

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Constitutional Petition No.S-02 of 2024

Petitioner: Muhammad Hussain son of Baqdar through attorney Mubashir Hussain son of Muhammad Hussain.
Through Barrister Jawad Ahmed Qureshi, & Mr. Osama Yousuf Parhyar, Advocates.

For the Respondent: Ali Muhammad Shaikh son of Ghulam Haider Shaikh.
Through Mr. Dilip J. Mullani, advocate.

Date of hearing: 26-08-2025

Date of Judgment: 26 -09-2025

JUDGMENT

Jan Ali Junejo, J.--- The instant proceedings invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioner seeks to assail and quash the interim Order dated 25.11.2023 (hereinafter referred to as the "*Impugned Order*"), passed by the learned IVth Rent Controller, Hyderabad, in ancillary proceedings (Rent Application No. 81 of 2022). The impugned order was passed under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 ("the Ordinance"), whereby the Petitioner was directed to deposit substantial arrears of rent, amounting to Rs. 19,85,000/-, along with ongoing monthly rent of Rs.310,000/-, into the court (before Nazir) pending the final adjudication of the main eviction application.

2. The factual matrix giving rise to this constitutional challenge is rooted in a landlord-tenant dispute, which has since been complicated by a parallel controversy over the lawful title and ownership of the leased premises. The Respondent, Ali Muhammad Shaikh, instituted an action for eviction against the Petitioner under Section 15 of the Ordinance before the learned Rent

Controller, Hyderabad. The subject of the dispute is the tenancy of Plot No. B-15/1, situated in the Railway Employee Housing Society on Autobahn Road, Hyderabad. In his eviction application, the Respondent asserted that he had let out the premises to the Petitioner in the year 2019 at a monthly rent of Rs.250,000/-, which was subsequently increased to Rs. 310,000/-. The primary grounds for seeking eviction were: (i) chronic default in the payment of rent, culminating in alleged arrears of Rs. 19,85,000/- up to February 2023; and (ii) the unlawful subletting of the premises by the Petitioner. During the pendency of this main eviction application, the Respondent filed an interlocutory application under Section 16(1) of the Ordinance. This provision empowers the Rent Controller to issue a tentative order for the deposit of alleged arrears and future rent during the litigation's pendency.

3. The Petitioner contested this application vehemently. His defense was twofold:

a) **On Merits:** He denied being in default, claiming to have made various payments via bank transfers and attaching corresponding bank statements to his reply.

b) **On Jurisdiction/Locus Standi:** He raised a fundamental objection to the Respondent's very capacity to sue.

The Petitioner averred that the Respondent was not the true owner of the property. He averred that the Respondent's son was the actual titleholder, a fact he claims was conclusively established by the dismissal of a previous civil suit (F.C. Suit No. 731/2020) filed by the Respondent against his own son concerning the ownership of the same property. Furthermore, the Petitioner produced a legal notice dated 20.05.2023 from the said son, claiming ownership, and a subsequent, fresh rent agreement executed between himself and the son on 26.05.2023. Based on this, the Petitioner argued that the landlord-tenant relationship with the Respondent stood severed, and thus the Respondent had no *locus standi* to seek eviction or demand rent. Vide the order dated 25.11.2023, the learned Rent Controller allowed the Respondent's

application under Section 16(1). The Controller directed the Petitioner to deposit the entire sum of alleged arrears with the Nazir of the court and to continue depositing the monthly rent. It is this order, which the Petitioner alleges was passed without meaningfully engaging with his crucial jurisdictional challenge, that forms the subject of the present constitutional petition.

4. The learned counsel for the Petitioner, vehemently argued for the allowance of the petition and the setting aside of the impugned order, contending that the learned Rent Controller committed a grave jurisdictional error by passing a non-speaking, cryptic order that failed to apply a judicial mind to the fundamental and prima facie credible defense raised, specifically, the challenge to the Respondent's very title and locus standi to file the eviction application. He emphasized that the Controller mechanically ignored crucial documented evidence, including the dismissal of the Respondent's own civil suit against his son concerning the property's ownership, a legal notice from the alleged true owner, and a subsequent rent agreement executed with that owner, which collectively severed the landlord-tenant relationship with the Respondent and rendered the entire proceeding void ab initio; further, the Controller's failure to provide any reasoning for rejecting these defenses to make a prima facie assessment of the bank statements showing payments, despite the draconian consequence of striking off the defense for non-compliance, renders the order arbitrary, perverse, and unsustainable in law, warranting this Court's swift intervention under its constitutional supervisory jurisdiction.

