IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Appeal No.90-K of 2023
Against the judgment dated 16.02.2022 passed by High Court of Sindh, Karachi in Const.P.No.S-999/2020

Karachi Properties Investment Company (Pvt) Ltd. ...Appellant

Versus

Habib Carpets (Pvt) Limited Respondent

For the Appellant: Mr. Salahuddin Ahmed, ASC
Mr. K. A. Wahab, AOR

For the Respondent: Mr. Zain-ul-Abedin Jatoi, ASC
Mr. Muhammad Younus, AOR

Date of Hearing: 03.04.2024

JUDGMENT

Muhammad Ali Mazhar, J. This Civil Appeal with leave of the Court is directed against the judgment dated 16.02.2022 passed by the High Court of Sindh, Karachi in Const.P.No.S-999/2020, whereby the orders passed by the Rent Controller and Appellate Court were set aside and ejectment application filed by the appellant under Section 15 of the Sindh Rented Premises Ordinance, 1979 ("**Ordinance**") was dismissed.

2. According to the chronicles of the *lis*, the appellant had let out shops Nos.1-A, 2, 3, Hotel Metropole Building, situated at Plot No.23/1, CL-5, Civil Lines, Club Road, Karachi, by virtue of unregistered Lease Agreement dated 01.03.1985 for the period of five years, however in the year 1986, the parties entered into a new tenancy agreement dated 01.03.1986 for an indefinite period. On 07.12.2017, the appellant had initiated eviction proceedings against the respondent under Section 15 of the Ordinance, *vide* Rent Case No.1181 of 2017 on the grounds of default including maintenance charges and unauthorized alterations and material impairment in the value and utility of the premises. The ejectment application was

allowed by the Rent Controller *vide* Order dated 27.09.2019. Being aggrieved, the respondent preferred a First Rent Appeal No. 258 of 2019, before the District Judge but the said appeal was also dismissed *vide* judgment dated 18.11.2020. The respondent filed the Constitution Petition No.S-999 of 2020 in the High Court of Sindh assailing the concurrent findings and *vide* impugned short order dated 16.02.2022, followed with the reasons, the learned Single Judge of the High Court reversed the concurrent findings and dismissed the ejectment application.

3. Leave to appeal was granted by this Court *vide* order dated 17.08.2023 in the following terms: -

> "This is a leave petition filed by the landlord against the tenant. The landlord had filed an ejectment petition and had won before the Rent Controller as well as the Appellate Court but when the matter was taken before the High Court in writ jurisdiction the findings were reversed and the ejectment application was dismissed. As presently relevant the ground for consideration for which the leave to appeal is being granted is whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" given in Section 2(i) of the Sindh Rented Premises Ordinance, 1979 and in particular fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid", Leave to appeal is granted accordingly.
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> 2. Let the paper book etc., be prepared and all codal formalities be completed within three months. The parties may file additional documents from the record of the case if so considered appropriate. Learned counsel for the Petitioner states that the rent, such as it may be, is being paid by the Respondent. That position must remain in force otherwise the Petitioner shall be at liberty to seek such relief as considered appropriate by making an appropriate application in the appeal".

4. The learned counsel for the appellant argued that in the Writ Jurisdiction, the High Court could not reevaluate the evidence and reverse the findings on facts recorded by the Rent Controller and affirmed by the Appellate Court. It was further averred that the learned High Court failed to appreciate that the expression "Rent" used in Section 2 (i) of the Ordinance includes water charges, electric charges, and such other charges which are payable by the tenant such as maintenance charges in cases of flats or commercial buildings. It was further argued that the learned High Court failed to appreciate the custom and practice that in multiunit commercial or residential buildings, the tenants are obligated to share maintenance charges for

common spaces and utilities (such as lifts, security, cleaning, and upkeep of common areas etc.) which are jointly paid by all occupants of the building. It was further contended that the respondent never denied the existence or quantum of the maintenance charges but refused to pay the same.

