

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitution Petition No.S-1405 of 2024

Petitioner : Noman Saleem
through Mr. Muhammad Javed Tanoli,
advocate

Respondents Nos.1 to 6: Rehmat Elahee & others
through Mr. Amir Saleem, advocate

Mr. Jan Muhammad Khuhro, A.A.G.
Sindh

Date of hearing: 28.02.2025

Date of judgment: 13.03.2025

J U D G M E N T

Jan Ali Junejo, J:-- This Constitution Petition is directed against the Judgment dated 14-10-2024 (here-in-after referred to as the *Impugned Judgment*) passed by the Court of learned VIIth Additional District Judge, Karachi-South (hereinafter referred to as the “Appellate Court”), whereby First Rent Appeal No.302 of 2023, preferred by the Petitioner, was dismissed. The said Appeal arose from the Judgment dated 28-09-2023 passed by Court of learned XVth Rent Controller, Karachi-South (hereinafter referred to as the “Rent Controller”) in Rent Case No.866 of 2022, which allowed Rent Application under Section 8, of the Sindh Rented Premises Ordinance, 1979 against the Petitioner in respect of determination of fair rent.

2. The Respondents Nos.1 to 6, being landlords, sought the fixation of fair rent of the demised premises before the Rent Controller. The Petitioner, as the tenant, contested the claim, denying

any default and asserting that he was depositing rent through M.R.C. No.996 of 2018 and later in M.R.C. No.Nil/2022 upon learning about the purchase of the property by the Respondents. Lastly, the Respondents Nos.1 to 6 prayed for fixation of fair rent of the demised premises. On being summoned, the Petitioner submitted a written statement in which he asserted that the Applicants are not entitled to the fixation of rent as claimed. He denied the allegations made in the main application, including the relief sought, on the grounds that they lack evidentiary support. While the Petitioner acknowledged that the Applicants had purchased the demised premises, he maintained that he only became aware of this fact after the filing of the rent application. Furthermore, he contended that he has been making regular rent payments. After recording evidence, the Rent Controller allowed the Rent Case No.866 of 2022 in favor of the Respondents. Aggrieved by the decision, the Petitioner preferred Rent Appeal No.302 of 2023, which was dismissed by the learned VIIth Additional District Judge, Karachi-South, through Judgment dated 14-10-2024. The present Constitution Petition has been filed against the said Impugned Judgment.

3. The petitioner's counsel contends that the impugned judgments of the Rent Controller and the Appellate Court are unsustainable as they were passed without proper appreciation of evidence and are based on assumptions rather than material facts. He further argues that the lower appellate court erroneously relied on a disputed Rent Agreement for Shop No.7, which, according to the petitioner, does not even exist, and that the court failed to decide the application for additional evidence before ruling on the main appeal. He asserts that the Courts below ignored binding precedents, including **2002 CLC 1819**, **1995 CLC 1441**, and **SBLR 2006 Sindh 1581**, and failed to apply the principle of reasonableness in rent fixation, thereby unjustly

increasing the rent from Rs.600/- to Rs.25,000/- per month without justification. He maintains that the lower courts neither conducted an inquiry nor appointed a Nazir to assess fair rent and that their failure to decide the application for additional evidence separately before the appeal decision rendered the judgment procedurally flawed. He concludes that the judgments suffer from non-reading and misreading of evidence, amounting to a miscarriage of justice, and are therefore liable to be set aside.

4. On the other hand, the learned counsel for the respondents Nos.1 to 6 argues that the impugned judgments are legally sound and were passed after due consideration of the available evidence. He contends that the lower courts properly appreciated the evidence and that the existence of Shop No.7 is supported by the rent agreement, which the petitioner seeks to challenge without credible proof. He further argues that the courts duly considered relevant legal precedents while deciding the matter and that the petitioner's cited case laws were distinguishable and inapplicable. He maintains that the increase in rent was justified based on prevailing market conditions and that the petitioner failed to demonstrate that the enhancement was arbitrary or unlawful. He asserts that the rejection of the application for additional evidence was within the appellate court's discretion and that the petitioner's attempt to introduce new evidence was merely a delaying tactic. He concludes that the judgments are well-reasoned, passed within jurisdiction, and do not suffer from any procedural or legal infirmities, warranting the dismissal of the constitutional petition.

