

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE AMIN UD DIN KHAN
MR. JUSTICE JAMAL KHAN MANDOKHAIL

Civil Petition No. 2743 of 2018

(On appeal from the order of the Lahore High Court, Rawalpindi Bench, Rawalpindi dated 14.05.2018 passed in W.P. No. 175 of 2018)

Malik Muhammad Arif

Petitioner(s)

Versus

Zafar Iqbal etc

.....Respondent(s)

For the Petitioner(s):

Ch. Afrasiab Khan, ASC
Mr. Ahmad Nawaz Ch., AOR

For the Respondents:

Malik Noman Khalid, ASC

Date of hearing:

15.02.2022

ORDER

Jamal Khan Mandokhail, J.- The petitioner claiming to be owner/landlord of the shop, subject matter of the petition, filed an application for eviction of the respondent/tenant from the shop in question. In the title of the application, the Court of Civil Judge, Kahuta was mentioned, therefore, it was registered as a civil suit. The respondent filed reply, contesting the application on factual as well as legal grounds. It was mainly contended that the application for ejectment of a tenant was not maintainable before the Court of Civil Judge, as the matters pertaining to landlord and tenant, which falls within the ambit of the Punjab Rented Premises Act, 2009 (**the Act of 2019**). The case was proceeded by the Court, however, after rectifying the error, the application was registered as

an application for ejectment, instead of a civil suit. On conclusion of the trial, the application was allowed by the Special Judge (Rent), vide order dated 22nd April 2017. An appeal against the same was filed by the respondent, which was dismissed. The respondent feeling aggrieved filed a constitution petition before the learned Lahore High Court, Rawalpindi Bench, which was allowed on 14th May 2018, dismissing the application of the petitioner, hence this petition.

2. Arguments heard and record perused. It is a fact that the petitioner filed an application before the Trial Court but was addressed to the Civil Court. The contents of the application precisely stated the facts with regard to the relationship of landlord and tenant and the relief claimed therein was for eviction of the respondent-tenant. It is important to mention here that to regulate the relationship of landlord and tenant, and for the settlement of their disputes in an expeditious and cost effective manner, the Act of 2019 was promulgated by the Provincial Assembly of Punjab. Under section 16 of the Act of 2019, the government shall establish a Rent Tribunal in a District or any area as it may deem necessary. Section 19 of the Act of 2019 deals with the territorial jurisdiction and the format of an application to be presented before the Tribunal in respect of disputes, arising out of a rented premises between landlord and tenant, therefore, it would be appropriate to reproduce section 19 as under:-

"19. Filing of application.- (1) An application in respect of a rented premises shall be filed in the Rent Tribunal of the area or the district.

(2) If an application is filed under sub-section (1), the Administrative Special Judge (Rent) of the area or the district may take cognizance of the case or entrust the same to any other Special Judge (Rent).

(3) An application under sub-section (1) shall contain a concise statement of facts, the relief claimed and shall

be accompanied by copies of all relevant documents in possession of the applicant.

(4) If the application is for eviction of a tenant, the landlord shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application.”

3. The above provision of the Act of 2019 provides that in case of a dispute in respect of a rented premises, a simple application shall be submitted before the concerned Rent Tribunal. The application shall contain a concised statement of facts, the relief claimed and shall be accompanied by copies of relevant documents in possession of the applicant. In the present case, the titled application contained concised statement in respect of the premises rented out by the petitioner to the respondent and the relief for eviction of the tenant and recovery of rent claimed for. Thus, it was clear enough to consider that it was a rent application, instead of a civil suit. Though the application was addressed to the Civil Court, but the contents of the same were sufficient to believe that it was for the eviction of a tenant. The Presiding Officer having dual capacity of a Civil Judge as well as a Special Judge (Rent) ought to have admitted and registered it as a rent application, instead of treating it as a civil suit, but the needful was not done. By treating the ejectment application as a plaint and registering the same as a suit, is an error committed by the Presiding Officer. However, subsequently the error was rightly rectified and the application was re-registered as an application for eviction of the tenant by the Special Judge (Rent).

4. During the proceedings before the Special Judge (Rent), the respondent filed an application under Order 7 Rule 11 of the CPC pursuant to an objection raised in his written reply that the suit in respect of the matters between landlords and tenant is not maintainable before the Civil Court. The application was dismissed by the Special Judge (Rent) on 5th December 2016 by holding that, “*Admittedly this Court is working as Special Judge*

(Rent), Kahuta, therefore, mere not mentioning or addressing the Court as Rent Tribunal should not be ground to non-suit the ejectment petitioner.” Through this order, the Special Judge has further clarified the situation and declared that the application was actually for ejectment of the tenant, which has been treated by the Special Judge as an ejectment petition. The said order remained unchallenged, as such it amounts to acceptance of the verdict of the Special Judge by the respondent, therefore, he is estopped under the law to raise such objection subsequently.

5. On conclusion of the trial, the application was allowed, against which, an appeal filed by the respondent was dismissed by the Appellate Court. Feeling aggrieved, the respondent approached the learned High Court and disputed the jurisdiction of the Trial Court on the ground that the application was presented to the Civil Court, which had no jurisdiction to entertain the dispute between the landlord and the tenant. The learned High Court was convinced with the arguments and objection of the respondent, as such, allowed the constitution petition and dismissed the ejectment application of the petitioner. We have observed that the learned High Court while deciding the constitution petition in favour of the respondent, did not consider the format and contents of the application. Similarly, the above referred order dated 5th December, 2016 passed by the Special Judge (Rent), wherein the application was tried as an application for eviction of the tenant, has been overlooked by the learned High Court. Though, initially the application was registered as a civil suit, but subsequently it was rectified and re-numbered as Eviction Petition No. 47 of 2016. All the proceedings were conducted in accordance with the Act of 2019. Under such circumstances, it cannot be said that the eviction application was before the Civil Court nor was it a civil suit. Actually, the application was filed before the Rent Tribunal and was tried by a Special Judge (Rent), as such, the learned High Court has erred in law and facts, hence, came to a wrong conclusion, therefore, the impugned judgment is not sustainable.

Thus, in view of the above, this petition is converted into appeal and is allowed. The impugned judgment of the learned High Court dated 14.05.2018 is set aside and that of the learned Additional District Judge, Kahuta dated 13th November 2017 and the learned Special Judge (Rent) Kahuta dated 22nd April 2017 are upheld.

Islamabad,
15.02.2022

~~NOT~~ APPROVED FOR REPORTING
K.Anees/-