

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-473 of 2023
Saleem Akhtar Vs VIIth Additional District Judge Karachi East and others
&
Constitutional Petition No. S-474 of 2023
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Date	Order with signature of Judge
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Hearing of cases priority

- 1. For hearing of CMA No.3688/2023
- 2. For hearing of main case.

Date of Hearing & order: 18.11.2025

Mr. Hasssan Arif advocate for the petitioner.
M/s Muhammad Safdar and Rohila Nazar advocates for respondent
No.2

Nisar Ahmed Bhanbhro, J- Through this common order, I propose to decide the fate of the captioned petitions, through which order dated 11.04.2023 passed by the Court of Learned VIIth Additional District and Sessions Judge Karachi East (Appellate Court) in FRA No. 230 of 2022 and FRA No 231 of 2022 has been challenged, whereby the appeals were allowed and order dated 19.11.2021 and 18.11.2022 passed by Learned XIIIth Rent Controller Karachi East (Trial Court) on applications under section 16(1) and 16(2) of SRPO were set aside

2. It is the case of the Petitioner that he was owner of demised premises Office No 3, Mazhar Arcade, Bihar Muslim Cooperative Society Alamgir Road Karachi. Petitioner rented out the demised premises to Respondent No 2 against a monthly rent of Rs 150,000. Respondent No 2 paid in advance the rent of eleven months through rent agreement dated 01.11.2016. The Respondent continued paying the rent until 2019 thereafter refused to pay rent. Petitioner filed Rent Case No 231 of 2021 before Learned Trial Court seeking ejectment of Respondent No 2 on the ground of default. Petitioner filed an application under section 16 (1) of SRPO for payment of arrears of rent which was granted vide order dated 19.11.2021. Respondent No 2 did not deposit the arrears of rent, hence vide order dated 18.11.2022 defence of the Respondent was struck off, by Trial Court invoking powers under section 16(2) SRPO. On appeals filed by Respondent No 2 orders of Trial Court were set aside, hence this Petition.

3. Learned Counsel for the Petitioner contended that Respondent No 2 was tenant of demised premises. Respondent No 2 defaulted in payment of rent, therefore, an application under section 16(1) of SRPO was filed for payment of

arrears of rent which was allowed vide order dated 19.11.2021. He argued that on refusal of tenant to comply with Court orders an application under section 16(2) SRPO was filed, which was allowed vide order dated 18.11.2022 and defence of Respondent No 2 was struck off. He argued that Learned Appellate Court set aside the orders of Trial Court on the ground that relationship of the parties for the tenement premises was under dispute, therefore, it should be determined first. He argued that the impugned orders passed by the Appellate Court were illegal and not in conformity with the statutory provisions of law. He argued that there was no dispute as to the tenancy relationship and findings rendered by appellate court were whimsical and not tenable under the law. He prayed to allow this petition.

4. Learned Counsel for the Respondent No 2 argued that there existed no relationship of landlord and tenant between the parties, Respondent No 2 was not tenant of Petitioner but he was owner. He argued that question of default did not arise in absence of existence of relationship, for which learned Trial Court has framed issues and evidence of Petitioner has been recorded. He prayed to dismiss the Petition.

5. Heard Argument, perused material available on record.

6. Scanning of record revealed that the application of Petitioner for payment of arrears of rent was granted vide order dated 19.11.2021, whereby Learned Trial Court directed Respondent No 2 to deposit arrears of rent. On failure of Respondent No 2 to comply with Court Order, the defence was struck off. Respondent No 2 challenged the orders of Trial Court through First Rent Appeals. Learned Appellate Court allowed rent appeals and set aside the orders of Trial Court. After decision in appeal matter before Trial Court has proceeded on merits, points for determination are framed and evidence of Petitioner has been completed. At this stage any findings in the matter may prejudice the case of either side, therefore, in the fitness of things it would be appropriate that the Trial Court seized with the matter may record its findings on merits on the divergent pleas taken by the parties including the issue of relationship of parties with regard to the disputed premises.

7. For the aforementioned reasons, the captioned Petitions are disposed of without disturbing the orders passed by Appellate Court. Trial Court is directed to expedite the rent proceedings and conclude the same within reasonable time.

Office to keep signed copy of this order in the connected file.

Karachi

Judge