

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitution Petition No. 3-791 of 2022

[Muhammad Ramzan & others Vs. Karamullah & others]

Mr. Ashfaque Nabi Qazi, Advocate for petitioners
Mr. Abdul Aziz Memon, Advocate for respondent No.1.

--

Date of hearing & order:21.11.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. The instant petition has been filed impugning multiple orders firstly dated 02.07.2022 alleged to have been passed in excess of jurisdiction not vested to Rent Controller Tando Allahyar whereby M/s. Abdul Aziz Memon and Ashfaque Nabi Qazi, advocates were appointed as Commissioner / Arbitrator / Ameen to decide / settle issue of future rent and advance money after fresh construction of rented premises amicably keeping in view the expenditure of fresh construction and fair rent of locality and the petitioners were directed to vacate the rented shops by handing over its peaceful possession to respondent No.1 within three months from passing of said order and disposed of rent application; secondly order dated 02.08.2022 whereby the application under Section 151 C.P.C filed by respondent No.1 / applicant in Rent Application No.4 of 2021 seeking recall of aforesaid order dated 02.07.2022 thereby rent ejection application was disposed of to be restored to its original position for further proceedings; and lastly order dated 15.10.2022 passed by learned District Judge Tando Allahyar, dismissing First Rent Appeal No.03 of 2022 maintained the above orders of Rent Controller Tando Allahywar.

2. Brief facts of the case as per memo of rent application are that applicant / respondent No.1 filed Rent Application under Section 15(2)(vi) of Sindh Rented Premises Ordinance, 1979 against the petitioners and others for ejection claiming himself to be the owner of rented premises i.e. C.S No.1745 admeasuring 283-4 sq. yards equal to 2550-6 sq.ft situated in Ward-C, Memon Mohalla Tando Allahyar City; whereupon his father had constructed a market with name and style of 'Haji Ahmed Memon Market' and rented out the same to different persons including petitioners; that the market was in dilapidated conditions and in order to avoid any untoward incident due to its collapse in future, the applicant requested the petitioners/ tenants to vacate the demised premises for reconstruction and restoring their

possession on fresh rent agreement; that the petitioners / opponents did not pay any heed and demanded huge amount for vacating the rented premises; therefore, the applicant sent them legal notices upon which out of ten tenants two agreed to vacate while petitioners instead of vacating the premises preferred the luxury of litigation; therefore, the applicant / respondent No.1 filed Rent Application for their ejection.

3. Upon service of summons, petitioners / opponents filed written statement admitting the ownership of applicant / respondent No.1 partly partly denied the averments of plaint including dilapidated condition of the premises.

4. Subsequently, applicant / respondent No.1 filed affidavit-in evidence in which he produced several documents including approved building plan and Map, so also original challans; thereafter he was cross-examined; that upon recording evidence Rent Controller came to the conclusion that the core issue of opponents / petitioners was settlement of future rent and advance amount after raising fresh construction; therefore, upon proposal of Rent Controller, both the parties agreed for appointment of Arbitrator / Commissioner / Ameen to settle the said issue, hence on showing confidence by the parties upon their counsel M/s. Abdul Aziz Memon, and Ashfaque Nabi Qazi, Advocates were appointed as Commissioner / Arbitrator / Ameen to settle such issue between the parties amicably keeping in view the expenditure of such fresh construction and fair rent of locality; meanwhile the petitioners / opponents vide order dated 2.7.2022 were directed to vacate the rented premises and handover its peaceful possession to applicant side within a period of 120 days for reconstruction of building. Subsequently, the petitioners moved the application under Section 151 CPC for recall / review / vacating the order dated 2.7.2022 on the ground that on the said date the rent application was fixed for cross-examination of applicant who was duly cross-examined by the opponents' / petitioner's counsel and after such cross-examination, the Court on its own motion passed order dated 2.7.2022 and disposed of the rent application directing the opponents / petitioners to vacate the premises within 120 days and such directions have been given without considering the material available on record. The said application was dismissed vide order dated 28.2022. Being aggrieved by the said two orders the petitioners preferred Rent Appeal No. 03 of 2022 which was also dismissed by learned District Judge, Tando Allahyar vide order dated 15.10.2022; hence the instant constitutional petition.

