

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-195 of 2010
C.P. No.S-196 of 2010
C.P. No.S-205 of 2010
C.P. No.S-725 of 2011
C.P. No.S-726 of 2011
C.P. No.S-757 of 2011
C.P. No.S-758 of 2011
C.P. No.S-759 of 2011
C.P. No.S-764 of 2011
C.P. No.S-862 of 2011

Date of hearing: 09-03-2020.

Date of Judgment: 00-03.2020.

Mr. Mumtaz Alam Laghari, Advocate for the petitioners in C.P No.S-725 and 726 of 2011.

Mr. Irfan Ahmed Qureshi, advocate for the petitioners in C.P. No.757 and 758 of 2011.

Mr. Arbab Ali Hakro, Advocate for the petitioners in C.P No.D-759 and 764 of 2011.

Mr. Aqeel Ahmed Siddiqui, Advocate for petitioner in C.P No.S-862/2011.

Mr. Naimatullah Soomro advocate for respondents / landlord in C.PNo.S-195, 196 and 205 of 2010 and C.P. No.S- 757 and 758 of 2011.

This is the bunch of petitions filed by the tenant of their respective premises situated in a building called Anjuman-e-Imamia. The landlord filed eviction application in the year 2006 on a common ground of default based on identical facts. The Rent Application was contested by the tenants before the Rent Controller. Initially there were two sets of order. One dated 28.05.2009 and 24.08.2009 allowing the rent application and the other set of order dated 19.02.2010, dismissing the rent application. On remand the set of order dated 28.05.2009 where application was allowed, appeal for some reason kept pending whereas in some of the appeals wherein order of allowing the application was impugned was successfully challenged by tenant but on remand they were also dismissed. Appeal against them were also filed and heard. Appeals against the order allowing application was dismissed vide order 21.1.2010 and appeals

against order dismissing application was allowed vide order 26.09.2011. This bunch impugns the order of appellate court. The chart for convenience is given as under:-

R.A. No.08 of 2006	First Rent Appeal No.52/2009	C.P. No.S-195/2010
Rent Application was allowed vide order dated 28.05.2009	Appeal was dismissed vide order dated 21.01.2019	Aziz Ahmed (tenant) versus Anjuman-e-Imamia (Landlord)
R.A. No.16 of 2006	First Rent Appeal No.55/2009	C.P. No.S-196/2010
Rent Application was allowed vide order dated 28.05.2009.	Appeal was dismissed vide order dated 21.01.2010.	Abdul Waheed (tenant) versus Anjuman-e-Imamia (landlord).
R.A. No.11 of 2006	First Rent Appeal No.51/2009	C.P. No.S-205/2010
Rent application was allowed vide order dated 28.05.2009.	Appeal was dismissed vide order dated 21.01.2010.	Muhammad Ishaque(tenant). Versus Anjuman-e-Imamia (landlord).
R.A. No.29 of 2006 1. Rent application was allowed on 24.08.2009. 2. On remand rent application was dismissed vide order dated 19.02.2010	1. First Rent Appeal No.94/2009 (filed by tenant) was remanded vide order dated 15.12.2009. 2. First Rent Appeal No.57/2010 (filed by landlord) was allowed vide order dated 26.09.2011.	C.P. No.S-725/2011 Khalid Noor (tenant) versus Anjuman-e-Imamia (landlord).
R.A. No.14 of 2006	First Rent Appeal No.53/2010.	C.P. No.S-726/2011
Rent application was dismissed vide order dated 19.02.2010.	Appeal was allowed vide order dated 26.09.2011.	Haji Abdul Majeed Khan (tenant) versus Anjuman-e-Imamia (landlord).
R.A. No.06 of 2006	First Rent Appeal No.52/2010	C.P. No.S-757/2011
Rent Application was dismissed vide order dated 19.02.2010.	Appeal was allowed vide order dated 26.09.2011	Nazim Khan Ghori(tenant) Versus Anjuman-e-Imamia (landlord).
RA. No.25 of 2006 1. Rent application was allowed on 24.08.2009. 2. On remand rent application was dismissed vide order dated 19.02.2010	1. First Rent Appeal No.92/2009 (filed by tenant) was remanded vide order dated 15.12.2009. 2. First Rent Appeal No.54/2010 (filed by landlord) was allowed vide order dated 26.09.2011.	C.P. No.S-758/2011. Inayatullah (tenant) Versus Anjuman-e-Imamia (landlord).

