

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-1167 of 2025
(Nazeer Ahmed & Ors. – v – Kareem Dhedi & Ors.)

Date	Order with signature(s) of Judge(s)
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Hg: / Priority.

1. For orders on Misc. No.8741/2025
2. For orders on Misc. No.7544/2025
3. For hearing of main case.

04.12.2025.

Mr. Maqbool ur Rehman, Advocate for the Petitioner.

M/s. Mukesh Kumar G. Karara and Sajid Ali Channa, Advocates for Respondents

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, petitioner has challenged the order dated 17.10.2025 passed by the VIIth Additional District Judge Karachi-South in F.R.A. No.113 of 2025 (re: Nazeer Ahmed & Ors – v – Kareem Dhedi & Ors.) and the order dated 07.05.2025 passed by XIIth Rent Controller Karachi-South in Rent Case No.1055 of 2022 (re: Kareem Dhedi – v – Nazeer Ahmed), whereby an application under section 16(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO) was allowed, defence was struck off and Petitioner was directed to hand over the possession of demised premises to Respondent / Landlord.

2. Mr. Maqbool ur Rehman, learned counsel for the petitioner argued that the ejectment was sought on the sole ground of default in payment of rent; that during proceedings of the case an application under Section 16(1) of SRPO, was filed which was granted with directions to the petitioner to deposit monthly rent in MRC proceedings and further to deposit outstanding utility bills of the demised premises within a period of one month and submit such proof before the Court. He further argued that there was no any default on the part of the petitioner in payment of rent. All utility bills were cleared and submitted before the Court on 14.11.2023 but learned trial Court instead of condoning the delay passed the impugned order 07.05.2025 whereby the defence struck off and the ejection orders were issued. He further argued that even if it is admitted that the petitioner committed default in payment of Utility Bills, the said default did not exceed 06 months' period as such the rent application itself

was not maintainable. He argued that the Rent Controller passed ejectment orders which denied the right of fair trial to the petitioner. He further argued that this Court vide orders 27.10.2025 suspended the operation of the orders of the courts below but pursuant to writ of possession issued in execution proceedings, the petitioner was ejected from the demised premises on 27.10.2025 the very day when the operation of impugned order was suspended. He argued that the order of this Court was communicated to the Learned Trial Court but compliance was not made. He prayed that the courts below have exercised the jurisdiction beyond powers, thus the impugned orders were not sustainable and liable to be set-aside.

3. Mr. Mukesh Kumar G. Karara, learned counsel for the respondent, argued that the petitioner was directed to pay the utility bills within one month through order dated 13.09.2023, which period lapsed on 12.10.2023. The utility bills were deposited in the concerned bank on 17.10.2023, which constituted a willful and deliberate default; thus, the orders passed under Section 16(2) were exceptional and did not require any interference. He further argued that the Appellate Court, in F.R.A. appraised the material available on record, dismissed the appeal filed by the petitioner while assigning cogent reasons. He argued that non compliance of orders passed under section 16(1) of SRPO followed the penal consequences, the Courts below acted well within the premise of law, thus impugned orders did not require interference.

4. Heard arguments, perused the material available on record.

5. Meticulous perusal of record revealed that the respondent Kareem Dedhi (landlord) filed ejectment application on two grounds: firstly, that the demised premises were sublet unauthorizedly, and secondly, Petitioner (Tenant) was defaulter in payment of rent since February 2021. It is also pertinent to mention that Respondent No. 2, Ahsan, has filed a counter-affidavit to the petition wherein he has stated that the demised premises were sub-let to him. However, this issue cannot be adjudicated in the present proceedings because it requires evidence. The only question before this Court is whether the order dated 07.05.2025 suffered from any illegality or not.

6. It evinced from record that Petitioner was directed by Trial Court vide order dated 13.09.2023 to submit copies of updated paid utility bills within 30 days' time. For the sake of convenience relevant paragraph of the order dated 13.09.2023 is reproduced below:

"There is nothing available on record which shows that payment of utility bills are responsibility of applicant. It is matter of record that through instant application, applicant has prayed for submission of upto date paid utility bills but opponent No. 1 in his counter affidavit has not addressed such prayer. By virtue of above quoted definition of "rent" water (charges, electricity charges and other charges are also part of rent and since opponent No. 1 is enjoying the demised premises therefore he is bound to pay utility bills and accordingly opponent No. 1 is directed to submit copy of upto date paid utility bills within 30 days. Application in hand is disposed of in above terms, accordingly. The observations made herein above are tentative in nature and shall not prejudice case of either party."