5. Conversely, the learned counsel for the Respondent, strenuously urged for the dismissal of the petition, supporting the impugned order as a lawful and prudent exercise of the Rent Controller's tentative jurisdiction under Section 16(1) of the Ordinance. He argued that the existence of a rent

agreement between the Petitioner and the Respondent is admitted, creating a prima facie landlord-tenant relationship for the purposes of the interim application, and that the purported dispute regarding status of the respondent as landlord raised by the Petitioner involves complex questions of fact, including the validity of the new agreement and the legal implications of the dismissed civil suit, that require a full-fledged trial with evidence and cannot be conclusively determined at this preliminary stage. He contended that the impugned order, by directing the deposit of the disputed rent with the Nazir of the Court rather than directly to the Respondent, adopted the most neutral and protective measure possible to secure the funds for the person ultimately found entitled, thereby preventing unjust enrichment by the tenant without prejudicing any party's rights, and that this Court, in its limited supervisory jurisdiction, must not interfere with such a balanced interim arrangement which is precisely within the contemplative purpose of the statute.

6. I have carefully considered the arguments advanced by the learned counsel for the parties and meticulously examined the material available on record with due care and caution. This Court's power under Article 199 of the Constitution is supervisory, not appellate. It is a settled principle that such jurisdiction is invoked only in cases of a patent lack of jurisdiction, a clear error of law apparent on the face of the record, or an order that is so perverse or arbitrary that no judicial mind could have arrived at it. Section 16(1) of the Sindh Rented Premises Ordinance (SRPO), 1979, provides a landlord with a specific interim remedy. When a landlord initiates an eviction case against a tenant on any ground, he/she may concurrently file an application under this section seeking an order for the tenant to deposit both accrued arrears and future monthly rent for the duration of the litigation. The purpose of this provision is not to adjudicate the parties' rights finally but to prevent the tenant from unjustly enriching themselves by occupying the premises without

payment, thereby securing the rent during the pendency of the case. The Rent Controller must first establish the landlord-tenant relationship and then determine the arrears due through a summary inquiry. Following this inquiry, the Controller must order the tenant to deposit the arrears within a fixed timeframe and may further direct the tenant to regularly deposit the monthly rent by the tenth of each succeeding month until the final disposal of the eviction case. Critically, although the order is interim or tentative in nature, this does not absolve the Rent Controller of the duty to apply a judicial mind to the material on record. The order must be reasoned and reflect a due application of mind to the pleadings, annexed documents, and specific defenses raised by the tenant. The law mandates a careful examination of the entire material, and a failure to consider a fundamental and prima facie credible defense, such as a challenge to the very existence of the landlord-tenant relationship, will render the order legally vulnerable. Reliance is placed on the case of *Tayaba Jama Masjid Trust Saudabad, Karachi v. Mst. Aqeela Begum and 2 others (2022 CLC 653)*, wherein this Court was pleased to hold that: *“However, the legal aspect of filing an application under Section 16(1) of SRPO, 1979 in spite of raising no plea of default in a rent case is that the law of SRPO, 1979 permits landlord, who files a case for eviction of the tenant from tenement on any ground, to file an application under Section 16(1) of the Ordinance against the tenant for depositing arrears of rent as well as monthly future rent in the rent case. The law of SRPO, 1979 directs the Rent Controller that on receiving the application under Section 16(1) of SRPO, 1979 make summary inquiry as he deems fit to make, determine the arrears of rent due and order the tenant to deposit the said arrears within such period as the Controller may fix in this regard. Besides this, the Rent Controller under Section 16(1) of SRPO, 1979 may direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case”*. The impugned order, passed under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, is inherently interim and tentative in