5. The main thrust of arguments advanced by Mr. Ashfaque Nabi Qazi, learned counsel for the petitioners is that the purported consent of petitioners for the impugned order dated 02.07.2022 cannot vest jurisdiction in the Rent Controller to exercise powers not vested in him under Section 20 of Sindh Rented Premises Ordinance, 1979; that impugned orders dated 2.7.2022, 28.2022 passed by Rent Controller and order dated 15.10.2022 passed by learned District Judge are ultra vires of Section 13 of SRPO, 1979 which contemplates eviction only in accordance with the said provisions; that learned Rent Controller has erred in considering the petitioner No.3 to be attorney of all the petitioners and accordingly treated his no objection as tendered by all the remaining petitioners; that while passing the impugned order dated 2.7.2022 learned Rent Controller again erred in considering the specific statements of opponents 8 to 10 to be the statement of petitioners to infer their no objection; that impugned order dated 2.7.2022 has left the petitioners helpless and un-remedied when it comes to the timings of meeting of appointed arbitrators / commissioner / ameens and disagreements between them that order conspicuously is silent and as per order the petitioners have to vacate the demised / rented shops within 120 days after passing order. He lastly prayed for allowing the instant constitutional petition by setting-aside the impugned orders and remanding the matter to the Trial Court for a fresh decision. In support of his contentions, he relied upon the cases reported as *2020 CLC 31, 2004 SCMR 1247, 2016 SCMR 2050, PLD 2020 Sindh 158, PLD 2001 Karachi 60, 2014 SCMR 1694, 2016 SCMR-1, PLD 1975 SC 678, Supreme Court Judgment dated 25.05.2002 [unreported] in Civil Petition No.620 & 444 of 2022 and 1986 CLC 1100.*

6. Mr. Abdul Aziz Memon, advocate appearing for respondent No. 1 supported the impugned orders contending that respondent No.1 being the owner of the subject premises was entitled to its possession. He prayed for the dismissal of this constitutional petition. In support of his contentions, he relied upon the cases of Khan Sahib Sher Muhammad Mir Vs. Islamic Republic of Pakistan [*1987 SCMR 92*], Muhammad Khawar Hasan Vs. Additional District Judge, Islamabad (West) and others [*2021 YLR 1458 Islamabad*], Irshad Ahmed Shad Vs. Pervez Akhtar and 2 others [*2013 CLC 254 Sindh*], Abdul Khaliq Vs. Khuda Bakhsh and 4 others [*1989 CLC 1316 Lahore*], Custom Public School through Liaison Officer Vs. Aftab Ahmed and 2 others [*2019 CLC 1774 Sindh*], Mehtab Hussain Vs. Abdul Aziz Khan [*1992 MLD 1675 Karachi*], Khawaja Imran Ahmed Vs. Noor Ahmed and another [*1992 SCMR 1152*], Haji Hussain Haji Dawood through Legal Heirs and others

Vs. M.Y. Kherati [2002 SCMR 343], and Amin Badshah Vs. Nargis Saleem Ahmed [2000 SCMR 1641].

7. I have heard learned counsel for the parties and also gone through the record with their able assistance.

8. The question involved in the present proceeding is whether the subject building is in dilapidated condition and the same needs reconstruction and whether the rent application could be decided by the purported consent of the parties or whether the same needs to be decided on merits.

9. For deciding the aforesaid question, reference may be made to Section 20 of Sindh Rented Premises Ordinance, 1979, which provides as follows:-

“Sec. 20 Power of Civil Court. (1) Subject to this Ordinance, the Controller and the appellate authority shall, for the purpose of any case under this Ordinance, have powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of **only** the matters, namely:- (a) summoning and enforcing the attendance of any person and examining him on oath;- (b) compelling production or discovery of documents; (c) inspecting the site; and (d) issuing commission for examination of witness or documents.”

10. A plain reading of the above Section indicates that the Rent Controller and the appellate court for any case under the Ordinance have been conferred powers of Civil Court under the Code of Civil Procedure, 1908 in respect of only matters mentioned in sub-clauses (a) to (d) and not in respect of any other matter.

11. The power to issue commission is confined to the issuance of commission for the examination of witness under clause (d) of Section 20 of the Ordinance. The use of the word “only” in Section 20 of the Ordinance indicates that the law-makers did not wish to vest or confer the powers of Civil Court to the Rent Controller and the appellate court in respect of all matters, which are provided in Code of Civil Procedure, 1908, but the powers were given only for limited purposes specified therein. Thus, the contention of learned counsel for the petitioner, that the Rent Controller had no power to settle the issue between the parties in that manner prima-facie seems to be correct to that extent. However, it does not mean that the rights of the tenant are extinguished and the same shall remain intact in terms of obtaining orders for the ejectment of the tenant based on the reconstruction of the premises under section 15(20)(vi) SRPO, 1979.

12. After dealing with technical objections, now I will advert to the merits of the case. The Rent Controller while disposing of the case has held as under:

Since, both parties have shown their confidence upon their Advocates and both of them are senior counsels, having enough experience in this field, therefore, Mr. Abdul Aziz Memon, Advocate and Mr. Ashfaque Nabi Qazi, Advocate are appointed as Commissioner / Arbitrator / Ameen to decide / settle such issue between the parties, after fresh construction of rented premises amicably keeping in view the expenditure of such fresh construction and fair rent of locality and their decision would be binding upon both the parties. The Opponent side is directed to vacate the rented premises / rented shops and handover its peaceful possession to applicant side within the period of 120 days from the date of this order. The respective counsels for contesting parties submitted that titled Rent Application be disposed of in such terms as there remain no dispute / issue between them.

