

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 592 of 2020

Petitioner : Mst. Aziza Begum through Mr. Muhammad Rafi advocate

Respondent No.3 : Habibullah through Mr. Iftikhar Javaid Qazi advocate

Date of hearing : 26.09.2023

Date of judgment : 02.10.2023.

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 24.10.2019 passed by learned IX-Additional District Judge/MCAC Karachi East in FRA No. 190 of 2018 and judgment dated 07.11.2018 passed by learned V-Rent Controller Karachi East passed in Rent Case No.179 of 2017, whereby, an application under Section 8 of the Sindh Rented Premises Ordinance, 1979 filed by respondent No.3 was allowed.

2. Concisely, relevant facts are that respondent No.3/landlord filed an application under Section 8 of Sindh Rented Premises Ordinance, 1979 against the petitioner for fixation of fair rent in respect of ground plus two storey building constructed on plots No. 943-C, 944-C and 945-C, admeasuring 315 sq. yards in commercial area, Block-2, PECHS, Karachi. It was stated in the application that previous owner/landlady Mst. Rubina Rahim (Waltraut Rahim) widow of Dr. Reiner Arif Rahim executed registered Sale Deed dated 23.09.2016 with regard to demised premises with the respondent No.3, who thereafter became its lawful owner. At the time of purchase of demised premises, the petitioner was already tenant in respect of Flat on 2nd Floor of the building constructed on plot No.945-C at the rent of Rs.1000/- per month. It is further submitted that the said Flat was originally rented out to one Sher Afghan Choudhry husband of the petitioner in the year 1974 and after his death, the petitioner became tenant of the said flat. After becoming its owner, the respondent No.3 served legal notice dated 02.11.2016 under Section 18 of the SRPO 1979 upon the petitioner informing therein regarding change of ownership with a request to pay arrears of rent and current rent to the respondent No.3 being lawful owner of the demised premises. Instead of paying rent to the respondent No.3, the petitioner sent rent to previous owner/landlady vide cheque dated

15.12.2016, which was returned by the son of the previous owner/landlady along with cover letter dated 31.12.2016. It is further submitted that despite receiving notice under Section 18 of SRPO 1979, the petitioner failed to pay arrears of rent to the petitioner, as such, she has committed default in payment of rent for which the respondent No.3 has failed separate rent case under Section 15 of the SRPO 1979. It is further stated by the respondent No.3 that the demised premises is located in commercial area of heart of Tariq Road and with similar size of accommodation he is receiving rent at the rate of Rs.50,000/- per month excluding water, electricity, utility charges, etc. The prevailing rate of residential premises located in the vicinity is Rs.100/- per sq. feet per month hence being 945 sq. feet, the petitioner is liable to pay Rs.94,500/- per month. It is further submitted that the rent of the demised premises is not increased and still rent is Rs.1000/- per month which is very meager amount. It is further submitted that rent of the premises in the city of Karachi has increased manifolds, hence, it is prayed that fair rent of the demised premises may be fixed at rate of Rs.100,000/- per month. Application under Section 8 of the SRPO 1979 filed by the respondent No.3 was allowed vide judgment dated 07.11.2018 passed by learned V-Rent Controller Karachi East and rent of the demised premises was fixed at Rs.50,000/- per month from the date of filing of the application, hence it was assailed in FRA before learned IX-Additional District Judge/MCAC, Karachi East, but it was dismissed vide impugned judgment dated 24.10.20219, hence this petition.

3. The learned counsel for the petitioner contended that in determining the fair rent of the demised premises, it was the duty of Rent Controller to take into consideration all the factors as depicted in section 8 of SRPO 1979 and that no fair rent could be fixed by merely advertent to one or two factors of the said provision; that Rent Controller increased rent from Rs.1000/- to Rs.50,000/- per month without appreciating the fact that the demised premises is 50 years old; that both the lower fora have misread the evidence and the respondent No.3 has failed to establish his case of fair rent by examining any witness in support of his version, as such, the rent could not be increased.

4. On the other hand learned counsel for the respondent No.3 while supporting the impugned judgments contended that the learned Rent Controller and learned Appellate Court passed well-reasoned verdict and the same is based on cogent findings and do not require any interference by this Court.

