitioner is of no consequence. It may be observed that a Rent Controller exercising jurisdiction under the Ordinance, 1979 is a Persona designata and not a Court as such. As a matter of fact, the Controller has to make such enquiry as deemed necessary by him for his satisfaction that if the ground or grounds on which eviction of the tenant is sought does/do exist. Thus within such limited scope of enquiry reference to arbitration is obviously not contemplated. Moreover, the Controller being not the civil Court has no jurisdiction to receive an award from the arbitrator and to make the same as rule of the Court. It, therefore, follows that the provisions of the Ordinance, 1979 as a whole are clearly intended to exclude the reference of disputes between the landlord and tenant for their settlement to arbitration. Reliance in this regard may be placed in the case of *Masood Hussain Anwar v. Sheikh Muhammad Amin (1982 CLC 1777)*.

12. For the foregoing facts, discussion and reasons, I find no illegality or infirmity in the impugned Order, requiring any interference of this Court under its Constitutional jurisdiction; hence, instant petition is dismissed, with no order as to costs.

Above are the reasons of my short order, dated 11.04.2022, whereby instant petition was dismissed.

JUDGE

Athar Zai