

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-537 of 2021

[M/s. National Advertiser (Pvt.) Ltd.v.....M/s. Pakistan National Shipping Corporation & another]

Date of Hearing : 14.02.2023
Petitioner through : Mr. Saadat Yar Khan, Advocate.
Respondents through : Mr. Zafar Iqbal Dutt, Advocate for respondent No.1.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails the concurrent findings of the learned trial Court dated 24.11.2020 as well as First Appellate Court dated 26.05.2021.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.484 of 2016 before learned Rent Controller, South at Karachi under the provisions of Section 8 of Sindh Rented Premises Ordinance, 1979 (“SRPO”) for fixation of fair rent of 834 square feet on first floor and 1825 square feet on second floor of a building known as Muhammad House, I.I. Chundrigar Road, Karachi (total area 2659 square feet) (“tenement”) which was allowed by the learned Rent Controller vide order dated 24.11.2020 and the learned Rent Controller fixed the rent of the tenement of Rs.20/- per sq. ft. The petitioner impugned the findings of the learned Rent Controller before the First Appellate Court by filing FRA No.178/2020 which was dismissed vide order dated 26.05.2021 and the order of the learned Rent Controller was maintained, hence the petitioner before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the opponent’s attorney was not competent to ensue the

proceedings under the provisions of Section 8 SRPO before the learned Rent Controller but the courts' below failed to consider this aspect. He lastly contended that the grounds for enhancement of rent as contained in Section 8 SRPO are lacking in this case, therefore, the rent fixed by the learned Rent Controller and affirmed by the Appellate Court be reduced.

4. In contrast, learned counsel for the respondent No.1 argued that concurrent findings of the Courts below are upon correct appreciation of law and facts presented by the respondent No.1 and concurrent findings cannot be disturbed, therefore, the petition be dismissed.

5. I have heard learned counsel for the parties at length and have also scanned the available record. The issue squarely revolves round Section 8 SRPO, therefore, I find it just and proper to refer the section directly for a proper answer. The mechanism and procedure for fixation of fair rent is provided in section 8 SRPO, which reads as under:-

“8. Fair rent. ---(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.”

6. The plain language of the Section 8(1) SRPO prima facie requires the Rent Controller to consider above four aspects while determining fair rent. All the above four aspects are independent in

nature and character therefore every independent aspect would be a factor affecting upon quantum of fair-rent but failure of any of them would not result in rejection of the application. The Apex Court in the case of Muhammad Farooq v. Abdul wahid Siddiqui (2014 SCMR 630) held as under:-

“5. It is pertinent to note that in the case of Mst. Muneera Kaleemuddin noted hereinabove this Court has observed that the failure of the landlord to bring on record the material in respect of any of the four elements to show increase would not necessarily lead to the rejection of an application but it may affect the quantum of fair rent. In the case of Abdul Rehman (supra) this controversy seem to have been rested with lucid pronouncement that the Rent Controller is not required to consider all the factors of Section 8 of the Ordinance as a composite whole rather these factors are independent or each other and in a given case may be supplemented for the purpose of fixation of a fair rent. The submissions of the learned counsel for the petitioner on this point needs no further consideration.”

7. I would also add that term “fair-rent” is not available for multiplicity of the existing/agreed rent but a reasonable appreciation of all the given factors so as to fix the fair-rent. Out of such factors, the one mentioned as *“the rent of similar premises situated in the similar circumstances, in the same or adjoining locality”* would be decisive one while other factors would independently cause effects upon quantum of fair-rent. Having said so, let’s examine the concurrent findings of the courts below. It is settled that learned trial Court i.e. Rent Controller is the fact finding authority and 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:-

“19. Admittedly, the respondent No.1 had filed a rent case No.674/1987 under section 8 of SRPO, 1979 against the appellant for fixation of rent of the premises in question and the learned rent controller, vide order dated 29.10.1990 fixed the fair rent from Rs.1001.66 to Rs.7977/- per month and the order was assailed by the appellant up to Honorable Supreme Court of Pakistan and vide order dated 04.12.1996, the Honorable Supreme Court of Pakistan has maintained the order of the learned rent controller. Hence, it shows that on 29.10.1901, the fair rent of the premises in question was fixed by the learned rent controller which was maintained by Honorable Supreme Court of Paksitan vide its order dated 04.12.1996. Thus the rent was lastly fixed about 30 years ago.