5. Heard and perused the record.
6. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the judgment of the appellate Court, which reads as under:

“POINT NO.1

10.- Perusal of record shows that during the course cross examination of attorney of the appellant himself admits that demised flat is situated in commercial area and in the surrounding area of demised flat there are also other commercial buildings. Moreover, appellant himself deposed that “I have not produced any documentary evidence that in the surrounding area of demised premises, prevailing rent is Rs.5,000/- per month. It is also admitted that cost of construction, taxes, labor charges and cost of land is increased”. He further admits that “It is correct to suggest that the cost of living in Karachi has been increased more than 20% per year since 1974”. “It is correct to suggest that the exchange rate of Rupee to US Dollar was about Rs.9.9 in the year 1974 and present the Dollar rate in Rupee is about Rs.100/- or Rs.120/-. He further admits the increase of price of gold and present monthly rent of demised flat is Rs.100/- per square feet. Vol. says the demised flat is rented out to the appellant in pugri basis”. It has come on the record that attorney has not challenged the affidavit in evidence and documents produced by the respondent side during the course of evidence”.

11- It has also come on the record through the above admission of the appellant side that due to the time factor and present economic situation value of the properties are on the high prices. Moreover, it is settled principle of law that poverty and increase of price etc is well-known factor in our society and there is no need to prove the same factors. Learned counsel for the appellant/tenant has failed to rebut the above facts and it is admitted fact that since the admission of suit and up till now he his (is) depositing meager rent amount of Rs.1,000/- per month in the court in respect of premises in question. It is settled principle of law that for the fixation of fair rent controller is not bound to satisfy all the factors mentioned in Section 8 SRPO, 1979 but rent controller is authorized to fix the fair rent of a demised premises (premises) even upon fulfillment of one condition. Here in this case, appellant fulfilled the required parameter for the fixation of rent. On the contrary, tenant has not furnished even a single piece of evidence in his defence with regard to the fair rent available in the vicinity. However, the plea of goodwill taken by the appellant is not maintainable under the rent laws. Therefore, I am of the view that fair rent was rightly determined by rent controller taking into consideration

imposition of betterment tax, increase in water charges, cost of maintenance increased due to inflation. Resultantly, I am agreed with the findings of learned trial Court that the demised premises covered area 945 square feet/105 square yards, hence the rent of demised premises is enhanced from Rs.1000/- to Rs.50,000/- at the rate of Rs.52.91 square feet and the appellant would pay monthly rent Rs.50,000/- per month from the date of filing the rent application for fixation of Fair till the October, 2019. The appellant also liable to pay the arrears of monthly rent from the date of filing the rent case after deducting/adjusting the monthly rent Rs.1000/- per month already paid/deposited in MRC No.48/2017 within three months to the respondent or deposit in this Court and appellant is also liable to pay future monthly rent at the rate of Rs.50,000/- per month from November 2019 on or before 10th of each calendar month. Therefore, so looking above circumstances, admission of the appellant side and relevant documents by the respondent rent controller has rightly awarded the fair rent of demised premises, therefore, no justification being available for interfering into the impugned judgment. Hence, point No.1 is answered as negative.”

As well it would be conducive to refer relevant paragraphs of the judgment of the Rent Controller, which is that:

“After gone through the entire evidence come on record and taken the guidance from the decisions of Superior Courts, I have come to the conclusion that as per section 8 of Sindh Rented Premises Ordinance, 1979 did not impose any restriction or bearer upon the Rent Controller for quantum or limit of rent to deal and adjudicate the question of fixation of Fair Rent. Factors for determination of Fair Rent were the Rent of similar premises situated in the similar circumstances or adjoining locality, the rise in cost of construction and repair charges, the imposition of new taxes if any after commencement of tenancy and annual value of premises if any on which property tax was levied, in addition to four factors given in S.8 of the Ordinance, must consider location of property, environmental value and attraction of general buyer. Landlord was not bound to prove the existence of all the four conditions during the course of trial and any one of the condition was sufficient to enhance the monthly rent of the demised premises. As per the applicant the premises in question was let out to the late husband of opponent Dr. Sher Afghan in the year 1974 at the rate of Rs.1000/- per month and as per opponent the premises was rented out to late Sher Afghan on Pagri basis prior to 1990 and rent was fixed Rs.500/- per month and when cost of construction and cost of rent, even in the heart of the city was nominal in comparison to prevalent cost of land and cost of construction and at present the opponent is paying the monthly rent only Rs.1000/ which is very meager and cheaper of the residential property situated in Commercial Arca in heart of City of Karachi. The demised premises is situated in the commercial area, which is heart of Tariq Road/Allama Iqbal Road and such facts has not been denied by the opponent and the opponent has stated that the opponent has obtained the demised premises on huge pagri basis but no written agreement is produced nor any witness is produced by the opponent to prove the pagri agreement. During the period of about more than 28 years of tenancy of opponent, value of location of the demised premises had been increased with passage of time which should also be taken into consideration while fixing the fair rent. No limitation on Rent Controller while fixing fair rent, who could enhance rent of Rs.1 to Rs.100 or Rs.1000 after keeping in view factors given in section 8 of SRPO, 1979. The demised premises which in possession of opponent since more than 28 years, is situated on main Tariq Road/ Allama Iqbal Road which is heart of the Karachi City ad very expensive area constructed on plot of land measuring 945 square feet/105 square yards but the opponent is only paying the monthly rent Rs.1000/- per month which is very meager and lowest rent of residential property situated at Tariq Road/Allama Iqbal Raod the heart City of Karachi and the opponent is only

