

IN THE HIGH COURT OF SINDH AT KARACHI

Revision Application No.196 of 2012

Port Qasim Authority & another
Versus
Zulfiqar Ali Malik & another



Date of hearing: 23.11.2017

Applicant: Through Mr. M.A. Isani Advocate

Respondents No.1: Through Mr. Anwar Hussain along with respondent No.1 present in person.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This Revision Application is arising of an order passed in Civil Appeals No.82 and 83 of 2011.

Respondent filed Suit No.236 of 1994 challenging the entitlement of the authority to revise the annual rate of rent from Rs.33.75 to 55.80 per sq. meter in terms of letter dated 28.04.1991 and further sought direction to hand over possession of the plot allotted to the respondents at the old rate. The trial Court framed the issues and decided the controversy of the rate original of rent in terms of Issue No.4 and 5, relevant part of which is as under:-

"... It is further pertinent to pointing out here that in lease agreement it was also disclosed that annual rate of rent shall be Rs.35.43 per sq. meter with 5% annual compounded increase. Next increase due on 01.07.1992 the payment of annual land rent will be effective from the date of handing over possession of plot or after one month from the date of receipt of allotment letter. It is further pertinent to pointing out here that the plaintiff side also failed to replied the letter dated 22.07.1993 Ex.D/3, Ex.D/4 and Ex.D/5.

So in view of the above facts and circumstances of the case, I am of the view that the plaintiff has failed to establish that the demand of the defendant (PQA) in respect to enhancement of rent i.e. of Rs.50.80 is illegal and unlawful, as such defendants have right to revise the annual rent in view of their letter No.PQA/ET-111/47/91

dated 28.04.199. So my findings of the aforesaid issue No.4 is in affirmative."

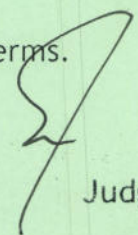
So the revised rate, as claimed by the applicants, was held to be a lawful claim in terms of letters referred therein. The issue No.5 relates to the possession and the trial Court held that the plaintiff/respondent is entitled to receive the possession of the land in terms of the findings on Issue No.4. The trial Court, while deciding Issue No.6 which relates to passing of a decree, perhaps the reasoning of Issues No.4 and 5 has not been kept in mind and held that plaintiff/respondent has failed to prove the rate of rent as demanded by the defendant/appellant side as being illegal and unlawful and the suit was decreed in terms of prayer clause 'b' and 'c' while the prayer clause 'a' was declined. What skipped from the notice of the trial Court was that prayer clause 'a' and 'b' are somehow on the same line and the decree in terms of prayer clause 'b' would be against the finding of issue No.4 and 5 which relate to prayer 'a'. Aggrieved of such judgment and decree both the applicant and respondent filed their respective appeals bearing No.82 and 83 of 2011, which were heard together. The appeal of the applicant was dismissed as being not maintainable since the appellate Court was of the view that the suit in terms of prayer clause 'b' of plaint was decreed to be in consonance with prayer 'a' whereas decree in terms of prayer clause 'b' and 'c' would be on conflict of findings of Issue No.4 and 5 hence this revision application.

Learned counsel for respondent has taken me to some extraneous documents which include the revised policy of Port Qasim Authority. He has also taken me to an order passed by this Court whereby this Revision Application was disposed of in terms of order dated 16.12.2015 which order was subsequently revised and the revision was restored to its original stage. The contention of Mr. Anwar Hussain, learned counsel appearing for the respondent, is based on extraneous material.

The scope of this revision is limited to the query raised by the applicant as to whether the decree in terms of prayer clause 'b' and 'c' was in conflict with the findings of Issue Nos.4 and 5. The disposal of this revision on the basis of an amicable settlement could arise only if applicant's counsel concedes to such request. The new policy in vogue cannot be applied at this revisional stage which however remained an independent cause and defence whereby respondents can take further steps before Port authority. However, this revision application is to be decided on the basis of questions raised and arising out of the pleadings of the parties.

After hearing the arguments of learned counsel, I reached to the conclusion that if at all plaintiff was entitled to possession it was in terms of the reasoning of Issue Nos.4 and 5 with a claim of arrears as agreed in terms of letters dated 28.04.1991 and 26.01.1992.

Revision Application stands disposed of in the above terms.



Judge