

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
C.P.No.S-435 of 2012

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

HEARING/PRIORITY CASE

1. For hearing of CMA No.1878/2012.
2. For hearing of main case.

20.10.2016

Mr. Rajindar Kumar Chabria, Advocate for the
Petitioner.

Mr. Muhammad Saleem Mangrio, Advocate for the
Respondent.

The instant petition arises out from FRA No.160 of 2011 (old FRA No.423/1995), where the core contention is that the rent ought to have been paid by the tenant vide Court's Order dated 26.10.1995 as reiterated by the Court on 09.02.1996 in FRA No.423/1995 for a period of April to September 1996, where from September onwards, the tenant started depositing the rent in MRC, a statement of the deposits made in MRC No.449/1996 is reproduced between pages 131 to 135. The legal question involved is that the default that occurred after passing of the order in FRA would become ground for ejectment under section 16(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO).

The learned counsel for the Petitioner contends that the FRA, which culminated in striking off his defense, is based on wrong appreciation of law and he placed reliance on PLD 1994 Karachi 227 and 1992 CLC 1930, as well as, 1984 SCMR 542. The learned counsel attempted to put forward a case that the default, if at all, occasioned in pursuance to the order passed in FRA would be considered the default under section 21(2) of the SRPO rather than under section

16(2), therefore no ejectment could have been granted if there were default in making the payment against the order passed in the FRA.

The learned counsel for the Respondent making reliance on the same case law submitted that once the tenant was aware of the order passed in FRA, it was his duty to start paying rent in MRC rather than attempting to pay rent directly to the landlord. Of significance is that the application made for striking off his defense was filed after lapse of 15 years' time of default that happened between the order of the Court dated 26.10.1995 for the months of between April to September, 1996. At this juncture, the attention of the learned counsel was drawn to Article 110 of the Limitation Act, which limits any action to be filed to recover the arrears of rent as three years, from the date when the arrears become due.

It is absolutely clear that when the tenant commenced depositing rent in MRC from August 1996, the application made for striking off the defense after 15 years was time barred under Article 110 of the Limitation Act, thus the landlord lapsed the opportunity to claim arrears of the rent, which was payable more than 15 years ago. It appears that while the learned Judge, who has minutely considered the point of default on page 6 of the impugned order, has failed to deliberate or apply his judicial mind as to the maintainability and the limitation which could be applicable. In connection with limitation, he made the following observations:

“So for as the other question whether the application barred by limitation is concerned the appellant have not referred any case law in support of his contention, therefore, keeping in view the rent law being a special law does not permit to apply any other law only to some extent the limitation and CPC are applicable, however, the plea taken have no force in the eye of law.”

It is obvious from the above reading that the learned appellate Court passed the impugned judgment solely because no case law was presented to it in relation to condonation of delay or time barred status of the application.

I stand to differ from his view. To me, it ought to have been the responsibility of the learned judge to be aware of the limitation imposed under Article 110 of the Limitation Act rather than posing an innocent question in this regard and then not giving any judicial finding thereon. I, therefore, at this vital ground suspend the impugned order passed alongwith all pending applications.

The appellate Court is directed to decide the matter pending before it preferably within a period of four months in accordance with law without being prejudiced by any observations given in this order.

Judge