5. I have carefully considered the arguments presented by the learned counsel for both parties and thoroughly examined the material available on record with the utmost diligence and caution.

Upon evaluating the pleadings, evidence, and legal submissions of both sides, the learned Rent Controller, through an Order dated 28-09-2023, allowed the application for fair rent fixation. The findings were based on the following reasons and legal precedents:

- The Respondents were established as the lawful owners and landlords of the demised premises, relying on a registered conveyance deed dated 04-11-2021.
- The Rent Controller considered expert opinions, market surveys, and rent agreements of comparable properties in the vicinity, concluding that the prevailing market rent was substantially higher than what the Petitioner was paying.
- It was ruled that rent must be determined in accordance with current market rates, considering factors such as location, amenities, and property value.
- **2010 SCMR 1582:** Held that fair rent should be fixed from the date of filing the rent case.
- **2013 MLD 239:** Emphasized that inflation and prevailing market trends must be taken into account in rent fixation.
- **2018 SCMR 581** (*State Life Insurance Corporation of Pakistan v. Messrs British Head and Footwear Stores*): Reaffirmed that under Section 8 of the Sindh Rented Premises Ordinance (SRPO), 1979, the existence of even one of the four prescribed factors is sufficient to justify a rent increase.

- The Petitioner's claim of pugree payment was dismissed due to lack of documentary proof.
- The Rent Controller ruled that pugree cannot override statutory provisions governing fair rent fixation.
- The Petitioner's request for additional evidence was deemed unnecessary and merely a delaying tactic, as the record already contained sufficient material for a fair decision.

Based on the above findings, the Rent Controller allowed the Rent Case and fixed the fair rent at Rs.25,000/- per month, holding that the Petitioner had failed to demonstrate any legal or factual basis to oppose the increase. The learned Rent Controller noted that, based on the evidence presented by Respondents Nos. 1 to 6, the admissions made by the Petitioner's attorney, and the prevailing social and economic conditions of the country—including rising inflation, currency devaluation, and the location of the demised premises—the determination of fair rent at the rate of Rs. 25,000/- per month for each shop in the aforementioned rent case is justified. The VIIth Additional District Judge, Karachi-South, upon hearing First Rent Appeal No.302 of 2023, upheld the findings of the learned Rent Controller and dismissed the appeal, holding that:

- i. No Jurisdictional Error or Misreading of Evidence was found in the Rent Controller's Judgment.
- ii. The increase in rent was justified based on market surveys and comparable properties.

- iii. The Petitioner failed to prove mala fide intent or any illegality in the Rent Controller's decision.
- iv. The application for additional evidence was rightly rejected, as it lacked merit and necessity.

6. After examining the record, hearing the arguments, and considering the legal precedents, I find no reason to interfere with the concurrent findings of the courts below. It is well-settled that findings of fact recorded by two competent Courts cannot be disturbed unless the Petitioner establishes special and exceptional circumstances, which he has failed to do. Both Courts have rendered well-reasoned judgments after properly appreciating the evidence. The Rent Controller's decision was based on market rates, property valuation, and relevant precedents, and the Appellate Court correctly affirmed the same. The discretion exercised by the Courts below in rejecting the Petitioner's request for additional evidence was neither arbitrary nor perverse. The rent increase from Rs.600/- to Rs.25,000/- is reasonable considering location, prevailing market rates, and property valuation. It is a well-established legal principle that jurisdiction under Article 199 of the Constitution cannot be invoked as a substitute for an appeal against the order of the Appellate Court. Therefore, the mere fact that this Court, upon perusal the evidence, may reach a different conclusion does not provide a valid basis for interfering with the Appellate Court's order. The Appellate Court serves as the final authority within the hierarchy of rent laws, as governed by the Sindh Rented Premises Ordinance, 1979. In this regard, reliance is placed on the authoritative judgment of the Apex Court of Pakistan in *Shakeel Ahmed and another v. Muhammad Tariq Farogh and others* (2010 SCMR 1925).

7. For the foregoing reasons, I find no merit in this Constitution Petition. The concurrent findings of fact recorded by the learned Courts below cannot be disturbed, as the Petitioner has failed to show any special and exceptional circumstances warranting interference by this Court in Constitutional Jurisdiction. Consequently, the current Constitution Petition is dismissed. The impugned judgments of the Appellate Court and Rent Controller are upheld. Parties shall bear their own costs for these proceedings.

JUDGE