<p>R.A. No.27 of 2006</p> <p>1. Rent application was allowed on 24.08.2009.</p> <p>2. On remand rent application was dismissed vide order dated 19.02.2010</p>	<p>1. First Rent Appeal No.93/2009 (filed by tenant) was remanded vide order dated 15.12.2009.</p> <p>2. First Rent Appeal No.55/2010 (filed by landlord) was allowed vide order dated 26.09.2011.</p>	<p>C.P. No.S-759/2011</p> <p>Mehboob Bux (tenant) Versus Anjuman-e-Imamia (landlord).</p>
<p>R.A. No.30 of 2006</p> <p>1. Rent application was allowed on 24.08.2009.</p> <p>2. On remand rent application was dismissed vide order dated 19.02.2010</p>	<p>1. First Rent Appeal No.95/2009 (filed by tenant) was remanded vide order dated 15.12.2009.</p> <p>2. First Rent Appeal No.58/2010 (filed by landlord) was allowed vide order dated 26.09.2011.</p>	<p>C.P. No.S-764/2011</p> <p>Muhammad Hanif (tenant) Versus Anjuman-e-Imamia (landlord).</p>
<p>R.A. No.28 of 2006</p>	<p>First Rent Appeal No.56/2010.</p>	<p>C.P. No.S-862/2011</p>
<p>Rent application was dismissed vide order dated 19.02.2010.</p>	<p>Appeal was allowed vide order dated 26.09.2011.</p>	<p>Muhammad Hanif(tenant) Versus Anjuman-e-Imamia (landlord).</p>

Consequently the issue of default was also addressed by the appellate court as a court of first impression. Aggrieved of the decision of appellate court these tenants have filed this petition on the following grounds:

1. Whether the appeal before the appellate court was time barred?
2. That the appellate court should not have given the decision on merits as the Rent Controller never decided the application on merits and consequently right of appeal was denied to the petitioner by the appellate court.

Heard learned counsel and perused the material available on record.

Let us first examined the issue of maintainability of appeal before the appellate court as it is claimed that it was barred by time. Learned counsel for the petitioner has relied upon the Judgments of MUHAMMAD NAWAZ v. ABDUS SALAM 1997 S.C. 563, wherein the certified copies were prepared and completed on a particular date while the petitioner collected copies much latter and almost took 04 months to collect the copies and there was no reasonable

explanation provided for this inordinate delay in obtaining copy. Counsel next relied upon the case of Mian MUHAMMAD SABIR v. Malik MUHAMMAD SADIQ reported in PLD 2008 SC 577. Based on the above decisions, it is contended that the time requisite for obtaining copy of the order within the contemplation of section 12 of the Limitation Act means only the interval between the “date of application for supply of copy” and the “date when it is ready for delivery”. Time between the date on which the copy was ready for delivery, and the date on which the applicant chooses to take delivery thereof, is not a portion of time ‘requisite’ for obtaining copy. It is contended that the landlord failed to produce chit/receipt issued by the copying agency showing the date for preparation of certified copy inasmuch as no such date has been indicated in the application for the condonation of delay. Had the appellant produced the chit and that the copy was not well ready on the date indicated in the chit, the appellant could have taken shelter of section 12(5) of Limitation Act. Next the petitioner has relied upon the case of ANISA BEGUM v. ATIQ UR REHMAN reported in 2007 MLD 1385.

Respondent’s counsel on the other hand relied upon the case of WEST PAKISTAN INDUSTRIAL DEVELOPMENT CORPORATION, KARACHI v. AZIZ QURESHI reported in PLD 1973 222, arising out of the judgment and order of the then High Court of West Pakistan Karachi Bench Karachi.

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

The cases cited by learned counsel for the petitioner are distinguishable in the sense that the lis originates from Peshawar High Court and Multan Bench of Lahore High Court respectively whereas in the present case Sindh Civil Court Rules are applicable in so far as obtaining certified copy of Judgment and Decree is concerned. The relevant rules of Sindh Civil Court Rules are reproduced as under:-

323. Registration of application and estimate of copying and other fees:-- (1) As soon as an order for a copy or translation has been made, the Record Keeper or under his supervision the Head Copyist, shall number and register the application in the order of its receipt in the Register of Application for copies and translations and shall enter on the application its serial number. He shall also at once, if possible, or during the same day but ordinarily not later than the following working day, ascertain the amount of copying, comparing and translation fees, when leviable, according to the scale prescribed in Chapter VIII, Appendix D and enter them on the application and communicate them to the applicant.

(2) No fees shall be charged for copying papers wanted for a public purpose by officers other than the Advocate General or the Government Pleaders of a Provincial Government or the Central Government or of the Government of Burma.

(3) The preparation of copies shall be undertaken in accordance with the serial order of applications unless otherwise ordered by the Judge.

