

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Faisal Arab
Mr. Justice Ijaz ul Ahsan

Civil Appeal No.25-K of 2018

(On Appeal against the impugned judgment dated 07.05.2018 passed by the High Court of Sindh, Karachi in F.R.A.No. 22/2017)

Abdul Latif and another

...Appellant(s)

Versus

M/s Parmacie Plus

Respondent(s)

For the appellant(s): Mr. Shahid Qadeer ASC with
Abdul Latif, appellant in person

For the respondent(s): Mr. Muhammad Pervaiz Khan Tanoli, ASC

Date of hearing: 25.02.2019

JUDGMENT

Faisal Arab, J.- The respondent was inducted as a tenant in the premises in question at a monthly rent of Rs.331,700/-. The tenancy agreement dated 30.11.2014 was for a period of eleven months starting from 25th September, 2014 to 24th August, 2015. Clause 15 of the tenancy agreement stipulated that rent shall be increased by seven percent after every eleven months. When the period of eleven months expired and the rent became due, the respondent remitted rent at the rate of Rs.287,262/- per month i.e. less than the rate of rent that was initially agreed upon at the time of execution of the agreement i.e. Rs.331,700/- per month. As the rent i.e. of Rs.354,919/- per month with seven percent increase as envisaged by clause 15 of the tenancy agreement was not remitted by the respondent, the appellant demanded the same. As the demand for increased rent was resisted by the

respondent, who kept on remitting rent at original rate, the appellant filed eviction application before the Controller of Rents, Clifton Cantonment, Karachi seeking eviction of the tenant on the ground of default and also sought eviction on the ground of personal need.

2. During the pendency of the rent case, the Controller of Rents passed an order under Section 17(8) of the Cantonments Rent Restriction Act, 1963 (*the Act*) directing the respondent to deposit the rent at the rate of Rs.354,919/- i.e. with seven percent increase in terms of clause 15 of the tenancy agreement. As the respondent failed to deposit the same, the appellant filed an application under Section 17(9) of the Act for striking off the defence of the respondent. Vide order dated 15.05.2017 the Controller of Rents struck off the defence and directed the respondent to vacate the rented premises and handover its possession to the appellant within a period of 60 days. Aggrieved by such decision, the respondent filed an appeal before the learned High Court which was allowed by the learned Single Judge after holding that the provisions of Section 7(5) of the Act prohibits increase in rent beyond what is determined under the tenancy agreement unless a period of three years has elapsed, therefore, no default in the payment of rent has been committed. Hence, this appeal with the leave of this Court.

3. The tenancy agreement was for eleven months and clause 15 of the tenancy agreement provided that the rent of the premises shall be increased by seven percent after every eleven months. Under the urban rent laws tenancy continues even after the expiry of the term provided under the tenancy agreement. Hence where the tenant continues to occupy the tenement after the expiry of the term mentioned in the agreement the covenants of the agreement continue to apply except such covenants that are in conflict with the provisions of the applicable rent

law. In that eventuality rent law would prevail. In the present case seven percent increase in rent as provided in clause 15 of the tenancy agreement has been called in question on the basis of Section 7(5) of the Act which reads as follow:-

"When the fair rent of a building has been fixed under this section, or where the rent of any building has been determined by an agreement between the landlord and the tenant, no further increase in such fair rent shall, during the continuance of tenancy be permissible within a period of three years from the date fixed by the Controller under sub-section (3) or from the date of the agreement, as the case may be, except in case where some addition, improvement or alteration has been carried out at the landlord's expense and at the request of the tenant."

4. Parties are free to agree to a fixed rate of rent or a rate that is variable to be increased either by a certain amount or by a certain percentage of the existing rent after a specified period of time. There is no prohibition in law. So the periodical increases agreed between the parties under the tenancy agreement has to be regarded as the rent determined by an agreement between the landlord and the tenant within the meaning of Section 7(5) of the Act. What is meant by the prohibition contained in Section 7(5) of the Act is that no unilateral increase to the surprise of the tenant is permissible before the expiry of three years. An increase, which is not unilateral but with the consent of both the parties cannot be subsequently disputed by the tenant unless it is called in question through an application made for fixation of fair rent. So it becomes quite clear that what is prohibited under Section 7(5) of the Act is that no unilateral increase is to be made beyond what is determined under the tenancy agreement, be it fixed or variable rate. On the contrary, Section 7(5) of the Act acknowledges the sanctity of the rent determined by an agreement between the parties. So only unilateral increase in rent or where fair rent has been fixed by a Court of Controller

of Rents that rent cannot be increased unless a period of three years has elapsed.

5. In the present case, seven percent increase after every eleven months term of tenancy has been agreed upon between the parties under clause 15 of the tenancy agreement, this is to be treated as the rent determined by an agreement between the landlord and tenant. Such rate of rent gets unaffected by the bar contained in Section 7(5) of the Act, which only prohibits unilateral increase within a period of three years. As stated earlier, the only way to challenge a rate of rent agreed upon with the consent of the parties is by moving the Rent Controller to fix fair rent under the provisions of rent law not otherwise. In the present case no application for fixation of fair rent has been moved by the respondent, therefore, the consequence of non-payment of agreed rent within the period prescribed by law would amount to commission of default in the payment of rent and would make it liable for eviction. In the present case as the respondent failed to pay the rent in terms of clause 15 of the tenancy agreement, this appeal is allowed and the impugned judgment is set aside.

Judge

Judge

Judge

Karachi, the
25th of February, 2019
Approved For Reporting