

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-499 of 2016

(Mst. Rukhsana Ramzan – v – Asif Karim & Ors.)

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

1. For orders on office objections.
2. For orders on Misc. No.8360/16
3. For hearing of Misc. No.2285/16
4. For hearing of main case.

03.12.2025.

Mr. Altamash Arab, Advocate for the Petitioner.

Mr. Aziz ur Rehman Akhund, Advocate for the Respondent.

ORDER

Nisar Ahmed Bhanbhro, J. This case has a checkered history. Earlier, the rent case was allowed vide order dated 24.02.2019, and the matter went up to the Supreme Court of Pakistan. The Hon'ble Supreme Court directed the learned trial Court to decide the matter afresh after affording an opportunity to the parties for recording additional evidence, if so desired. The matter again proceeded and vide order dated 14.07.2009 the ejectment application was dismissed. Thereafter F.R.A. No.88 of 2009 was preferred which was allowed vide judgment dated 13.02.2016 whereby order passed by the trial court was set-aside and ejectment application was allowed.

2. Mr. Altamash Arab, learned counsel for the petitioner, contends that the ejectment application was filed on three grounds: firstly, default in payment of rent; secondly, personal bona fide need; and thirdly, alteration in the demised premises. He further contends that, in the earlier round of litigation, the two grounds of personal bona fide need and alteration in the demised premises were not proved; therefore, the ejectment case proceeded only on the ground of default in payment of rent. He submits that there is no default in payment of rent, as the petitioner was regularly paying rent through MRC No. 191/1993. He next contends that the order passed by the Appellate Court is based on misreading and non-reading of the evidence on record, as the order passed by the learned trial Court under Section 16(1) of the SRPO, 1979 was itself condoned by the trial Court, and the petitioner continued to pay rent regularly. He further submits that had there been any default in payment of rent within the meaning of Section 16(1) of the SRPO, 1979, the penal consequences under Section 16(2) would have followed, and the defense of the petitioner

would have been struck off. He therefore prays that the ejectment application be dismissed and the judgment dated 13.02.2016 be set aside.

3. Mr. Aziz-ur-Rehman Akhund, learned counsel for the respondent contends that the petitioner was occupying the demised premises for the last five decades. He next contended that the learned trial Court vide order dated 04.12.1997 directed the petitioner to deposit the regular rent by 10th of each calendar month before the trial Court instead of MRC No.191/1993. He further contended that the said orders were not complied with, therefore, the Appellate Court rightly allowed the appeal and set aside the judgment of the learned trial Court.

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

5. A perusal of the record reveals that there is a tenancy dispute between the parties, and the landlord filed an ejectment application on three grounds: firstly, default in payment of rent; secondly, personal bona fide need; and thirdly, alteration in the demised premises. The record further shows that the tenant had been depositing rent through MRC No. 191/1993, and the learned trial Court, vide order dated 04.12.1997, directed adjustment of the rent period in the MRC and further directed the tenant to deposit rent on or before the 10th day of each calendar month in the rent case. Upon the tenant's failure to deposit rent as ordered by rent controller, his side was closed under Section 16(2) of the SRPO, 1979. In appeal, the matter was again remanded to the learned trial Court. The rent case was allowed vide order dated 04.02.1999; the F.R.A. was dismissed, and the constitutional petition filed before this Court was also declined. However, the Hon'ble Supreme Court of Pakistan, vide judgment dated 16.08.2007 passed in Civil Petition No. 176-K of 2007, once again set aside the orders passed by this Court, the Appellate Court, as well as the Court of the Rent Controller. The case was remanded for determination of the question of default in payment of rent in accordance with law, with permission to the parties to present their case. The rent case proceeded and the learned trial Court concluded that the default in payment of rent was not deliberate. Accordingly, the rent case was dismissed vide order (supra).

6. Since the only ground remaining for adjudication by the Rent Controller was default in payment of rent, it is pertinent to note that Section 15(2)(ii) of the SRPO, 1979 provides that when an ejectment application is filed solely on the ground of default in payment of rent, the Rent Controller is required to inquire from the tenant as to the liability. If the tenant admits the liability and the Rent Controller is satisfied that the default relates to previous rent and does not exceed six months, the Rent Controller may direct payment

of rent to the landlord for the purpose prescribed and on payment of rent reject the ejectment application. For convenience, Section 15(2)(ii) of the SRPO, 1979 is reproduced herein below:

15(2) (ii) 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

Provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits 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."

7. It appears from the record that, at the time of remand of the case by the Hon'ble Supreme Court of Pakistan, no such exercise was undertaken by the trial Court as envisaged under Section 15(2)(ii) of SRPO, 1979. However, from the judgment dated 14.05.2009, it is evident, albeit implicitly, that the tenant was depositing rent through MRC. Thereafter, the tenant was directed to deposit future rent in the rent proceedings vide order dated 04.12.1997, but he continued to deposit the rent through MRC. The order of the learned trial Court further reflects that the rent was continuously deposited with the Nazir and recorded in the MRC until 23.03.2009. Meaning thereby, there was no willful default on the part of the tenant, nor any refusal on his part to deposit the rent. It appears that the earlier order dated 04.12.1997 pertained to the deposit of regular rent, and the orders passed by the forums below merged into the order of the Hon'ble Supreme Court of Pakistan passed in Civil Petition No. 176-K of 2007, dated 16.08.2007, whereby the Court specifically directed that the aspect of default in payment of rent be determined. Since it appears from the record that, well before filing of the ejectment application and until 04.12.1997, the petitioner/tenant was regularly depositing the rent in MRC, therefore it was the discretion of the Rent Controller to reject the ejectment application solely on the ground of default in payment of rent, and in such circumstances, there was no necessity to record evidence of the parties. It is clear from the record that the tenant continued to deposit rent in MRC until 23.03.2009. The rent application was filed in 1994, whereas the MRC was filed in 1993, which demonstrates that there was no default on the part of the tenant in the payment of rent.

8. Since the rent has been regularly deposited in the Court to date, the sole ground for ejectment based on default in payment of rent was not available. In the case of Ashiq Ali v. Mehar Elahi reported as 2001 SCMR 130, which was relied upon by the appellate Court, it was held that the trial Court had directed the tenant to deposit the rent in the rent proceedings which were being deposited through MRC and it was also held that failure to comply with order passed under Section 16(1) of SRPO, 1979 was sufficient to hold that the tenant was defaulter in payment of rent. Since the said case related to arrears of rent, and in the present case there was no default on the part of the petitioner/tenant. A perusal of the record reveals that no order under Section 16(2) of SRPO, 1979 was ever passed by the trial Court. It is for the trial Court to determine the manner in which regular rent is to be paid. Since the trial Court had already condoned the deficiency in depositing rent in MRC, the Appellate Court was not justified in disturbing such well-reasoned findings.

7. For the aforementioned reasons, the petitioner has succeeded in establishing a case for the indulgence of this Court. Accordingly, this petition is allowed. The judgment passed by the Appellate Court dated 13.02.2016 in F.R.A. No.88 of 2009 is set aside, and the order of the learned trial Court dated 24.02.2019 in Rent Case No.520 of 1994 is maintained. It is clarified that the findings in the present case will not debar the petitioner from instituting fresh proceedings on any other new ground, except default in payment of rent, if so advised.

8. The instant petition stands disposed of in the above terms.

JUDGE