

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S –829 of 2003

*[State Life Insurance Corporation vs Sami-ur-Rehman,
since Deceased through his legal heirs and others]*

Date of hearings : 07.05.2024, 13.05.2024 and
22.05.2024

Petitioner
[State Life Insurance Corporation] : Through Mian Mushtaq Ahmed,
Advocate for the Petitioner

Respondent No.1
[Sami-ur-Rehman since Deceased through his legal heirs] : Through Shaikh F.M. Javed,
Advocate

Respondents No.2 and 3
[The IInd Additional District and Sessions Judge, Karachi (South) and VII Senior Civil Judge and Rent Controller, Karachi (South)] : Through Mr. Ziauddin Junejo,
Additional A.G. Sindh.

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Petitioner has challenged the impugned Judgment of the Appellate Court, modifying the rate of fair rent fixed by the learned Rent Controller on the basis of per square feet, that is, Rs.10/- per square feet per month from the date of institution of Rent Case, that is, 30.07.1991, to Rs.2,500/- (*rupees two thousand five hundred only*) per month from the date of the impugned Judgment.

2. Mian Mushtaq Ahmed, Advocate representing the Petitioner, has first addressed the Preliminary Objection taken by Respondents' Counsel in the proceedings below, about the competency of person, who has filed the Fair Rent Case No.1261 of 1991 on behalf of present Petitioner; has

referred to Memorandum of Authority (Exhibit A/28), issued by the Petitioner, signed by M. Jaffar H. Siddiqui, Assistant General Manager (Law) and General Attorney, to Peer Khan Sajid, Deputy Manager Relisted Division, to appear before the Court of Senior Civil Judge/Rent Controller, besides registered General Power of Attorney (at page-261), *inter alia*, given by Board of Directors of Petitioner's Company vide a Resolution dated 11.11.1990 in favour of above Jaffer Hussain. Contended that the impugned Judgment of the Appellate Court is contrary to record and has modified the fair rent fixed by the learned Rent Controller, by adopting extraneous factors, without proper appraisal of the evidence. Has referred to the Paragraph of the Impugned Judgment in which it is mentioned that the Petitioner (landlord) admitted that it cannot produce bills of repair and maintenance but only Statement regarding repair and maintenance. In subsequent Paragraph it is observed in the impugned Judgment that lease documents produced by the Petitioner in respect of other premises are not located in same vicinity and not in accordance with Section 8(A) of the Sindh Rented Premises Ordinance, 1979. The Counsel has referred to the opinion of the learned Judge of the Appellate Court, in which it is observed that fair rent should be fixed by considering the convenience of tenant so also not to deprive the landlord from its right to receive the rent; argued, that this novel observation is foreign to the Rent Laws so also Case Law developed on the point of determination of fair rent. To support his argument that the impugned Appellate Judgment is contradictory (as highlighted above), has referred to Page-210 in which the Statement of Expenses incurred on the building in which the Demised Premises is situated, has been produced in evidence at Exhibit-A/8 so also the Lease Deeds of different premises owned by Petitioner, situated in close proximity of the demised premises in State

Life Building 5-A- the **Subject Building**; these Lease Deeds are at pages- 99, 113, 131, 141, 161, 169 and 183; Exhibits-A/6, A/9, A/10, A/11, A/13, A/14 and A/15, respectively. Argued that the impugned Judgment has fixed the effective date of enhancement of rent from the date of its Order, which also is the unlawful exercise of jurisdiction in view of judicial precedents handed down by the Superior Courts.

As a pre-emptive measure, argued that since it is an old matter and if this Court comes to the conclusion that impugned Judgment is to be set-aside for a fresh Decision, then it is not necessary to remand the case to the Appellate Court, because in such a situation Supreme Court in certain cases itself has fixed the fair rent, considering the time consumed in protracted litigation. Learned Counsel for Petitioner in support of his arguments cited the following Case Law_

1) 2000 SCMR 472

[Habib Bank Limited vs. Zelins Limited and another]

2) PLD 1993 Karachi 642

[State Life Insurance Corporation of Pakistan, Karachi vs. M/s. Siddique Tailors through its Sole Proprietor]

