

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial.

High Court Appeal No.234 of 2023

Cedar (Pvt.) Limited
Versus
Soneri Bank Limited and others
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Dated 23.01.2024

M/s. Haider Waheed and Aadil Channa, Advocates for the Appellant.

M/s. Ovais Ali Shah and Jahanzeb Balouch, Advocates for Respondent No.2.

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J U D G M E N T

Muhammad Shafi Siddiqui, J.- The appellant, being a tenant of the premises, has filed a suit for declaration, cancellation, injunction and damages.

2. The appellant was inducted in the premises by virtue of a tenancy agreement reduced into writing. The monthly advance cheques were handed over to the landlord. The tenancy was disclosed to be of 11 months from 15.03.2021 till 14.02.2022. The cause for filing of the suit arose when purportedly some structure/ceiling of rental premises collapsed. It is claimed that the said incident was communicated to the respondent and consequently the referred suit was filed with the following prayer:-

- (i) *declare that the Demised Premises, rented out to be used as a school by the plaintiff, is unfit for such a purpose as the structure of the same is damaged and is unfit for such use or habitation;*
- (ii) *cancel the cheques enumerated in paragraph 10 above drawn on the Defendant No.2 as the same cannot be encashed as there is no corresponding obligation, within the meaning of the agreement dated 4.12.2020 or section 489-F of the PPC, to honour the same;*
- (iii) *award compensation to the Plaintiff for incurring expenditure of Rs.350,000,000/- that went to waste as*

part of the refurbishment and retrofitting activity upon the Demised Premises;

- (iv) award damages to the Plaintiff for the misrepresentation and breach of warranties by the Defendant No.1 that caused loses and inconvenience to the Plaintiff;*
- (v) award compensation to the Plaintiff to the tune of Rs.20,000,000/- as restitution for arranging alternate venue in place of the Demised Premises to resume teaching;*
- (vi) grant injunction against presentation of cheques forming matter of the instant suit;*
- (vii) award damages to the tune of Rs.200 million along with such further sum as may be determined at the time of hearing/ disposal;*
- (viii) direct the Defendant No.1 to return Rs.84,00,000/- deposited with it as Fixed Security Deposit in terms of the Agreement dated 4.12.2021;*
- (ix) award cost and special costs; and*
- (x) any other additional/alternate relief as this court may deem fit and appropriate.*

3. The injunctive order in the suit was passed on 14.03.2022 whereby the respondent No.2 (disclosed in the plaint as defendant No.1), was restrained from presenting and entertaining cheques disclosed in the application and further from initiating criminal proceedings against the appellant and the directors for the aforementioned cheques which covers the rent of the relevant period. On receipt of notices/summons, application under Order-VII Rule-11 CPC was also filed challenging the jurisdiction of the learned single Judge apparently in terms of Section-12 of the Sindh Rented Premises Ordinance, 1979 [SRPO, 1979]. On 10.5.2023 the injunctive order of 14.03.2022 was modified to the extent that appellants were directed to deposit the amount of cheques, disclosed in the application, with the Nazir of this Court within four weeks' time of the order and the said amount on deposit to be invested in a profit bearing scheme. Apparently the restraining order to initiate criminal proceeding against directors

was not disturbed. The said order in terms of above modification is challenged in this Appeal.

4. It is appellant's case that there is sufficient evidence available before the learned single Judge to adjudge that the ceiling was collapsed and the premises, at least some part of it, was rendered uninhabitable; and that the cheques were not presented for encashment for six months and the rent case on account of such default was filed after six months of such cause, which delay shows the understanding of parties. It is further claimed that a security in the sum of Rs.8,400,000/- is available with the landlord and the outstanding amount in terms of arrears is only Rs.14,300,000/-, the substantial amount is covered by security. It is claimed that the impugned order was passed without prejudice to the merits of the case and that means that the appellants were condemned unheard.

