

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 434 of 2023

[Sarfarazuddin *versus* M/s Paras Commercial Company and others]

C. P. No. S – 390 of 2023

[Sarfarazuddin *versus* Homi D. Ghadilly and others]

C. P. No. S – 435 of 2023

[Sarfarazuddin *versus* M/s Paras Commercial Company and others]

C. P. No. S – 436 of 2023

[Sarfarazuddin *versus* M/s Paras Commercial Company and others]

and

C. P. No. S – 437 of 2023

[Sarfarazuddin *versus* M/s Paras Commercial Company and others]

Date of hearing : 16.02.2024 and 01.03.2024.

Petitioner [in all Petitions] : Sarfarazuddin, through M/s. Naeem Akhtar and Muhammad Kamran Mirza, Advocates.

Respondent No.1 : M/s Paras Commercial Company and Homi D. Ghadilly, through M/s. Junaid Alam Khan and Qazi Ajmal Khan, Advocates,

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due to commonality, all the titled Petitions are decided by this common Judgment. It is necessary to reproduce the relevant portion of Order dated 01.03.2024, as under_

. There are two categories of cases-CP No.S-390 and 437 of 2023 relate to purported default in nonpayment of rentals under the Tentative Rent Order, whereas, the other CP No.S-434, 435 and 436 of 2023 pertain to the issue that the Tentative Rent Order has allowed the arrears beyond three years to be deposited, basis of which is challenged by the Petitioner's Counsel. On this, learned counsel for the Respondent argues through the record that even the default was committed in depositing the future rentals. Learned counsel for the Respondent seeks some time to place on record under the Statement Case Law that if one part of the Tentative Rent Order about arrears of rent is not correct and default is committed about the specific part of the Tentative Rent Order about future rent, still the Tenants should be evicted.

Reserved for announcement of Judgment.

Written Synopsis be filed within three days for and against on the above proposition. Interim order passed earlier to continue till announcement of the Judgment.”

2. Succinctly, the subject matter of the titled Petitions is as follows_

- i. Shop No. P-3, Ground Floor, Paras Market, Ghadially Building, Plot No.SB 1/23, Saddar, Karachi opposite Empress Market Karachi [in C. P. No. S – 434 of 2023];
- ii. Shop No.2-A, Ground Floor [in C. P. No. S – 390 of 2023];
- iii. Shop No.P-4, Ground Floor [in C. P. No. S – 435 of 2023];
- iv. Shop No.P-5 & P-6, Ground Floor [in C. P. No. S – 436 of 2023]; and
- v. Shop No.16, Ground Floor [in C. P. No. S – 437 of 2023];

3. Respondent No.1 – Landlord filed Rent Cases concerning the above Shops against the Petitioner, *inter alia*, on the ground of default. The Rent Cases were contested by the Petitioner through his written reply. In the intervening period, Applications under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 – SRPO [the “**Rent Law**”], were filed, which were opposed through Counter Affidavits.

4. In C. P. No. S – 390 and 437 of 202 {**Category A**}, which pertain to Rent Cases Nos.762 and 763 of 2020, the learned Rent Controller passed the Tentative Rent Order(s) dated 07.01.2021, directing the Petitioner to deposit the arrears of Rent, from November 2019 to August 2020, within thirty days at the rate of Rs.5,000/- per month, as well as future monthly rent at the same rate with 10% enhancement per year, as claimed by the Respondent in the Application [supra]. **Whereas**, in C. P. No. S – 434, 435 and 436 of 2023 {**Category B**}, which arise out of Tentative Rent Orders of the same date, passed in Rent Cases No.759, 760 and 761 of 2020, the Rent Controller passed identical Orders as mentioned above; which means that he has allowed the Applications under Section 16[1] of the Rent Law, filed

by the Respondents, in which arrears of rent [of varied figures] were claimed from April 2011 to August 2020, so also directing the Petitioner to deposit future monthly rent with 10% enhancement per year on the same rate, which the Petitioner has been depositing in Miscellaneous Rent Case [“MRC”], on or before 10th of each calendar month.

5. Subsequently, Application under Section 16(2) of the Rent Law was preferred by Respondent No.1, alleging that the Order has been violated and defence of Petitioner should be struck off while evicting him from the premises, which was opposed by the Petitioner, but was granted vide Impugned Order dated 21.07.2022.