5. The learned counsel for the respondent while supporting the impugned judgment passed by the High Court, argued that the Rent Controller and the Appellate Court both passed the orders in a mechanical manner without considering the evidence available on record. He further argued that the respondent is engaged in the business of carpets and was using the demised premises as a warehouse without any alteration in the demised premises. He further argued that the Rent Controller and the Appellate Court both misread and misinterpreted the definition of rent provided under Section 2 of the Ordinance. No condition was jotted down in the agreement for any maintenance charges, and the same was never claimed in the past by the appellant and despite having such a long tenancy arrangement, made the demand for the first time through an ejectment application. It was further contended that the respondent never committed any default in the payment of rent or relevant utilities

6. Heard the arguments. According to the definition provided under Section 2 (i) of the Ordinance, the expression “rent” includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid. The bone of contention for which leave to appeal was granted by this Court for consideration is whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" and, in particular, fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid".

7. The Ordinance articulates efficacious and constructive provisions for regulating the relations between the landlord and tenant for protection of their interest in respect of rented premises within urban areas. According to Section 3 of the Ordinance, notwithstanding anything contained in any law for the time being force, all premises other than those owned or requisitioned under any law, by or on behalf of the Federal Government or Provincial Government, situated

within an urban area, shall be subject to the provisions of this Ordinance and the Government may, by notification, exclude any class of premises, or all premises in any area from operation of all or any of the provisions of this Ordinance. To resolve the crux of the present matter, the niceties of Section 5 of the Ordinance are somewhat significant wherein it is distinctly provided that the agreement by which a landlord lets out any premises to a tenant should be in writing to accept as proof of the relationship of the landlord and tenant and no landlord shall charge or receive rent in respect of any premises at the rate higher than that mutually agreed upon by the parties, and, if the fair rent has been fixed by the Controller in respect of such premises, at the rate higher than the fair rent. The expression *consensus ad idem* is a Latin term that means “agreement to the same thing” or “meeting of the minds”. In reality, it connotes the notion that for a contract to be legally binding the parties should have well-defined and flawless insight of the bargain the stipulated terms and conditions of the agreement and obviously, without *consensus ad idem*, a contract may not be legally binding and enforceable and in order to substantiate the canons of *consensus ad idem*, the terms and conditions of agreement should be unequivocal and incontrovertible because any omission, oversight or misrepresentation may result in adverse consequence and repercussions. The precept of *consensus ad idem* is rudimentary in the law of contract being an elementary constituent for the execution of a valid contract. Likewise, a tenancy agreement within the realm of the same doctrine, intrinsically sets forth the terms and conditions of the tenancy for the rented premises, which is for sure must fulfil and adhere to the rights and obligations of landlord and tenant in accordance with the prevailing laws of tenancy applicable to the demised premises. No doubt in addition to some express terms and conditions of tenancy, certain rights and obligations deem to be implied which if created by fiction of law. However, it is also necessary to incorporate the express clause for the quantum of rent and its due date of payment, utility/amenities charges, and all other charges if agreed to be paid by the tenant under the arrangement of tenancy over and above the monthly rent and payment of utilities bills/charges regularly and it is important to visibly distinguish and identify who is responsible for what charges or dues so there should be no ambiguity or vagueness.