3) PLD Karachi 294

[Messrs Habib Insurance Co. Ltd vs. Messrs State Life Insurance Corporation of Pakistan Ltd and another]

4) 1996 SCMR 1329

[Habib Bank Limited vs. Anis Ahmad and others]

5) 2001 SCMR 1103

[Messrs Olympia Shipping and Weaving Mills Ltd and another vs. State Life Insurance Corporation of Pakistan]

6) Unreported Judgment passed in FRA Nos.610 and 611 of 1998

[M/s. Kodvavi & Co., vs. Mian S.M. Yousuf Baghpatee] and {Abdul Razzak Thaplawal versus S. M. Yousuf Baghpatee}.

3. Mr. Shaikh F.M. Javed, Advocate for Respondent No.1, has rebutted the above arguments. Stated that the very Application for Fixation of Fair Rent was unauthorizedly filed and the same objection is taken in Paragraph-4 of his Written Statement, because no document was filed on behalf of Petitioner to show that the Person, who has sworn the Rent Application and filed the same was completely authorized, whereas Affidavit-in-Evidence was filed by one Peer Khan Sajid, who admittedly did not file the Rent Application and thus his entire Affidavit-in-Evidence along with the Documents / Annexures are to be discarded; the Annexure / record relied upon by the Petitioner was not properly exhibited and thus could not have been considered by the learned Rent Controller, while giving his Order dated 15.05.1998, which was correctly set-aside by the impugned Appellate Judgment. Contended that the Statement of Expenditure (Exhibit-A/18; page-217) relied upon by the Petitioner's side, is irrelevant as it is of some other building, so also, it is *ex facie* incorrect, because had the Petitioner was maintaining the Subject Building, then the roof of the demised Premises (Flat No.8) would not have collapsed due to rain; thus, there was no justification to accept the Application of Petitioner for increase of rent and it should have been dismissed.

Learned Counsel for Respondent No.1 has placed reliance on the following reported Decisions_

- 1) **PLD 2004 Karachi 17**
[*Abdul Hameed Khan vs. Mrs. Saeeda Khalid Kamal Khan*]
- 2) **1987 CLC 367**
[*Abu Bakar Saley Mayet vs. Abbot Laboratories and another*]
- 3) **2012 SCMR 954**
[*Abdul Rehman and another vs. Zia-ul-Haque Makhdoom*]
- 4) **1987 CLC 2182**
[*Abdul Ghaffar vs. Noor Jehan Malik*]

4. Arguments heard and record perused.
5. Crux of the Case Law cited by the Petitioner's Counsel is, that burden is on the Applicant (especially when it is a corporate entity) to show that the rent proceeding is competently instituted, either by placing on record the Power of Attorney in favour of the person who signed the Application or a Board Resolution (stating such authority). In the State Life Insurance Case (*supra*), it is held that a competent witness is the one, who is either able to depose the facts from his own knowledge or knowledge acquired from a permissible source and the testimony will be assessed accordingly; interestingly, it is necessary to observe, that in this reported Decision, the deposition was given by Peer Khan son of Bara Khan, on the basis of General Power of Attorney dated 22.11.1982 (produced in the Rent Proceedings), who is the Witness of the Petitioner Corporation in the present *Lis* as well.

Habib Insurance Case (*ibid*); facts whereof are very relevant to the facts of present *Lis*, because, in that reported Judgment also, the present Petitioner filed a fair rent proceeding against Habib Insurance-the Tenant, which was eventually remanded by this Court for Decision afresh, as two documents exhibited with Affidavit-in-Evidence of the present Petitioner's Witness, which were the Lease Deeds of other buildings, mentioning the rate of rent on the per square feet basis, were not properly considered and appraised by the learned *Fora* below. It is held by this Court, that, when evidence is led by filing Affidavit-in-evidence, the documents appended therewith are exhibited by the deponent of Affidavit, and Court while examining the witness producing such documents, either refuses the production of those documents, which are photocopies or it should be objected to by the adversary; if neither has happened, it means

that if no objection is taken for the production of original documents, then it leads to the conclusion that the production and or genuineness of documents or its contents are not disputed and the Appellate Court cannot ask for the production of original of the exhibits appended with the Affidavit-in-Evidence.