6. Learned counsel for the Petitioner in support of his arguments has argued that the tentative rent order is illegal, because it has directed the Petitioner to deposit arrears of Rent of more than three years, besides, did not consider the undisputed fact, that rentals are already being deposited by the Petitioner in MRC and the Petitioner cannot be vexed twice by directing him to deposit the rentals of that period which is already being deposited in MRC. He has cited the following case law to augment his arguments_

1. P L D 1991 Supreme Court 711
[*Noor Muhammad and another versus Mehdi*];
2. 2007 Y L R 363
[*Mrs. Jumana Khursheed versus Ist. A.D.J., Karachi East and 2 others*]; and
3. 1987 C L C 1391 [Karachi]
[*Jamil Ahmad versus Mrs. Sultan Jehan Begum*].

7. The above argument is opposed by the learned counsel for Respondent No.1 [Landlord]. The first contention is that the Rent Appeals are time barred and hence these Petitions are liable to be dismissed. In this regard, the contention of Petitioner’s counsel that since initially tentative rent order was void *ab initio* and therefore, no limitation will run, is also

misconceived in nature. The conduct of the Petitioner is that he is not willing to comply with the earlier Orders and thus is not entitled for any discretionary relief. He has cited the following case law in support of his arguments_

- i. **1993 M L D 2186**
[*Mir Jawed Ali Talpur versus Mrs. Z. Shirazee*];
- ii. **2020 S C M R 2046**
[*Haji Wajdad versus Provincial Government through Secretary Board of Revenue Government of Balochistan, Quetta and others*];
and
- iii. **2001 S C M R 2020**
[*Khawaja Muhammad Mughees versus Mrs. Sughra Dadi*].

8. Arguments heard. Record perused.

9. The crux of the case-law cited by the Petitioner's Counsel is as under:-

The initial tentative rent order passed under Section 16(1) of SRPO 1979, is sketchy and non-speaking, followed by striking of defence under Section 16(2) [*ibid*], then the Appellate Court should have condoned the delay in filing of First Rent Appeal, inter alia, on the ground that the Rent Controller instead of deciding the relationship of Landlord and Tenant which is specifically agitated in the reply of Tenant (of the reported case), passed the tentative rent order for depositing the rent. The rent was deposited after delay of three (03) days, contrary to the directions mentioned in the tentative rent order; however, the same was condoned [in the Reported Decision, *supra*] due to the fact that on perusal of record, it transpired that the rent of the same period was earlier deposited even before passing of the tentative rent order. It is held that the default is committed when it is willful one and not technical; thus, the tenant cannot be penalized for a technical default.

The striking off defence of the Tenant was eventually set aside by the Hon'ble Supreme Court on the ground that the rental of the same

months was deposited in another Miscellaneous Case, which is proved from the record and it is rules, that since there is no deliberate or contumacious disregard of the Order of the Rent Controller, there is no default on the part of the Tenant / Appellant (of the reported case).

10. Summary of the Case Law cited by the Respondent's Counsel is__

Since the Review is not provided in the scheme of Rent Laws (*ibid*), therefore, period of limitation to file Appeal will not be counted from the date of dismissal of the Review Application, but from the date when the defence of the Tenant was struck off. The limitation would run even against a Void Order, affecting rights of any person; no one can seek condonation of delay on this sole ground, unless it is successfully shown that the Challenger of a Void Order had no knowledge of the same. Delay of one day in depositing the rent (in compliance of the tentative rent order) was not condoned by the Hon'ble Supreme Court and the Order of striking off defence of the Tenant has been affirmed.

11. In C. P. Nos.390 of 2023 and 437 of 2023, the facts are that the Petitioner (Tenant) has not challenged the Order dated 21.07.2022, within the limitation period of thirty days, whereby, the defence of the Tenant was struck off, instead he preferred to file Application under Section 151 of Civil Procedure Code, for Recalling of the Order dated 18-07-2022, debarring the Petitioner from filing Objections [*despite giving opportunity to file the same*] to the Application [of the Respondent] under Section 16(2). This Application [of the Petitioner for Recalling] was dismissed by the **Order dated 07.09.2022, challenged before the Appellate Court**. It is correctly observed by the Appellate Court that the Order dated 21.07.2022, striking off defence of the Petitioner, was challengeable under Section 21 of the Rent Law, but, was not questioned in the Appeal; instead the above Application was filed in the intervening period, and the time period of

thirty days to file the Appeal has lapsed; resultantly, the First Rent Appeals have been dismissed through the impugned Orders.

