

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 420 of 2022 : Cedar (Pvt.) Limited vs.
Suit 862 of 2023 : Marina Construction (Pvt.) Limited & Others

For the Plaintiff : Mr. Ahmed Masood, Advocate
(Suit No.420 of 2022)

Mr. Sarmad Hani, Advocate
Mr. Zarar Qadir Shoro, Advocate
(Suit No.862 of 2023)

For the Defendant/s : Mr. Ovais Ali Shah, Advocate

Date/s of hearing : 28.08.2024

Date of announcement : 28.08.2024

ORDER

Agha Faisal, J. Briefly stated, the plaintiff entered into an agreement for tenancy dated 04.12.2020 (“Tenancy Agreement”) with the defendant to rent property bearing D-120 Block 4 Clifton Karachi; to be used as a school. Around 04.03.2022¹, the plaintiff claims that the property suffered damage that merited immediate repair. Suit 420 of 2022 was filed essentially to have the premises declared unfit; cancellation of cheques paid for rent and for compensation. Subsequently, Suit 862 of 2023 was filed in respect of the same Tenancy Agreement, however, this time primarily seeking to have clause 5 thereof rescinded. Per the defendant, the first suit was barred by the Sindh Rented Premises Ordinance 1979 (“SRPO”) as a specific statutory forum was provided therein for adjudication of the grievance. Notwithstanding the foregoing, it was contended that the subsequent suit was barred per sections 10, 11 and Order II rule 2 CPC. The respective applications seeking rejection of complaints, being CMA 4041 of 2023 and 10761 of 2023, shall be determined herein.

Undisputed facts

2. The respective suits agitate grievances arising out of a Tenancy Agreement; the parties thereto, being the plaintiff and principal defendant, are common *inter se*; and the dispute pertains essentially to rights and obligations pertaining to such tenancy.

¹ As pleaded in paragraph 6 of the memorandum of complaint in the lead suit.

Respective arguments

3. Mr. Ovais Ali Shah articulated that the controversy in the primary suit was amenable to adjudication pursuant to section 12 of the SRPO, applicable to the exclusion of other laws by virtue of section 3 thereof. Hence, the plaintiff ought to have agitated its grievance before the statutory hierarchy. It was added that a subsequent suit on the same *lis* could not be entertained.

4. Mr. Ahmed Masood insisted that declaration or the compensation sought could not have been granted in the statutory hierarchy and even otherwise the consequent plea for damages etc. could only be considered by this Court.

Mr. Sarmad Hani sought to demonstrate that the subsequent suit was predicated on a subsequent grievance, albeit arising out of the same Tenancy Agreement, therefore, could only have been filed subsequently.

Scope of determination

5. It is settled law that the question of whether a suit was likely to succeed or not was irrespective of whether or not the plaint ought to have been rejected². It is often seen that while a plaint could not have been rejected, however, a suit was dismissed eventually for a variety of reasons. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*³ wherein the Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested⁴. The Supreme Court concluded that the rejection of the plaint was

² *Al Meezan Investment Management Company Limited & Others vs. WAPDA First Sukuk Company Limited & Others* reported as PLD 2017 Supreme Court 1.

³ Per Saqib Nisar J in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

⁴ Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

merited *inter alia* when the suit appeared to be barred by law and the import of the word *appear* was deciphered to mean that if *prima facie* the court considered that it *appears* from the statements in the plaint that the suit was barred, then it should be terminated forthwith. The plaint, coupled with the submissions of the learned counsel, shall be subjected to the anvil illumined by the Supreme Court in order to determine these applications.

Implication of the SRPO

6. There is no cavil to the overriding applicability of the SRPO to the premises / agreement subject matter herein, as denoted by section 3 thereof. *Admittedly*, the plaintiff is the landlord per section 2(f)⁵ and the principal defendant is the tenant per section 2(j)⁶. The subject property constitutes as building / premises per section 2(a)⁷ / 2(h)⁸ and the dispute with respect to the monetary compensation for the tenancy constitutes rent per section 2(i)⁹. Section 12¹⁰ comprehensively deals with the issues of renovation to a *building / premises* subject matter of a tenancy between a *landlord* and *tenant*.

7. *Prima facie* perusal of the letter of the law demonstrates that the plaintiff remained endowed with the option to ask the landlord to undertake the

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.

⁵ "landlord" means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.

⁶ "tenant" means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf.

⁷ "building" means any building or part thereof, together with all fittings and fixtures therein, if any, and include any garden, garage, out-house and open space attached or appurtenant thereto.

⁸ "premises" means a building or land, let out on rent, but does not include a hotel.

⁹ "rent" includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid.

¹⁰ 12. (1) Subject to the agreement, if the landlord fails to make such repairs or white-washing as may be necessary to keep the premises in proper shape, the Controller may, on application made to him by the tenant and after such inquiry as the Controller deems fit to make, direct that such repairs or whitewashing may be made by the tenant and the cost thereof may be deducted from the rent payable to the landlord.