With regard to criteria for fixation of fair rent, the Hon'ble Supreme Court in the above mentioned Case Law has ruled, that it is not necessary that all the four factors should co-exist, while determining the fair rent of a premises, but those are enumerated only as a guiding principle; one of the main factors is the prevalent market rent of the similar premises situated in similar circumstances in the same or adjoining locality. Baghpati Case (*supra*), has interpreted the expression "rent of similar premises" as appearing in Section 8(1)(a), as, '*relatable to recently transacted tenancies*'.

6. Précis of the Case Law relied upon by the Legal Team of Respondent Company is, that when a plaint is filed through an Attorney, but no Power of Attorney was annexed with the plaint nor it is mentioned in the List of Documents, then annexing the Power of Attorney with Vakalatnama would not be enough to conclude that the signatory was duly authorized to sign and verify the plaint as contemplated under Rule 14 of Order IV of CPC, because the mentioning of authorization together with documentary evidence, is a material fact, as envisaged under Order VI Rule 2 of CPC, which be stated in the body of the plaint, and non-compliance whereof is fatal.

No Suit can be filed on behalf of a Company or Corporation on the verbal authorization, except through Board Resolution, a valid Power of Attorney containing such authority or placing on record the Articles of Association [mentioning such authority]; this Court in the Case of Abbott

Laboratories (*supra*) has discarded the contention that subsequent ratification through Minutes of Meeting has filled up the lacuna, because when the said document was produced it was silent about giving such authorization to the Manager, who instituted the Suit, concluding that the Suit was incompetently instituted.

Photocopies produced in the evidence on the basis of which increase in rent was sought, was secondary evidence and inadmissible, besides not proved in accordance with law, thus, the case was remanded to the learned Rent Controller for a fresh finding.

7. First the issue of valid authorization is discussed as it goes to the root of the entire controversy. The Petitioner's representative-Peer Khan Sajid, filed his Affidavit-in-Evidence together with various documents, which is mentioned in the Order of the learned Rent Controller; whereas, the Rent Application is filed by Mr. M. Jaffer Hussain Siddiqui, who in the Verification Clause at the end of pleadings, has mentioned that he has signed the Application as Attorney of Petitioner. The General Power of Attorney in favour of the above named person is available in record at Page-261 of the Court File. It is a registered General Power of Attorney, stating that Mr. Jaffer Hussain Siddiqui is empowered by the Board of Petitioner Company, *inter alia*, to sign lease document so also deal with the litigation, including, authorised to sign pleadings and appoint attorneys (Clause-4). This Power of Attorney is produced by the above Witness Peer Khan with his Affidavit in Evidence as Exhibit-A/29 along with the Memorandum of Authority in his favour to give the evidence, as Exhibit-A/28. This is undisputed. It is observed by the learned Rent Controller that all the documents brought on record by the Petitioner's Witness were not objected to by the Respondent's side.

Secondly, undisputedly, the Petitioner is a statutory Corporation, which acts through its different officials. It is not necessary that the person who has signed the original Rent Case, should also give the evidence, because, *inter alia*, other developments can also take place in the intervening period, for instance, a person is transferred, retired from the Corporation or Service, so on and so forth. Thus, two different Officials/ employees duly authorized can file / institute a Suit or Rent Case and adduce evidence.

Thirdly, the Hon'ble Supreme Court, in Civil Petitions No.24-K to 26-K of 2009, has ruled that in Rent Cases, Order XXIX Rule 1 of Civil Procedure Code (relating to filing of pleadings in a Suit by an authorized Officer of a Company or Corporation) is not strictly applicable.

In view of the above undisputed documentary evidence, Mr. M. Jaffer Hussain Siddiqui, has competently filed the Rent Case and Peer Khan was / is a Competent Witness of Petitioner on the basis of the Memorandum of Authority, which is covered under above Clause-4 of the Registered General Power of Attorney.

