

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CP NO.S-1678/2014**

-----  
Date                                      Order with signature of Judge  
-----

1. For order on office objection at flag-A
2. For order on CMA No.7311/2014
3. For hearing of main case.

**21.02.2018**

Mr. Amir Saleem advocate for petitioners.  
Mr. Muhammad Imtiaz Khan advocate for respondent No.1.

.....

Through instant petition, petitioner seeks fixation of fair rent whereas Trial and Appellate Courts dismissed his prayer. Precisely relevant facts are that petitioner filed two rent applications bearing No.193/2010 and 207/2010, one with regard to ejectment and second for fixation of fair rent. Trial Court allowed ejectment application on ground of default whereas dismissed rent application with regard to fixation of fair rent; appeal preferred by petitioner was dismissed by the appellate Court. In similar way, respondent No.1 (tenant) preferred appeal against ejectment order which was dismissed; hence both parties filed petition challenging the both orders.

2. CP No.D-1369/2014 filed by respondent No.1 (tenant) was by consent disposed of vide order dated 01.04.2016, with direction to vacate the premises within ten months, whereas through instant petition petitioner is seeking fixation of rent. Since concurrent findings are against the petitioner and it is settled principle of law that a question of facts decided by the two Courts below, cannot be reversed in writ jurisdiction if same is not contrary to the evidence even if there are possibilities of a different conclusion. This, being by now, a settled principle of law hence needs no reference however, if

any, needed may be made to the case of Mst. Farhat Jabeen, reported in 2011 SCMR 1073 Hon'ble Supreme Court held that:

“.....because interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reasons that another conclusion shall be possible drawn, on the re-appraisal of the evidence, rather interference is restricted to the case of misreading and non-reading of material evidence which has bearing on fate of the case.”

There can be no denial to the fact that criterion for *determination* of **fair-rent** has been limited by the Section 8 of the Ordinance *itself* therefore, the party approaching the Rent Controller for determination of **fair-rent** would always be required to make the Rent Controller convinced that four-lines, sketched by the Section-8, require review of *existing* rent and fixation of a **fair-rent**. To have concurrent findings of two courts below, including that of Rent Controller, the complaining party in Constitutional Jurisdiction would be required to *prima facie* establish that conclusion drawn by the Courts below either falls out of or falls short of given criterion. To gauge, it would be conducive to refer paragraph Nos.7 and 8 of impugned judgment, as under:-

“7. I have heard learned counsel for the parties, anxiously perused the impugned order and record so also gone through the contentions so advanced by the learned counsel for the parties in the light of Section 8 of the Sindh Rented Premises Ordinance, 1979. Learned counsel for the parties, both during their arguments emphasized upon ingredients of Section 8 of the Ordinance, therefore, in order to judge the findings on point No.1, I deem it appropriate to reproduce the Section of the Ordinance, which provides the parameters for determination and fixation of fair rent. To quote,

“(1). The controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors”-

- (a) The rent of similar premises situated in the similar circumstances in the same or adjoining locality:
- (b) the rise in cost of construction and repair charges:
- (c) the imposition of new taxes, if any, after commencement of the tenancy; and
- (d) the annual value of the premises, if any, on which property tax is levied.”

8. Taking into consideration aforesaid ingredients of law, I have perused the record so also findings of learned Rent Controller on point No.1 in the light of arguments of learned counsels for the parties. The main thrust of the arguments of learned counsel for the appellants is that the learned trial Court did not appreciate the material on record and also ignored the fact that the respondent has failed to produce any evidence showing that the rate of rent claimed by the appellant in the rent application is not prevailing in the area. The learned counsel for the respondent has strongly refuted the above contentions and argued that the appellants have failed in producing any sort of evidence to make out a case of enhancement of rent as per ingredients provided under Section 8 of the Ordinance. As regards, non-production of any evidence by the respondent, as argued by the learned counsel for the appellants, is concerned, the same is vague contention owing to the reason that since the appellants have made application for enhancement of rent in respect of demised premises, as such, initially the burden to establish prevailing market rent lay upon the appellants and not to the respondents. It is pertinent to mention here that the learned trial Court while dismissing the rent application mainly observed that the appellants have claimed the enhancement of rent at the prevailing market rate and referred rate of the rent of adjacent building viz. M/s Allied Bank Ltd and M/s Metropolitan Bank Ltd and paying rent at the rate of Rs.70/- and Rs.69/- per Sq. ft. but the appellants failed to inspire through any tangible piece of evidence. There is no doubt that the demised premises is an old building and the respondent has been in continuation of tenancy since 1958 and the appellants must satisfied that the adjoining premises as compared to the demised premises similar and situated in similar circumstances, failed to establish the same. The appellants in the whole proceedings have not produced any documentary proof that either any new tax was imposed upon the premises in question after commencement of their tenancy or they paid any tax in regard to the tenant. It is an admitted position that after commencement of tenancy in between appellants and respondents no work of renovation or repair was made by the appellants". Appraisal of evidence

of the appellants' side, I find the above observation justified owing to the reason that no tangible evidence on record from the side of the appellants to establish either the rent of similar premises situated in the similar circumstances in the same or adjoining locality; or the rise in cost of construction and repair charges; or the imposition of new taxes, if any, after commencement of the tenancy; and or the annual value of the premises, if any, on which property tax is levied. I fully agree with the argument of the learned counsel for the appellants that it is not mandatory that all the four factors as provided under Section 8 of the Ordinance must co-exist, for which the learned counsel has relied upon case law reported in 1992 CLC 739 Karachi. But in the case in hand, the appellants have not been able to establish any of the ingredient so envisaged in Section 8 of the Ordinance through tangible evidence. In the discussed circumstances, I'm guided by the case law reported in PLD 2005 Karachi 521, wherein the Hon'ble apex Court has been pleased to, while dealing almost similar situation, quashed the orders for fixation of fair rent.”

Perusal of above reflects that the material has been appreciated with reference to all four (04) factors, given in Section 8 of the Ordinance. The petitioner did not bring material on record with regard to factor (a) to (d) of Section 8 of the Ordinance. In absence thereof, a request for *increase* in rent even in name of **fair-rent** would not succeed. The petitioner has failed to make out a case where extra-ordinary Constitutional Jurisdiction in concurrent findings of two courts below could be exercised. Accordingly, instant petition is dismissed.

**J U D G E**