8. It is undoubtedly corroborated from the record that there was no express or implied covenant incorporated in the agreement which may impose any obligation on the respondent for the payment of the alleged monthly maintenance charges. It was also pleaded by the respondent that neither any such dues were ever claimed nor paid by the respondent but suddenly, the ejectment petition was filed for the alleged default of maintenance charges unanticipatedly, as a tool for securing the ejectment of the respondent from the demised premises. Despite repeated queries, the learned counsel for the appellant could not satisfy as to how, without an express condition in the tenancy lease or agreement, the appellant could assert the default on account of nonpayment of maintenance charges. No doubt, the definition of rent includes water charges, electricity charges, and such other charges which are payable by the tenant but are unpaid. Here the foundation of the appellant's ejectment case was on account of default in the payment of maintenance charges taking into consideration the residue fragment of the definition of rent i.e., "and such other charges which are payable by the tenant but are unpaid". At the outset, before invoking any default in the aforesaid residuary segment, there must be something agreed in writing between the landlord and tenant. Had the condition of making payment for any monthly maintenance charges been jotted down and agreed between the parties, then of course, that could be considered a binding agreement and the tenant/respondent could not get rid of it without payment and obviously, in the event of default, that cause of action would have been available to the appellant to seek ejectment on the ground of default including the nonpayment of maintenance charges; but here the situation is altogether different where no such condition was ever pressed nor incorporated in any lease/tenancy agreement. The expression "such other charges which are payable by the tenant" will not come into field automatically or mechanically to rescue the landlord unless and until the condition of making payment for such charges is itemized in the agreement with proper details. The purpose of this rider is to provide a fair opportunity to the landlord that if, beyond the basic amenities/utilities mentioned in the definition of rent, any facility is made available in the rented premises including the liability to pay maintenance charges, then it should be properly mentioned in the agreement to avoid any doubts or disputes in the future.

9. In the case of Hakim Ali versus Muhammad Salim and another **(1992 SCMR 46),** the deducible ratio of the judgment is that the agreement purported to be printed on the back of the rent receipt did not satisfy requirements of Section 5 of the Ordinance. The object of Section 5 seems to be to avoid any controversy as to the existence of relationship of landlord and tenant between the parties and to provide documentary proof thereof, and to also provide documentary proof of the terms and conditions on which the premises is let out to the tenant. Merely printing of the terms and conditions without evidence that the tenant agreed to the same would not, and could not, be effective for the reason of absence of mutuality and the parties being *ad idem*. When law gives direction to do a thing in a particular manner, it should be done in that manner or not at all. If there is no evidence to prove that the parties intended to follow the terms and conditions printed on the back of the receipt, such terms and conditions will not constitute the terms and conditions of the tenancy. While in the case of Mst. Fakhra Begum and others. versus Mst. Sadia Ashraf and others **(2012 SCMR 1931)**, this court held that in view of the pleadings of the parties and the evidence available on the record it is therefore abundantly clear that neither was there any agreement between the parties to pay the water charges and nor were the charges ever paid by the appellant. Consequently, in the absence of the same, an eviction could not be sought by suddenly approaching the Rent Controller on the allegation that the water charges had not been paid.

10. The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is to foster justice, preserve rights and to right the wrong. While exercising writ jurisdiction, if the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere; when the finding is based on misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, excess or abuse of jurisdiction, and arbitrary exercise of power. Each case is based on its own facts and circumstances. The concurrent findings, if any, recorded by the forum below erroneously may not be considered so revered or untouchable or as gospel truth which cannot be upset, come what may, by the High Court in its constitutional jurisdiction. If some blatant illegalities or

violation of law is unearthed or surfaced, the High Court cannot shut its eyes to cover, protect or patronize such defective orders or judgments where interference is really required to advance the cause of justice; and in its fine sense of judgment, may intervene, with the strength of mind that to turn a blind eye to injustice in fact perpetuates and aggravates the injustice. In the case in hand, the learned High Court rightly exercised its writ jurisdiction to sort out the illegality and dismissed the ejectment petition after taking notice of the misreading or non-reading of evidence and vital points of law which were ignored by the Rent Controller and the Appellate Court. The impugned judgment divulges that all relevant factors and grounds raised were properly considered and answered by the learned High Court and the same does not require any interference by this Court.

11. This Civil Appeal was fixed for hearing on 03.04.2024 when it was dismissed *vide* our short order. Above are the reasons assigned in support of our short order.

Judge

Judge

KARACHI
3rd April, 2024
Khalid
Approved for reporting