

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
C.P. No.S-756 of 2014

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For katcha peshi.
2. For hearing of MA-10671/2014

03.11.2016.

Mr. Aqeel Ahmed Siddiqui, Advocate for petitioner.  
Mr. Muhammad Ilyas Ansari, Advocate for respondent No.1.  
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Through this constitutional petition, the petitioner has called in question the judgment dated 09.09.2014, passed by the learned District Judge, Hyderabad, being the Appellate Court in F.R.A No.164 of 2014, whereby the appeal preferred by the present petitioner against the order dated 22.04.2014, passed by the learned IIIrd Senior Civil Judge/Rent Controller on the application moved by the petitioner under Section 17 of SRPO, 1979, was dismissed. In the impugned judgment after taking into account the arguments of the parties of the present proceedings as well as cases cited at bar, the directions were given that both the parties, the present petitioner and respondent No.1 should participate in the rent proceedings *sub judice* before the respondent No.2 (IIIrd Senior Civil Judge, Hyderabad). It has been vehemently argued on behalf of the petitioner that petitioner is not a tenant of respondent No.1 and there is a serious dispute of ownership of subject property bearing No.490 with all construction, situated at Shah Najaf Mujahid Colony, Unit NO.10, Latifabad, Hyderabad, amongst the petitioner and respondent No.1. He has also pointed out that the present petitioner and respondent No.1 had entered into a compromise in respect of subject property and a compromise decree dated 12.01.2010 has been passed by the learned Vth Senior Civil Judge, Hyderabad, whereunder, *inter-alia*, the

present respondent No.1 had to give her no objection to the prayer clause of the present petitioner as reproduced in the above decree (available at Page 41 of the present petition), which includes that the sale deed in respect of the property in question be declared as illegal and *void ab-initio*.

On the other hand, the contention of petitioner's Counsel has been controverted by Mr. Muhammad Ilays Ansari, who represents respondent No.1 and according to him, the petitioner is adopting delaying tactics, so that rent proceedings can be delayed. He further submits that against a compromise decree the present petitioner filed an execution proceeding, which was dismissed being time barred. On a query, it was frankly acknowledged that an appeal was filed by the present petitioner being Civil Miscellaneous Appeal No.13 of 2015 before the learned IXth Additional & Sessions Judge, Hyderabad, which was also dismissed for non-prosecution on 04.03.2016, but again the petitioner took steps to get the said appeal restored by moving a restoration application.

I have heard the arguments advanced by the learned Counsel for the parties and has given anxious consideration to the case record. One thing, which is apparent from the record is that there is a serious dispute of title in respect of the subject property and regarding which a compromise decree between the petitioner and respondent No.1 was earlier passed as mentioned above. It would be just and proper that the learned Rent Controller should first frame an issue of relationship between landlord and tenant, that is, whether petitioner is a tenant of Respondent No.1 and after deciding this issue should further proceed in the matter. At this juncture, Mr. Aqeel Ahmed Siddiqui, the learned Counsel for petitioner submits that an application under Section 16(1) for depositing of rentals is also pending and respondent No.1 is pursuing that said application should be decided first.

Keeping in view the above discussion and the intricate question of facts and law involved in the matter, the impugned judgment is modified only to the extent that, it is directed that the learned Rent Controller should first decide the issue of relationship between the landlord and tenant, Respondent No.1 and petitioner before proceeding further in the matter and should defer the hearing on application under Section 16(1) of SRPO, 1979. With these observations, the present constitutional petition is disposed of. The parties should appear before the learned Rent Controller on 16.11.2016 and the learned Rent Controller will not grant un-necessary adjournments and will decide the rent case in an expeditious manner.

JUDGE

Shahid