8. With regard to the other arguments of Respondent's Counsel that Exhibits/Documents filed with the Affidavit-in-Evidence should be discarded, as it was not proved as primary evidence and procedure for leading the secondary evidence, as envisaged in the Qanun-e-Shahadat Order, 1984, was not followed; the Record shows that no Objection was taken by the then Counsel for Respondent Company during evidence, as correctly observed by the learned Rent Controller in its Order. Conversely, the Witness of the Petitioner was cross-examined on these Exhibits primarily on the factum of rate of rent and structural conditions of the Buildings. No objection was raised about the admissibility of these Documents, including Lease Deeds. The Judgment of Habib Insurance

Co. Ltd (*ibid*) relied upon by the Petitioner's Counsel is applicable, with the result, that the afore-referred Lease Deeds cannot be discarded from the evidence.

9. The Respondent's Witness has admitted in his cross-examination that **from July, 1957**, he is paying the rent at the rate of Rs.84.5/- per month [for an area of 2665 sq. ft.] and there is no enhancement of rent on the basis of imposition of new Taxes and costs of construction. Has not disputed the fact that Excise and Taxation Department has increased the Taxes on the basis of covered area.

10. The Subject State Life **Building No.5-A, is** built at Plot No.11-SB-6, Zaibunnisa Street, Saddar, Karachi. One of the Deeds of Lease is of 20.06.1993-Exhibit A/9, for a Building of the Petitioner Company situation at Abdullah Haroon Road, which is let out to the tenant-Marubeni Corporation, on a monthly rent of Rs. 167,747/- (*rupees one hundred sixty-seven thousand seven hundred forty-seven only*) per month at the rate of Rs.15.60 per square feet per month. Abdullah Haroon Road is behind Zaibunnisa Street, where the above Subject Building exists, in which the demised Premises is located. This material fact about location and rate of Rent could not be contradicted in the evidence [by the Respondent's side].

Non-enhancement of rent by the Respondent since 1957 till the filing of the Rent Case in 1991, that is, for 34 years, itself justifies the determination of enhanced fair rent.

11. In view of the above discussion and the record of present **LIS**, the argument of Respondent's Counsel, that the enhanced fixation of rent is not justified due to dilapidated condition of the Subject Building, is not acceptable, due to the reason, that the Respondent's Counsel himself has

filed the **Statement of 21.10.2011**, together with Photographs. A Counter-Affidavit to the above Application and a Rejoinder thereto were filed [*available at pages-475 and 479 of the Court File*], where from it can be deduced that the Premises in question was in use of Respondent **till September 2011; while vacating the demised Premises** its Key was handed over to another Tenant-M/s. Optica, on the ground floor. **Secondly**, no evidence is produced by the Respondent to support the above stance about the overall condition of the Subject Building and that the Premises in question due to such fact had become unusable.

12. The impugned Judgment of the Appellate Court, while modifying the Order of the learned Rent Controller, has not appraised the evidence properly; rather, a novel criteria is invoked for fixing of fair rent, by observing that “...*In my opinion it will be better to fix the fair rent as much as which shall be convenient for the tenant to pay and also not deprive the landlord from its right, it's should not be so high or exorbitant...*”.

No justification is mentioned as to why the modified rate of rent of Rs.2,500/- (*rupees two thousand five hundred only*) should be paid from the date of the impugned Judgment of the Appellate Court, that is, 06.09.2003, and not from the date of the Application (as decided by the Rent Controller). This effective date, as determined by the Appellate Court, is a deviation from the Case Law of Superior Courts. The Decision in *Olympia Shipping* is relevant.

However, one clarification is necessary at this juncture. The demised Premises became unusable since September 2011 due to heavy rainfall, because its roof collapsed, as mentioned in the above Statement, which is not disputed as such. In this regard, a Site Inspection Application

was also filed by the Respondent, which was dismissed by this Court on 22.01.2024.

13. In view of the above, the Appellate Court has not exercised jurisdiction properly and the impugned Judgment suffers from material irregularity, as discussed in the foregoing paragraph. Consequently, the impugned Judgment is set-aside and that of the learned Rent Controller is restored, but, with the modification that the Respondent Company is liable to pay rent as determined by the learned Rent Controller from the date of the Order (dated 15.05.1998) passed by the learned Rent Controller upto 30.09.2011. This Petition is in the above terms is accepted.

JUDGE

Karachi.

Dated: 27.03.2025.

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