

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-72 of 2022

[Muhammad Zain & anotherv..... Mushtaq Ahmed & another]

Date of Hearing : 16.01.2023
Petitioners through : Mr. Siraj Ahmed, Advocate.
Respondents through : Mr. Zafar Iqbal, Advocate for the
respondent No.1.
Mr. Ali Zardari, AAG.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails findings of the learned trial Court dated 28.05.2021 as well as those of the first Appellate Court dated 07.01.2022 which are against the petitioners.

2. The precise facts of the case are that the petitioners are tenant of the respondent No.1 who is landlord of shops No.3, 4 & 6, Lakhani View Apartment, Kausar Niazi Colony, Opposite Fateh Part North, Nazimabad, Karachi and they are aggrieved by the forementioned findings. In *minutiae*, the respondent No.1 filed a Rent Case No.14 of 2019 before learned Rent Controller, Central at Karachi and pending adjudication of the said Rent Case, the respondent No.1 preferred as application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 (“SRPO”) beseeching therein for arrears of rent, which application was allowed vide order dated 01.08.2019 with directions to the petitioners to deposit rent at the rate of Rs.55,000/- per month with further directions to the petitioners to deposit arrears of the rent within fifteen days. Owing to the non-compliance of the order dated 01.08.2019, the respondent No.1 preferred an application under Section 16(2) SRPO in the said Rent Case praying for striking off the defence of the petitioners and

eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 28.05.2021 and petitioners were directed to vacate the tenements within forty five days. The petitioners assailed the said order before the learned Appellate Court by filing FRA No.93 of 2021 and the learned Appellate Court having heard the parties dismissed the said FRA vide order dated 07.01.2022, hence the petitioners are before this Court against such concurrent findings.

3. The petitioners' entire case was premised on the argument that they were depositing the rent in MRC No.124/2019 at the rate of Rs.50,000/- per month and there is no default on the part of the petitioners but both the courts below failed to appreciate such fact and order of eviction from the tenement has been rendered without going through the record and proceedings.

4. In contrast, learned counsel for the respondent No.1 argued that concurrent findings of the lower fora are in consonance with law and the petitioners failed to deposit the rent of Rs.55000/- as per order of the learned Rent Controller passed on the plea of the respondent No.1 under Order 16(1) SRPO and on non-compliance of the said order, the defence of the petitioners were struck off as mandated under Section 16(2) SRPO and eviction orders were passed, therefore, no illegality or infirmity in the concurrent findings hence the petition be dismissed.

5. I have heard the respective learned counsel and have also considered the record to which surveillance of this Court was solicited. It is considered pertinent to initiate this deliberation by referring to the settled law that the purpose of appellate jurisdiction

is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Rent Controller went on to hold as under:-

“5.As per order dated 01.08.2019 passed under section 16(1) of the Ordinance the appellant was required to deposit rent at the rate of Rs.55,000/- per month regularly on or before 10th of every English calendar month in Rent Case No.14/2019 till final disposal of the said rent case. Appellants were further directed to deposit arrears of the rent from 27.03.2019 till to date within 15 days of the said order.

6.To ascertain the actual position regarding deposit of rent, report was called from the learned Rent Controller, pertaining to MRC No.124/2019 which is placed on record. Perusal of such report shows that after passing the order dated 01.08.2019, appellants remained depositing rent in the said MRC at the rate of Rs.50,000/- till 16.10.2019 however as per order dated 01.08.2019 appellants were required to deposit rent @ Rs.55,000/-. Record further reveals that there are 29 deposits altogether till 12.10.2021 wherein there are 22 occasions when rent was deposited with delays. It is not the case of single or couple of the occasions when non-compliance of the order dated 01.08.2019 is committed. Apart from the above, it is not the case of mere

non-deposit of rent in due time. It is the matter of record that appellant deposited less amount so also in the MRC, rather than in Rent Case, in contradiction to the directions contained in the order dated 01.08.2019.

7. In view of the above circumstances, I am of the humble view that the findings of the learned Rent Controller does not suffer from any illegality or material irregularity requiring interference by this Court.

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the petitioners failed to obey the order of the learned Rent Controller passed on application under Section 16(1) SRPO whereby they were directed to pay a rent of Rs.55,000/- but the petitioners instead of paying the said rent, paid a rent of Rs.50,000/- which is in complete defiance of the said order of the learned Rent Controller side by side, the petitioners also failed to pay the arrears of rent as directed earlier. The prescriptions of Section 16(2) SRPO are very clear that when the tenant fails to comply the order of the learned Rent Controller passed under Section 16(1) SRPO his defence be struck off and the landlord be put into possession of the tenement. It is considered pertinent to reproduce Section 16(2) SRPO which is delineated hereunder:-

“16. Arrears of rent.-(1).....

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.

(3).....”

7. The statutory prescriptions are very clear that where the tenant has failed to deposit the arrears of rent or to pay monthly rent

under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises. The striking of defense in rent case is not mere technically. To me, use of the word “shall” in Section 16(2) SRPO, 1979 leaves no room to deny a statutory right accrued to respondent No.1/ landlady after acknowledging that the “purpose” of Section 16(2) SRPO, 1979 is to struck off the defence and the learned Rent Controller as well as the Appellate Court rightly held and passed the concurrent orders against the petitioners. My lord Mr. Justice Mushir Alam, (as his lordship then was as Judge of the Hon’ble Supreme Court) in the case of Syed Asghar Hussain v. Muhammad Owais & others (2018 SCMR 1720) held that when a tenant fails to deposit arrears of rent his defence must be struckoff. Hon’ble Supreme Court held that best course for the tenant could have been to comply with the tentative rent order under S. 16(1) and to have contested the matter to its logical conclusion thereafter.

8. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can

interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.¹

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed. Learned counsel for the respondent graciously extends no objection for grant of two months' time to the petitioners for vacating the premises. Order accordingly.

Karachi
Dated: 16.01.2023.

JUDGE

Aadil Arab

¹ Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).