5. Mr. Ovais Ali Shah, learned counsel for Respondent No.2 submits that without prejudice to the substance of the order impugned in this appeal, the learned single Judge had no jurisdiction to entertain the suit which is otherwise vested with the Rent Controller in terms of Section-12 of the SRPO, 1979. It is claimed that the premises was handed over to the tenant on 'as is where is' basis, as could be seen from the second recital of the tenancy agreement, as it was on the concessional rate. It is also claimed that the appellants are blowing hot and cold, as at one hand they are saying that the Rent Controller had the jurisdiction, who had already passed the order to deposit the rent in terms of Section-16(1) of the SRPO, 1979; which order has also been challenged in a writ petition on the count of pendency of suit and orders passed, and on the other hand objected the impugned order

of learned single Judge in this appeal. Thus, they have avoided to deposit and secure the amount in the suit proceedings as well as in the rent proceedings.

6. We have heard learned counsel for the parties and perused the material available on record.

7. An application under Order-VII Rule-11 CPC is otherwise pending adjudication and hence we would not like to comment as far as the jurisdiction of the learned single Judge is concerned, however, there are certain questions which requires consideration of this Court.

8. The subject matter of the suit is not just simply a negotiable instrument but it is the rent of the subject period which was not paid, therefore, there is no logic in saying that since the Rent Controller could not pass any order on “negotiable instrument”, therefore, the suit was filed. The subject matter of the suit relates to the outstanding rent which was to be paid through cheques and that is it. It could have been paid through other modes however the subject is rental outstanding. Section-12 of the SRPO, 1979 encompasses the issue of repair of premises and apparently gives a responsibility to the landlord to make necessary repairs other than the structural alteration to a premises. On failure of such obligations, such question could be raised apparently before the Rent Controller by tenant by moving an application, and Rent Controller may direct the landlord after an inquiry, as required and deemed necessary by the Rent Controller and if the Rent Controller thinks necessary that such repairs may be made by the tenant, only then the cost thereof may be deducted from the rent which is payable by him (tenant) and not otherwise. In the same way it is also to be seen what “as is where is basis” means, by a court.

9. In the instant matter though the application was not preferred by the tenant in this regard but the eviction application was filed by the landlord on account of alleged default of the rent payable in advance for the period in relation to which the suit was filed and injunctive order was obtained exparte. Section-12 of the SRPO, 1979 does not empower the civil court to adjudge necessary repairs to be carried out by the landlord; neither an application was filed by the tenant in this regard. The said proceedings in the suit includes an independent claim of compensation on account of the fact disclosed therein but in the same breath the suit also seeks an injunctive order that the subject cheques for rent, may not be encashed which relates to a period when the premises was claimed to be uninhabitable and they had to resort to an alternate and suitable premises and additional rent was paid.

10. The question before us as insisted by Mr. Haider Waheed is that the interim order as granted on 14.03.2022 should not have been modified on 10.05.2023 without considering the merit of the case. We are not in agreement with Mr. Haider Waheed's contention. It is the discretion of the court to grant injunction on a reasonable condition, considering the relief claimed. Injunction involved a considerable amount to be paid by the tenant towards rent and consequently it (the court) felt necessary that the said finances should have been secured with the Nazir of this Court and that was rightly adjudged, at least as an interim measure, subject to the decision of the learned Judge while disposal of the pending applications, as it may deemed fit and proper, however, once the rent is deposited pursuant to the orders of the Court, which the appellant had not deposited till date, the tenant/appellant will "not" be under the obligation to deposit the arrears of rent in

compliance of Section-16(1) of the SRPO, 1979, as the tenant cannot be waxed twice. Security would not come in the way unless the tenant vacates the premises.

11. We were told that as against an order under Section-16(1) of the SRPO, 1979 in rent case No.983/2022, a direct petition has been filed, which is pending adjudication. It is up to the learned single Judge to decide fate of that petition, however, insofar as the impugned order is concerned, we do not see any reason to interfere and object in the interim order as modified. To conclude the instant case, we may sum-up that the rent of the premises cannot be withheld unless the order as required under Section-12 of the SRPO, 1979 is passed entitling him (landlord) to carryout repairs and the amount as adjudged and only then tenant be permitted to withhold the amount subject to the condition that such amount as adjudged was actually spent.

12. With this understanding the appeal merits no consideration and is dismissed. Learned single Judge may dispose of the applications pending at the earliest.

JUDGE

JUDGE

Ayaz Gul