Provided that on payment of an extra fee of four annas by a Court fee stamp upon the application and on extra payment of half the copying fees and comparing fees, if any, an applicant should be entitled to obtain a copy, if possible, within 24 hours and in any case within 48 hours, of any document among the records of the Court to which the application is made.

329. Copies how certified:-- Certified copies shall be endorsed with the following particulars:--

- (1) the date of application for the copy;
- (2) the date of estimate of fees;
- (3) the date of deposit of estimate fees and the date of supply of stamp;
- (4) the date of certification by the chief ministerial officer; and
- (5) the date of delivery of the copy.

They shall be certified at the foot to be a "true copy" shall bear the seal of the Court on each page, and shall be dated and subscribed in full with his name and official title by the chief ministerial officer of the Court. The certifying officer shall initial every alteration and interlineations in the copy.

331. Posting of list of copies ready for office delivery:-- (1) A list of copies and translations ready for delivery shall be posted on the notice board of the Record Keepers' office.

(2) If a copy or translation is not claimed by the applicant within six months from the date of posting the aforesaid list, the copy shall be destroyed and the fact shall be noted in the remarks column of the Register of Applications for copies and translation.

(3) Where the applicant has applied that a copy should be sent to him by post, the copy shall be sent accordingly.

The procedural requirement in obtaining certified copy of the order judgment, decree etc as described above requires that an intimation to the applicant is

inevitable when copies are made ready in terms of Rule 331. In terms of Rule 331 a list of all those orders/judgment etc, copies of which ready for delivery, shall be pasted on the notice board of the Record Keeper. This notice and/or intimation was never issued to the applicant who has applied for the certified copy. Under above cited rules there appears to be no concept of chit/receipt to be issued by the copyist to indicate the date of the delivery of the copy. Hence the ratio of the judgment in WEST PAKISTAN INDUSTRIAL DEVELOPMENT CORPORATION is applicable and the time requisite includes the time till it was intimated to applicant as there was no evidence that the applicant was intimated about the copy made ready on a date prior to the date it was received by the applicant.

In view of the above, if a time is calculated and the requisite time till its intimation and in its absence, receipt of copy is excluded as requisite time; the appeal is within time.

The next question as raised by the petitioner is that the appellate court in fact acted as a trial court and decided the case on merit for the first time. The trial court dismissed the ejectment application except two R.A. 16/2006 and R.A. 11/2006 on the count that the applicant was not competent to maintain the application whereafter the issue No.2 was rendered as redundant. In some of the cases in the first round of litigation the applications of the landlord were allowed and on appeal preferred by the tenant it was remanded to the same Rent Controller who then persuaded to dismiss the same. Surprisingly, it was done by the same Rent Controller who earlier took a contrary view by allowing the application. Be that as it may, in the second round of litigation when the Rent Controller dismissed the application, the appeal was preferred by the landlord and it was allowed. It is at this point of time when the question of default was taken into consideration without adjudicating as to what was the period of default. It was mere presumption that the rent was liable to be enhanced at the

rate of 10% per annum from the date of the expiry of the first rent agreement for 11 months. Surprisingly, the period of default was not even pleaded in the application nor the evidence came in support thereof as to what the period of default was.

Mr. Naimatullah Soomro learned counsel in the arguments concedes that it may be taken up from the date of the cause of action disclosed in the application. Even if that is taken into consideration, there is no substantive finding as to what the amount was which was required to be paid and was due. The payment of periodical lump sum rent was not denied but what is claimed that the enhanced rent was not paid. The calculation at the rate of 10% per annum is also not disclosed. The trial court and appellate court on the basis of a general principle held that it is liable to be enhanced and since it is not enhanced and paid, therefore, they have committed default. Though this exercise was not done by the trial court at all, for the first time this general exercise was done by the appellate court in holding that the rent ought to have enhanced at the rate of 10%.

At the first instance when the trial court was silent and the applications were dismissed as being not maintainable then the primary jurisdiction of the appellate court would be to hear the appeal on the question agitated and not which was not decided by the trial court. By assuming the jurisdiction of trial court the right of appeal of aggrieved party was curtailed. Though we do not take anything away from the merit of the case if at all the rent was required to be enhanced but then in all fairness the period of default must be pleaded.

JUDGE

Since this view of the appellate court came for the first time as there were no findings of the trial court at all, therefore, the petitioner is deprived of a right of an appeal as far as the findings of the court on default is concerned. They filed the instant writ petition challenging the order passed by the appellate court on merit but the jurisdiction of this court is not the same as available to the appellate court under section 21 of the Sindh Rented Premises Ordinance.