nature. Its primary objective is not to conduct a mini-trial or render a final verdict on complex, contested questions of fact such as relationship of the landlord and tenant. Rather, its purpose is to act as a protective mechanism to secure the disputed rent *pendente lite* (during the litigation), thereby preventing the tenant from unjustly enriching himself by occupying the premises without payment and ensuring that the funds are available for the party ultimately adjudged to be entitled. The learned Rent Controller, by directing the deposit with the Nazir of the Court and not directly to the respondent, adopted the most neutral and judicially prudent course available. This mechanism impeccably serves the purpose of Section 16(1) by safeguarding the money without pre-judging the substantive dispute over ownership, which is expressly reserved for evidence in the main proceedings. At this preliminary stage, the Controller's mandate was to conduct a *prima facie* scrutiny, not a definitive one. The learned Controller correctly identified the existence of a rent agreement between the petitioner and the respondent, which, on its face, establishes a landlord-tenant relationship for the purpose of entertaining the application under Section 15 of the Ordinance. The petitioner's defense, while serious, introduces a title dispute that is inherently complex and fact-intensive, relying on the interpretation of a dismissed civil suit and the validity of a subsequent tenancy agreement with a third party. The Controller's observation that such a dispute "cannot be decided at this stage" and "requires determination through evidence" is not a failure to apply her mind but is, in fact, a correct application of the law to the limited scope of a Section 16(1) proceeding. A full-fledged trial is the appropriate forum for leading evidence, cross-examining witnesses, and conclusively determining the rival claims of ownership. To expect the Controller to resolve this tangled web of factual assertions at an interim stage would be to misconstrue the very nature of the provision. Contrary to the petitioner's assertions, the impugned order is not "non-speaking" or "cryptic" in the context of its intended purpose. It notes the

admitted relationship via the rent agreement, acknowledges the petitioner's objections, and provides the essential reasoning for its tentative conclusion: that the dispute is not decidable summarily and that the safest interim measure is to secure the rent with the court. The order reflects a balanced judicial mind weighing the competing interests, the respondent's prima facie claim based on a contract and the petitioner's serious but complex challenge. The reasoning, though brief, is sufficient for an order of this nature and demonstrates the path the Controller's mind took. It cannot be labeled as arbitrary or perverse. Reliance is placed on the case of *Mst. Seema Begum v. Muhammad Ishaq and others (PLD 2009 Supreme Court 45)*, wherein the Honourable Supreme Court of Pakistan was pleased to hold that: "*The most important aspect of the case is that respondent Muhammad Ishaq had challenged the interim order passed by learned Rent Controller in the Constitution Petition. As such the same was not maintainable and impugned order is liable to be set aside on this score alone*".

7. This Court is mindful that the consequence of non-compliance with an order under Section 16(1) is severe, namely the striking off of the defense. However, this severity is justified by the legislature to prevent tenants from frivolously withholding rent. The proportionality of the impugned order is evident in its neutral formulation. The petitioner is not being asked to pay the respondent; he is being asked to deposit the money with the Court/Rent Controller. This protects his interests entirely, if he ultimately prevails on his claim that the respondent is not the owner, the funds will not have been released to him. The impugned order thus perfectly balances the rights of both parties at this interim juncture. It is a well-settled principle of law that the Petitioner, being a tenant, is legally bound and under an obligation to pay rent to the Respondent/landlord. However, in line with the binding principles enunciated by the Honourable Supreme Court of Pakistan in case of *Chaudhry Rahimuddin v. Chaudhry Jalaluddin (PLD 1991 Supreme Court 484)*, the

disputed amount of rent, though liable to be deposited, shall not be withdrawn by the landlord until further orders of the learned Rent Controller.

8. In conclusion, the learned Rent Controller has acted well within the lawful bounds of jurisdiction under Section 16(1) of the Ordinance, 1979. The order impugned constitutes a valid, judicious, and balanced interim measure, aimed at safeguarding the subject matter of the litigation without delving into or prejudicing the merits of the underlying dispute. It discloses no jurisdictional error, no error of law apparent on the face of the record, and no perversity. Therefore, this Court finds no justification to exercise its constitutional jurisdiction to interfere with the Impugned Order. Consequently, the present Constitutional Petition stands dismissed. However, the Impugned Order of the learned Rent Controller is modified to the limited extent that the Petitioner is granted further time of Thirty (30) days to deposit the disputed arrears of rent, while the Respondent shall not be permitted to withdraw the same during the pendency of the rent proceedings. The learned Rent Controller is directed to proceed with the rent proceedings expeditiously and decide the matter, preferably within Ninety (90) days, while submitting a compliance report through the learned Additional Registrar of this Court. The parties are left to bear their own costs.

JUDGE

Ahmed/Pa,