12. The case law relied upon by the Petitioner's Counsel in view of the above facts is distinguishable, whereas, the reported Decision in ***Talpur Case*** [*ibid*, 1993 M L D 2186] cited by the Respondent's Counsel is relevant.

13. Conclusion of the above discussion is that the impugned Decisions in FRA No.244 of 2022, which is challenged in C. P. No. S – 390 of 2023 and FRA No.245 of 2022, challenged in C. P. No. S – 437 of 2023, so also the earlier Orders of the Rent Controller [Tentative Rent Order and Striking off defence of the Petitioner], have been passed by exercising the jurisdiction properly; hence, no illegality exists in these Orders nor successfully pointed out by the Petitioner; thus, both the above Petitions are dismissed.

14. Now adverting to the facts of Constitutional Petitions No.434, 435 and 436 of 2023. The basic common fact in these Petitions is, that while passing the Tentative Rent Order dated 07.01.2021, the Rent Controller **without specifying the period and amount of arrears of rent**, has granted the Application of Respondent in a mechanical manner, not realizing that the Respondent is claiming arrears of rent of more than nine years, with effect from April 2011 to August 2020, with 10% enhancement per year thereafter. It is a settled rule that Tentative Rent Order cannot be passed for payment of arrears of rent exceeding three years [2020 Y L R 192, *Zahid Khan versus Mst. Razia Khatoon and another*, is relevant]. The Tentative Rent Orders are violative of Rent Law and the Limitation Act [Article 110]. *Secondly* and apparently, the Rent Controller has passed the identical Tentative Orders, which are subject dispute of these

Category B Petitions, which he has passed in the Rent Cases of the above Category A Petitions, although facts of both the Categories are quite different from each other, with regard to the period of arrears of rent. *Thirdly*, the Tentative Rent Order was/ is not only vague, but, void ab initio, because, the Petitioner, cannot be saddled with such a huge liability in the shape of arrears of rent of more than a million rupees [cumulatively], even without inquiring the essential facts relating to the case. The term '**Summary Inquiry**' mentioned in the above Provision [Section 16 of Rent Law], means, that at least basic facts, including, with regard to rate of rent, exact period of arrears, be ascertained before passing a Tentative Rent Order. It is also an undisputed fact that the Petitioner was depositing the Rent in another Miscellaneous Rent Case, so also observed in the Tentative Rent Order [*supra*].

15. Although, in these Category B Petitions also the Petitioner repeated the same error, that instead of challenging the Order dated 21.07.2022 [striking off his defence], he pursued his Application for recalling of Order dated 18.07.2022, whereby, he was debarred from filing the Objection to the Application filed by Respondent under Section 16[2] of the Rent Law. However, facts of these three Petitions are quite distinguishable from the above two Petitions and that is why vide Order dated 1-3-2024 [of this Court], all the title Petitions were categorized into two Categories [A and B]. The blatant and patent illegality committed by the Rent Controller while passing the Tentative Rent Orders in these Petitions **{Category B}**, is far greater than the error committed by the Petitioner and his Counsel and thus, the latter's conduct, in these peculiar circumstances, cannot be treated as fatal to his Case. It is a settled rule that mistake of Court should not prejudice anyone.

16. The case law cited by the Respondent's Counsel is distinguishable and do not apply to the facts of these Petitions, as the Tentative Rent Orders have resulted in gross hardship and injustice to the Petitioner. This aspect has been overlooked by the Appellate Authority, which is not the proper exercise of jurisdiction; conversely, should have condoned the delay and decided the First Rent Appeals on merits. [**P L D 2001 Supreme Court 514**, *Land Acquisition Collector, Nowshera and others versus Sarfaraz Khan and others*, and **2020 C L C Note 45 [Sindh]**, *Ghulam Nabi Qureshi versus Government of Pakistan through Secretary Ministry of Defence and 2 others*, are relevant]. Since the impugned Appellate Orders, Tentative Rent Orders so also Order(s) dated 21.07.2022 [striking off defence of Petitioners], are not passed within the parameters of the Rent Law and the case law developed by the Superior Courts, hence, liable to be set-aside. Resultantly, these Petitions are accepted and the Impugned Orders are set-aside. These Rent Cases relating to Category B Constitution Petitions are remanded to the learned Rent Controller, to be decided within a period of six [06] weeks from today. However, in the intervening period, Respondent's Advocate may press his Application under Section 16[1] of the Rent Law, which is deemed to be pending, which can be decided by learned Rent Controller in view of the above observation.

Judge

Karachi.

Dated: 10.04.2025.

Riaz / P.S.