The parties are strictly directed to abide their commitment, Applicant side is directed to get complete fresh construction work of rented premises within stipulated period, given under Sindh Rented Premises Ordinance, and such period would be commenced from the date of getting possession of rented premises by applicant, resultantly, titled Rent Application is disposed of in above terms.”

13. The appellate Court, while dismissing the appeal(s) of the petitioners, held as under:

“ From the plain reading of above observations of Honourable Apex courts, it appears that no appeal is preferable upon the consent order, passed by the learned Rent Controller.

So far as reliance placed by the learned counsel for the appellants / opponents is concerned, I have great honor and respect for the same, but the same are distinguishable from the facts and circumstances of the instant case.

In these circumstances, I am of the view that the learned trial court has passed just and proper orders, which does not require any interference of this court. Accordingly First Rent Appeal merits no consideration and same is hereby dismissed.”

14. The respondent No.1 filed rent case under section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 on the ground that the premises needed for the purpose of reconstruction.

15. A perusal of the above-quoted section 15(2)(vi) of the Sindh Rented Premises Ordinance, 1979 clearly defines the rights and liabilities of landlord and tenant in respect of matters where eviction is sought on the ground of reconstruction or erection of new building at the site. Firstly, from provisions of clause (vi) of sub-section (2) of section 15 of Sindh Rented Premises Ordinance, 1979 it is clear that a landlord can seek ejectment of his tenant

on the ground of reconstruction of the premises. In this regard, the only duty cast upon the landlord is that he should obtain “necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction.”

16. When a landlord obtains demised premises on the ground of reconstruction or erection of a new building, as envisaged under clause (vi) of sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979, a duty is cast upon him by sub-section (3) of Section 15 of the Sindh Rented Premises Ordinance, 1979, to demolish the existing building within six months of taking over possession of the premises and to commence the erection of new building within two years. In case the landlord fails to demolish the existing building within six months, the tenant shall be entitled to be put into possession of the premises and for that purpose the tenant may apply to the Controller for an order in that behalf.

17. Once a landlord obtains possession of demised premises on the ground of reconstruction or erection of new building, demolishes the existing building within six months and also commences the erection of new building within two years and also completes the new building as per approved plan, the provisions of sub-section (4) of section 15, Sindh Rented Premises Ordinance, 1979 would come into play. Sub-section (4) (ibid) states that where the land-lord constructs the building as aforesaid the tenant who was evicted from the old building may, before completion of new building and its occupation by any other person, apply to the Controller for an order directing that he be put in possession of such area in the new building as does not exceed the area of old building which he was in occupation and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, as considering the location and type of new building and the need of tenant, he deems just and on payment of rent to be determined by him based on rent of similar accommodation in the locality.

18. In my humble opinion, the above finding given by the Courts below to the petitioners could not be said to be unjustified and uncalled for; firstly, as the respondent was legally bound to construct the new building strictly in accordance with the building plan approved by the competent authority as such the petitioners could not be compelled to construct a building as per need and requirements of existing petitioners/tenants; secondly, in case of failure on the part of respondent to demolish the old building within the time prescribed by the Ordinance, the tenant would become entitled to seek

remedy under subsection (3) of Section 15 of the Ordinance, and in such an event the law would take its own course. Lastly, once the building is near completion, and before its occupation by any other person, the tenant, in view of the provisions of subsection (4) of section 15 of Sindh Rented Premises Ordinance, 1979, may apply to the Controller for an order directing that they be put in possession of such area in the new building and does not exceed the area of old building which they were in occupation; and the Controller shall make an order accordingly in respect of the area applied for or such smaller area, considering the location and type of the new building and the need of tenant, he deems just and on payment of rent to be determined by him based on rent of similar accommodation in the locality.

19. I have gone through the decision of the learned Courts below and I do not find any justification to put the petitioners in occupation of the subject premises by directing the learned rent controller to rehear the parties on the subject issue as that would be futile exercises, for the simple reason that the rights of the tenants have already been protected under the law; besides, there is no dispute on the subject issue that the subject premises are in dilapidated condition which needs reconstruction and in the meanwhile the allowing the tenant to remain in occupation of the premises will be harmful if allowed, so far as the other arrangement so made by the learned Rent Controller is concerned, at this juncture, the same has lost its efficacy as the property if it is allowed to be used, the damage could be caused to the tenants, if it falls on the ground being in dilapidated condition, therefore, the arrangement so made will not come in the way to impart substantial justice between the parties, the stance of the petitioners that the matter may be remanded for a decision on merits this could not be done to allow the parties to litigate on the premises which is in a dangerous condition.

20. The learned Rent Controller or any other forum cannot be allowed to play the lives of tenants in such a way as portrayed by the petitioners. Prima facie the petitioners want to engage in litigation for just rhyme and reason.

21. In view of the above facts and circumstances of the case, this petition fails and is dismissed with no order as to costs.

JUDGE