

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. 913 of 2021

Petitioners : 1. Mst. Syed Muhammad Naheed Meer w/o Syed Muhammad Meer
2. Syed Muhammad Meer s/o Syed Ahmed Ashraf, through Mr. Aamir Mansoob Qureshi, advocate

Respondent No.1 : Rubina Zafar Zehri @ Rubina Irfan d/o Mir Zafar Iqbal Zehri, through Mr. Iftekhhar Javed Qazi, advocate

Respondent No.2 : Additional Controller of Rents, Clifton Cantonment Board (*nemo*)

Date of hearing : 11.04.2022
Date of order : 11.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- By invoking constitutional jurisdiction of this Court under Article 199 of the Islamic Republic of Pakistan, 1973, the petitioners have impugned the Order, dated 26.10.2021, whereby Additional Controller of Rents, Clifton Cantonment, Karachi (**“Controller”**) while allowing application under section 17(8) of the Cantonment Rent Restriction Act, 1963 (**“the Act”**) in Rent Case No. 31 of 2021 directed the petitioners to deposit arrears of rent amounting to Rs. 2,20,000/- @ Rs. 5000/- per month from March, 2018 to October, 2021 (*44 months*) on or before 26.11.2021 and future rent at the same rate from November, 2021 onwards before 5th of each calendar month.

2. Learned counsel for the petitioners has contended that the impugned order is without jurisdiction as the same has been passed by the Controller without framing and deciding preliminary legal issue with regard to the existence of relationship of landlord and tenant between the parties, which has been denied by the petitioners in their joint written statement. Learned counsel has also contended that the impugned order has been passed by the Controller without jurisdiction as in view of

dictum laid down in the case of Zahid Khan v. Razia Khatoon (2020 YLR 192) the Controller does not have jurisdiction to pass tentative rent order of payment of arrears of rent of more than 3 years; hence, instant petition has been maintained.

3. Conversely, learned counsel for the respondent No.1 has objected over the maintainability of the instant petition being filed against the interim order passed by the Controller by referring to the case of Mst. Seema Begum vs. Muhammad Ishaq and other (PLD 2009 SC 45).

4. Heard the learned counsel for the parties and perused the material available on record.

5. As regard the first contention of the learned counsel for the petitioners, suffice it to say that the impugned tentative rent order is an interlocutory/interim order in its nature and the same is even not appealable under the Act. No order has yet been passed by the Controller under section 17 (9) of the Act. The provision of appeal has been provided under section 24 of the Act by the legislature against the final order of the Controller. The petitioners will have opportunity to file an appeal if the final order goes against them and they can raise the ground of existence of relationship of landlord and tenant between the parties too in rent appeal. Therefore, the instant constitutional petition is not maintainable against an interim order of the Controller, for the reason that if constitutional petitions are to be entertained against the interim rent orders, the very purpose of section 24 of the Act would be defeated. Reliance can be placed in this regard on the case of Mst. Seema (supra) and Abdul Farooque and another v. Maqsood Ahmed and another (2015 CLC 663).

6. As regard second contention of the learned counsel for the petitioners, as observed in the case of Zahid Khan (supra), the Rent

Controller has no jurisdiction to pass tentative rent order of depositing time barred rent arrears i.e. arrears of rent exceeding three years from the date of filing of ejectment application, and on this account a Constitution Petition is maintainable as in such case, the order of the Rent Controller would be in excess of jurisdiction.

7. The perusal of the impugned order shows that the learned Controller, while observing that the respondent No. 1 has claimed the arrears of rent from November, 1998 onwards but she can claim the rent only for last three years prior to filing of ejectment application, has passed the impugned order directing to petitioners to deposit, besides future rent, the arrears of rent from March, 2018, while the rent case was filed in the month of April, 2021. As such, the impugned tentative rent order does not appear to have been passed for depositing of rent arrears exceeding three years from the date of filing of ejectment application.

8. For the forgoing facts and reasons, instant petition does not merit consideration; hence, the same is accordingly dismissed, along with the pending application.

9. Above are the reasons of my short order, dated 11.04.2022.

JUDGE

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