7. From a bare perusal of the order dated 13.09.2023, it transpired that there is no mention of any default in payment of utility bills or any Tentative Rent Order for payment of specific rent amount was issued. Trial Court directed Petitioner to submit the copies of paid utility bills within 30 days. It transpired from the copies of the utility bills annexed with the memo of the petition, available from page Nos. 123 to 133 that the water charges of KW&SB were paid on 17.10.2023. It further appears that copies of those bills were submitted before trial Court on 14.11.2023 through statement. Learned Trial Court construed that the submission of statement by delay of 32 days as a sufficient proof of default and impose penalty to striking off defence and allowed the rent application as prayed, by directing the petitioner to handover the vacant and peaceful possession of tenement premises to the landlord within 30 days of the date of order.

8. Under the provisions of SRPO, 1979 "default" has not been defined. In general terminology failure to pay regular rent within the time specified under rent agreement constitutes default, and such default has been termed as arrears of rent in Section 16 of SRPO. As per the definition contained in Section 2(1) the rent includes water and electric charges as well as other charges which are payable by the tenant but are unpaid In the present case, Petitioner paid monthly rent in MRC proceedings and there was no default with regard to payment of rental amount. Electricity bills were also regularly paid; water charges were also paid. .

9. In order to determine whether the tenant was in the arrears of rent, Section 16 of SRPO, 1979 itself provides guidance. For the sake of convenience Section 16 of SRPO, 1979 is reproduced below:-

“Section 16. Where a case for eviction of the tenant has been filed, the Controller shall, on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in his behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case;

Provided that the Controller may direct that the arrears of rent approximate rent may be paid to the landlord through pay order, or by any other mode agreed to be the parties, or as directed by the Controller.”

10. From a bare reading of Section 16, it transpired that when an application for ejectment is filed on the ground of default, the trial Court after a summary inquiry, as it deems fit to make, to determine the arrears of rent due and shall order the tenant to deposit the same within such period as may be fixed by the trial Court. It further provides that the Court may require the tenant to pay regular rent on or before the 10th of each calendar month. It appears from the record arrears of rent were not determined, in its order dated 13.09.2023 the Court observed that Petitioner shall continue paying regular rent through MRC. The Petitioner was directed to furnish the proof of paid utility bills within 30 days. There was a general direction to the petitioner that he shall submit proof of the paid utility bills within one month time. Admittedly Petitioner paid water charges on 17.10.2023 and such proof was placed before the Court on 14.11.2023. It transpired from the record that Petitioner was issued bill for the month of September 2023 was issued on 17.10.2023 and last date for clearance of dues was 24.10.2023. Petitioner paid the bill amounting to Rs 21146 on 17.10.2023. He submitted copy of the bill through statement dated 14.11.2023, which per learned Trial Court was sufficient ground to knock out the petitioner and order for ejectment from tenements. It is a matter of common understanding that when the bill was issued on 17.10.2023 and last date for payment was 24.10.2023, the bill was paid on the very day of issuance then how the payment will fall under the limb of default.

11. Record further transpired that Respondent Landlord filed an application under section 16(2) of SRPO to invoke penal proceedings against the Petitioner on the ground that he failed to comply with the Court order dated 13.09.2023, further the water charges were paid on 17.10.2023, which constituted default. Learned Trial Court allowed the application holding Petitioner defiant of Court orders. Trial Court dealt with the issue of non-compliance in para No 5 of the order dated 07.05.2025 in the following manner:

“Admittedly, after passing the preceding order, opponent side was required to pay the entire utility bills of demised premises and submit its receipt in this Court within Thirty (30) days of passing of the order (supra) on or before 12th October 2023 but the opponent side through their counsel has filed statement annexed with copies of paid bills on 14.11.2023, after lapse of about (32) days, which comes within the ambit of default in due payment of rent as ordered by this Court.”

12. It is very strange rather shocking that learned trial court held that filing of the statement with delay amounted to default, particularly when no application to condone delay in submitting the proof was filed. Section 15(2)(ii) of the SRPO lays down the procedure to evict a tenant on the ground of default. This provision of law articulated that where landlord sought eviction of the tenant on the ground of default, the controller shall make an order, if he is satisfied that the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment. Section 15(2)(ii) provided an exception for eviction when the tenant on the first day of hearing admitted his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application of eviction. In the case of Petitioner there was no admission on the part of tenant that he was defaulter on the contrary he demonstrated his bona fides that on refusal to accept rent it was being deposited through

MRC and trial court itself approved this practice by allowing Petitioner to continue deposit the rent in MRC proceedings.