21. Evaluating the material on record in juxtaposition with section 8 of SRPO, 1979, it transpires to this Court that respondent/landlord based his claim for fixing of fair rent at the prevailing market rate of rent in the same locality. It may be noted that the respondent/landlord has placed lease agreement executed between respondent No.1 and M/s. Gray Mackenzie Restaurants International Ltd dated 24.12.2012 as Ex-A/5 and challan of payment of property tax for the year 2014 at Ex-A/12. On perusal of lease agreement and tax challan which is of the same building where rented premises is situated shows that tenant was paying rent at the rate of Rs.77.79/- per sq. feet per month in the year 2012, which is more higher than the rent paying by appellant to respondent No.1. Appellant admitted in evidence that one tenant of the building in question i.e. Rotary Club is paying the rent of their tenements in question at the rate of Rs.25/- per square feet per month. Thus the said admission also suggests that the rent is much higher than the rent paying to respondent No.1.

22. The cost of construction and the Government Taxes have reasonably been increased and the landlord has to pay the property tax for which the respondent No.1 has produced challan of property tax which was not controverted during cross examination

[Emphasis supplied]

8. It is gleaned from appraisal of the foregoing and it is not disputed that the rent of the tenement had not been increased since 1996, whereas, Section 9 of SRPO clearly provides that fair rent once fixed can be increased after three years. It is further crystal clear from the above excerpt that the petitioner admitted that one of the tenants of the respondent No.1 in the said building is paying rate to the respondent No.1 at the rate of Rs.25/- per sq. ft. The learned Appellate Court having examined the pros and cons reached to the conclusion that the respondent No.1/landlord entitled for fixation of fair rent as was found by the learned Rent Controller.

9. Admittedly, there has been increase in the property tax which, too, is indicative of the fact that there has been increase in annual value of the premises. I would add that an affirmation to any of the factors, detailed in section-8(1)(b) to (d) SRPO, shall be taken as an “adding factor” towards increase in the “monthly rent” which the Rent Controller or appellate Court finds reasonable in satisfaction of Section 8(1)(a) SRPO. Worth adding here that a balance is always to be appreciated by the Rent Controller, including appellate Court, while fixing the fair-rent which must find strength with detailed factors as well reasonable approaches to available material and circumstances.

10. The legislative intent of the aforesaid provisions of Section 8 SRPO can be gauged from the very fact that it allows the (Rent)

Controller to exercise his/her discretion in order to determine fair rent, which is premised on the aforesaid factors, which includes rent of similar premises situated in similar circumstances in the same or adjoining locality, rise in cost of construction and repair charges, the annual value of premises etc. The said factors can well be read so as to tentatively determine the rate of rent or the amount of rent as envisaged under Section 8 SRPO. In this regard, reliance can be made on the judgment reported as State Life Insurance Corporation of Pakistan and another v. Messrs British Head and Footwear Stores and others (2018 SCMR 581) in which the Hon'ble Supreme Court of Pakistan has held that:

“it is not necessary for a landlord to prove hike in respect of all four factors as detailed in section 8 of the Sindh Rented Premises Ordinance, 1979, or that all four factors must co-exist in each and every case seeking fixation of fair rent. Infact, the prime factor has always been the prevalent market rent of the similar premises situated in similar circumstances, in the same or adjoining locality.”

11. It also emerges from the record that the demised premises is situated at main I.I. Chundrigar Road which is a known commercial hub having high rates as well as the petitioner admitted before the learned Rent Controller during course of evidence that one of the tenants of the respondent No.1 in the same building is paying the rent to the respondent No.1 at the rate of Rs.25/- per sq. ft. The facts and circumstances as well as concurrent findings tilt in favour of the respondent No.1/landlord.

12. 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 Family Judge 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

13. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith the application.

Karachi
Dated: 14.02.2023.

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).