(2) Where any authority empowered by a law for the time being in force has required the landlord to make such repairs within such period as may be specified by such authority and the landlord has made default in this behalf, such authority may require the tenant to make such repairs. (3) Where the tenant has made the repairs as aforesaid the authority ordering the repairs shall, after due verification of the details of the expenditure incurred by the tenant, certify the cost of repairs and the tenant may thereupon deduct the amount so certified from the rent payable to the landlord.

requisite repair and upon failure of such an endeavor apply to the Controller¹¹ for directions¹². The cost of repair undertaken by the tenant is also recoverable, subject to verification, from rent payable to the landlord. Perusal of the memorandum of plaint demonstrates the controversy to fall squarely within the domain of the SRPO, hence, and prayer clauses 1 till 3 seek relief that ought to have been sought from the controller.

8. The last 3 prayer clauses are incumbent upon favorable consideration of the first 3, therefore, fall within the category of consequential relief. The question, whether any prayer for consequential relief could result in saving the plaint from rejection, has been answered in *Zain Khan*¹³ wherein, post sieving the law¹⁴, it was maintained that where consequential relief was dependent upon the main claim, the entire suit would fall foul of the law if the primary / main claim was barred. The same was also maintained by this Court in *Amsons Textiles*¹⁵. Hence, no case is made out to sustain the suit for consequential relief in the presence of a finding that the primary relief ought to have been sought per the SRPO before the controller.

9. Section 9¹⁶ CPC demarcates the remit of this Court's jurisdiction and precludes cognizance of matters barred either expressly or by implication. The SRPO contains a detailed dispute resolution mechanism and in the presence of a specific statutory provision delineating the mode and mechanism required to be invoked, to address the grievance articulated by plaintiff's counsel, no case could be set forth for resort to original civil jurisdiction of this Court in so far as Suit 420 of 2022 is concerned.

Res judicata

10. *Admittedly*, Suit 862 of 2023 is a successive suit essentially in respect of the same tenancy agreement, parties etc. *Shafi Siddiqui J* interpreted statutory *res judicata* in *Atta Elahi*¹⁷ and observed that the law does not talk of identical issues / relief. It would suffice for the subsequent relief to be directly or substantially linked to the earlier one. It was further observed that any

¹¹ "Controller" means a Controller appointed under section 4 (SRPO) ...

¹² Reference is made to section 12(1) SRPO.

¹³ Per *Adnan Iqbal Chaudhry J* in *Zain Khan & Others vs. Taj Roshan & Others* reported as 2018 CLC Note 116.

¹⁴ *Maulana Nur ul Haq vs. Ibrahim Khalil* reported as 20000 SCMR 1305; *Muhammad Ramzan vs. Muhammad Qasim* reported as 2011 SCMR 249; *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

¹⁵ Per *Adnan Iqbal Chaudhry* in *Amsons Textiles vs. Pakistan* reported as 2022 PTD 212.

¹⁶ 9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

¹⁷ *Atta Elahi vs. Allah Bachaya* reported as 2024 CLC 18.

formal or informal addition of a party, having no substantial effect on the proceedings / relief claimed, would have no material effect on the application of the law. Sections 10¹⁸ and 11¹⁹ CPC disapprove of multiple litigation and Order II rule 2²⁰ requires *inter alia* consolidation of successive claims within the same proceedings. While the plaintiffs' counsel articulated no cavil to the consistency of parties, tenancy agreement etc. across the successive suits, it was averred that each suit was actuated on a *successive claim* in respect of the same tenancy agreement.

11. The Tenancy Agreement is dated 04.12.2020 and clause 5 remains a constituent thereof since inception. The said clause deals with increase in rent predicated upon retention of the premises beyond the mandate of the Tenancy Agreement. While the plaintiff remained at liberty to be aggrieved by an agreement or any constituent thereof, it remained at liberty to not enter into the agreement or have an offending portion excised prior to execution. Perusal of the SRPO demonstrates that section 8 thereof deals with determination of fair rent by the controller on application by either tenant or landlord²¹. Nothing was articulated before this Court to dispel the applicability of the aforementioned provision or why resort thereunder was not availed.

12. Be that as it may, clause 5 of the Tenancy Agreement remained an integral constituent thereof, rather boilerplate in nature, since inception and no rationale has been articulated as to why a plea in such regard was not raised in the earlier suit arising out of the same Tenancy Agreement. Notwithstanding the preponderant bar of the SRPO, learned counsel remained unable to justify as to how the subsequent suit could be permitted to be perpetuated, *inter alia* per Order II rule 2 CPC, when the same relief could have been sought in the earlier suit with respect to the same Tenancy Agreement.

¹⁸ 10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title...

¹⁹ 11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit...

²⁰ 2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished claim.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief; but if no omits, except with the leave of the Court, to sue for all such relief, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

²¹ *Abdul Latif vs. Pharmacie Plus* reported as 2019 SCMR 627.

Conclusion

13. In view hereof, it is concluded that the learned counsel for the applicant / defendant has successfully befallen this matter within the strictures of Order VII rule 11 CPC, therefore, CMA 4041 of 2023 and 10761 of 2023 are hereby allowed and the respective plaints are rejected. The office is instructed to place a copy hereof in the connected suit.

Judge