13. Section 16 of the SRPO, empowered the Rent Controller/ Court firstly to determine the arrears of rent and then direct the tenant to deposit the arrears in the manner deemed appropriate through a Tentative Rent Order. To strike off the defence, it was essential that amount of arrears of rent was determined and a direction was issued for payment of the default or regular amount of rent. In the order dated 13.09.2023 no such direction was issued, Petitioner was only required to furnish copies of paid utility bills, as discussed above the last date for payment of bill was 24.10.2023 and bill was paid on 17.10.2023, meaning thereby that the petitioner was not a defaulter. The order for striking off the defence was passed on 07.05.2025, and admittedly, on that date the petitioner was not in default. If the trial Court was of the view that the petitioner had failed to comply with the order, it could have passed appropriate orders on the very date, that too after conducting an inquiry regarding the arrears. Since no such inquiry was conducted, the order passed under Section 16(1) SRPO itself was without jurisdiction. The Appellate Court dealt with the issue of defiance of court orders on the premise that the order of trial Court was not complied with as mandated, therefore, concluded that Trial Court had no option but to strike off the defence, however, failed to comprehend that Trial Court itself had bypassed the mandatory requirements of Section 16(1) of the SRPO, 1979.

14. Since the order striking off the defense was passed after a lapse of more than 20 days, the proper course available to the Court was to proceed with the matter on merits instead of taking penal action. Non filing of an application to seek condonation of delay in filing statement was not a sufficient ground to deprive a party of right to fair trial, which is recognized as a fundamental right under article 10 – A of the Constitution of Islamic Republic of Pakistan of 1973. Under the principles of administration of justice and dispensation of justice, trial court was required to exercise such powers through judicious application of mind, which lacked in the present case. The Court is saddled with a balancing task to do complete justice between the parties, tilting of balance in favor of any party amounted to abuse of the process of law and resulted in miscarriage of justice.

15. It further transpired from the record that the operation of the impugned orders of Courts below was suspended by this Court vide order dated 27.10.2025, and it is also evident from the record that on the said date the petitioner was evicted from the demised premises. Intimation of the order passed by this Court was transmitted to the Trial Court on the very day. The trial Court on receiving the copy of order of this Court passed the following order:

Order

"Now, at 1:40 pm, learned counsel for opponent/JD has filed statement a/w copy of order dated 27.10.2025 regarding the suspension of impugned order, however, due to non-compliance of conditional order, office has already issued writ of possession on the order passed on the statement filed on behalf of applicant/DH, therefore keep on record till further proceedings."

Sd/27.10.2025

XIIth S.C.J Karachi

16. It is very pertinent to note that the trial Court was intimated of the order passed by this Court at 1:45 p.m on the same day. It was incumbent upon the trial Court to restrain its bailiff from executing the judgment which stood suspended. However, instead of passing any appropriate order, the trial Court held that since the writ of possession had already been issued, the orders of this Court would make space on the record till further proceedings. The conduct of the trial court cannot be appreciated in any manner. Since the orders of the courts below were suspended, the execution of the ejectment order was without any lawful authority.

17. This Court, in its writ jurisdiction, exercises supervisory jurisdiction and sparingly interferes with the concurrent findings of the fact, as argued by Mr Mukesh Kumar, however unhesitatingly steps in when it transpired that the courts below exercised the jurisdiction not vested in them or failed to exercise the jurisdiction vested in them. Such supervisory powers are similar in nature as to the powers conferred upon revisional court under Section 115 of the Code of Civil Procedure. Record made it crystal clear that the courts below exercised the powers not vested in them, which resulted in miscarriage of justice and caused hardship in the smooth running of the business of petitioner. Therefore, this is a fit

case for indulgence of this Court to exercise its powers of judicial review under Article 199 of the Constitution

18. In the wake of above discussion order dated 07.05.2025 passed by the XIIth Rent Controller Karachi-South in Rent Case No.1055 of 2022 (re: Kareem Dehdi - v - Nazeer Ahmed) and order dated 17.10.2025 passed by the VII Additional District Judge Karachi-South in F.R.A No.113 of 20225 (re: Nazeer Ahmed - v - Kareem Dehdi) are hereby set-aside. Rent Case No.1055 of 2022 shall be deemed to be pending and be decided on its own merits.

19. Since the petitioner was ejected from the tenements under the garb of the orders which were not in the field as stood suspended by this Court, therefore the trial Court is directed to put the petitioner back into the possession of demised premises within a period of 07 days from the date of receipt of this order and submit such compliance report to this Court through Registrar Office for perusal in chambers.

20. Order passed by the Trial Court prejudiced the case of the petitioner; therefore, it will be in the interest of justice to assign this case to any other Court having jurisdiction. The Learned District Judge Karachi South is directed to withdraw the file of rent case No 1055 of 2022 (Re Kareem Dedhi Vs Nazeer Ahmed and another) from the Court of XIIth Rent Controller Karachi-South and assign the same to any other Rent Controller. However, the restoration of possession to the petitioner shall be done by the trial Court itself and once the possession is handed over to the petitioner file of the rent case shall be transmitted to Learned District Judge for sending the same to any other court.

21. Petition stands disposed of in the above terms. Office to send copy of this order to learned District Judge South Karachi and Trial Court for compliance.

JUDGE

Approved for reporting