

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-535 of 2021

[Abid Khurramv..... Sheikh Saeed & others]

Date of Hearing : 06.02.2023
Petitioner through : Mr. M. Ghaffar Khan, Advocate.
Respondents through : Mr. Zahid Hussain, Advocate for respondent No.1.

ORDER

Zulfiqar Ahmad Khan, J:- This petition assails findings of the learned trial Court dated 12.03.2021 as well as those of the First Appellate Court dated 22.05.2021 which are against the petitioner.

2. The facts in *minutiae* are that the respondent No.1 filed a Rent Case No.347 of 2018 before learned Rent Controller, East at Karachi and pending adjudication of the said Rent Case, the respondent No.1 preferred an 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 10.12.2019 with directions to the petitioner to deposit rent at the rate of Rs.54,000/- per month before the 10th date of each month with COC of the learned trial Court. Owing to the non-compliance of the order dated 10.12.2019, 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 petitioner and eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 12.03.2021 and petitioner was directed to vacate the tenement within 20 days. The petitioner assailed the said order before the learned Appellate Court by filing FRA No.44 of 2021 and the learned Appellate Court having heard the parties dismissed

the said FRA vide order dated 22.05.2021, hence the petitioner is before this Court against such concurrent findings.

3. The petitioner's entire case was premised on the argument that due to covid-19, the petitioner could not deposit the rent, however, a sum of Rs.4,86,000/- was deposited on 17.11.2020 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. I have heard 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:-

“It has been brought on record that, the appellant/opponent firstly committed default when he deposited the rent of Rs.54,000/- on 08.01.2020 in MRC

referred hereinabove instead of main rent case for the obvious reason that, after passing tentative rent order, he was required to deposit the rent in main rent case and not in MRC, but he failed to do so. Not only this, but after depositing such rent in MRC, he remained silent from January, 2020 till October, 2020 for about 10 months and lastly paid cumulative rent of Rs.486,000/- on 17.11.2020 and Rs.54,000/- on 18.11.2020. For sake of arguments, if the rent amount is calculated from January, 2020 to November, 2020 at the rate of Rs.54,000/- per month as per tentative order, it comes Rs.5,94,000/- whereas the appellant/opponent after passing tentative order deposited the rent in main rent case i.e. Rs.486,000/- on 17.11.2020 and Rs.545,000/- on 18.11.2020, total amount of Rs.5,40,000/- instead of Rs.5,94,000/-. Therefore, I am of the considered opinion that, it was prime duty of the opponent/tenant to comply the tentative order passed by the learned trial Court in its letter and spirit and mere non fulfillment of such directions tantamount his defense plea strike of without further delay. Accordingly, I feel no hesitation to hold that appellant/opponent has committed willful default in payment of rent in compliance of tentative order.

Since, in the above facts and circumstances of the case and dictum laid down in the cited case laws, the appellant has committed willful default n payment of monthly rent in compliance of tentative directions contained in order dated 10.12.2019, passed by the learned Rent Controller on an application under Section 16(1) SRPO, 1979, hence I do not find illegality or irregularity whatsoever in the impugned order.

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the petitioner failed to comply with the order of the learned Rent Controller passed on application under Section 16(1) SRPO whereby he was directed to pay rent, which act is in complete defiance of the order of the learned Rent Controller. The prescriptions of Section 16(2) SRPO are very clear that when the tenant fails to comply with the order of the learned Rent Controller passed under Section 16(1) SRPO, his defence is to be struck off and the landlord is to 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 as there is use of the word “shall” in Section 16(2) SRPO, 1979 that leaves no room to deny, defer or camouflage a statutory right accrued to respondent No.1 after acknowledging that the purpose of Section 16(2) SRPO, 1979 is to struck off the defence and the learned Rent Controller. The Appellate Court in my view rightly passed the impugned order 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 & others¹ 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

¹ 2018 SCMR 1720

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.²

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

Karachi
Dated: 06.02.2023.

JUDGE

Aadil Arab

² 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).