paying monthly rent per square feet at rate of Rs.1.05820 which is very cheapest, meager and lowest and same is liable to be enhanced. The attorney of applicant has produced sufficient evidence while the opponent has not produced any strong and reliable evidence that in the surrounding of demised premises the rent of other residential properties is/are very cheapest/ meager/ lowest. In certain situation the Court/Judge has its own knowledge in respect to the facts or material which is connected with the issue involved in the case and increase in the price therefore if knowledge of the Court is beneficial towards a decision of one issue then there is no restriction under the law that said knowledge cannot be exercised and in cases of enhancement of rent are mostly relevant to the general public and the Presiding Officer of the Court itself a member of the public can have the knowledge in that respect and Court itself to visualize overall impact of the inflation and increase on the existing rent and rent can be enhanced as per market rate.

In view of above detailed discussion, the applicant stands fully established his case against the opponent on the point of enhancement of rent. The demised premises covered area 945 square feet/105 square yards, hence the rent of demised premises is enhanced from Rs.52.91 square feet and the opponent would pay monthly rent Rs.50,000/- per month from the date of filing the rent application for fixation of Fair Rent that is 19.04.2017. The opponent will pay the present rent case till November, 2018 after deducting/adjusting the monthly rent Rs. 1000/- per month already paid/deposited in MRC No. 48/2017 by the opponent from the date of filing the present rent case till November 2018 within three months to the applicant or deposit in this Court and also paid the future monthly rent at the rate of Rs.50,000/- per month from December 2018 on or before 10th of each calendar month in this case. Resultantly, the point No. 1 is hereby answered in "affirmative."

8. In the instant case, Section 8 of the Sindh Rented Premises Ordinance, 1979, is attracted, as such it would be conducive to reproduce the same, 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 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.

(2) Where any addition to or, improvement in any premises has been made or any tax, or other public charges has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration."

9. It is now a well settled principle of law that it is not necessary that all such four factors must be satisfied or fulfilled by the landlord while making a request for fixation of fair rent, upon fulfillment of even one condition the Rent Controller is authorized under the law to fix the fair rent of a property since cumulative effect of all the four factors, as mentioned in the instant section, is to be kept in mind by the Rent Controller while fixing the fair rent. In the instant case, it is an admitted position that demised premises was rented out to the husband of the petitioner in the year 1974 and no increase has ever been made in the monthly rent since the inception of tenancy. It is not deniable that the rate of the rent in the city has increased manifold. The demised premises is situated in commercial area, Block-2, PECHS Karachi which is heart of Tariq Road/ Allama Iqbal Road, near Jheel Park. It is a settled principle of law that it is the exclusive domain of the Rent Controller to fix the fair rent keeping in view the above factors apart from rise in cost of construction, repair charges, imposition of new taxes etc. Moreover, the attorney of the petitioner in his cross-examination admitted that *"it is correct to suggest that since 1974 till 2017 of filing of this rent case, the cost of construction, taxes, labour charges and cost of land is increased."* In the case of **Ittehad Chemicals Limited vs. VIIIth Additional District Judge, Karachi (South) and 2 others** (2010 SCMR 1582) the Apex Court found no legal infirmity in the orders of the three Courts below wherein the fair rent was fixed at Rs.80,000/- per month from Rs.8,178/- per month.

10. For what has been discussed above, petitioner has failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant petition is dismissed.

11. These are the reasons for the short order announced on 26.09.2023.

J U D G E