

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P Nos.S-453 and 454 of 2010

Date	Order with signature of Judge
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27.03.2017

Mr. Khaleeq Ahmed, Advocate for the petitioners in all petitions.
Mr. Yawar Farooqi, Advocate for respondents in C.P No.453/2010.
Mr. Arif Khan, Advocate for respondents in C.P No.S-454/2010.

NAZAR AKBAR, J:- By this single order I would dispose of both the above petitions as the common question of law and facts are involved in these petitions. The controversy of rent has started in 1959 through Civil Suit filed by the respondents. Initially the controversy was that the respondents were claiming rent at the rate of Rs.90/- and Rs.180/- per month with effect from the date of Permanent Transfer Orders (PTO) dated 17th December, 1959. This controversy reached to the Hon'ble Supreme Court in 1978 and in CPLA No.K-190/1978 Hon'ble Supreme Court on **13.09.1978** passed the following order:-

After hearing the learned counsel for the petitioners it appears to us that the contention of the appellants' counsel is not without force. **The order directing the appellants to deposit the rent at the latest assessment was to take effect from the date on which the order was passed. It had no retrospective effect.** In these circumstances, the appellants are rightly depositing rent at Rs.90/- and Rs.180/- per month from the date of the order. There is no force in this petition. The petition is dismissed.

2. The assessment order was passed by the then Director and Collector of Excise and Taxation on **27.7.1964** whereby the rent of the premises in question had been determined at the rate of Rs.90/- and 180/- per month respectively. Therefore, Hon'ble Supreme Court in the above order when determined the rent also confirmed that the petitioners were required to deposit the rent at the aforesaid rate from **27.7.1964** and not prior to the said date as the assessment

order had no retrospective effect. The petitioners who were already depositing rent in High Court in the Constitution **Petition No.4 of 1963** inspite of the above orders did not deposit rent at the said rate for the period from **July, 1964** to **September, 1978**. However, from October, 1978 they started deposit rent at the said rate of rent in C.P No.4 of 1963.

3. Therefore, the respondents filed rent cases in 1986 and they relied on the judgment of Hon'ble Supreme Court to claim default in payment of rent at the rate of Rs.90/- and Rs.180/- respectively per month from the date of assessment order. The respondents have also claimed personal bonafide need besides the default.

4. In the first round the parties contested the rent case upto the level of Hon'ble Supreme Court where Civil Appeal Nos.647, 648 and 649 of 1994 were filed by the petitioner against their eviction. However, the rent cases were not finally decided in the said appeals as the Hon'ble Supreme Court by order dated **23.12.1997** remanded rent cases in the following terms:

“The upshot of the above discussion is that we hold that the appellants' application for personal requirement is not competent till the properties are partitioned because of the above peculiar circumstances of the case. **However, their rent cases for ejectment on the ground of default are competent, but the ejectment order, if any, would be for the benefit of all the transferees and not for the exclusive benefit of the appellants.**

We are inclined to **remand the case to the High Court to decide the above appeals afresh only on the ground of default**, and in case the High Court find that the default is committed by the respondents and it passes ejectment order, it may be clarified that same will be for the benefit of all the transferees for the exclusive benefit of the appellants.

The appeals stand disposed of in thee above terms with no order as to costs.”

5. On remand, the First Rent Appeals were to be heard by the High Court, but before its disposal on amendment in Rent Laws, the jurisdiction of High Court as appellate Court was withdrawn and conferred on the District and Sessions Court. Therefore, the First Rent Appeals were assigned to the **IIIrd Additional Sessions Judge**, South, Karachi, who passed order dated **19.11.2005** as the appellate Court. The learned IIIrd Additional Sessions Judge did not follow the spirit of the above remand order passed by the Hon'ble Supreme Court and passed a comprehensive order on all the points except default. The said order was challenged in the Constitution Petitions No.685, 686 and 687 of 2002 before this Court. Again by consent of the parties, this Court by order dated **08.9.2005** remanded the appeals to the First Appellate Court for the determination of ONLY question of default. The remand order is reproduced below:-

“In the circumstances the impugned order is set aside. This case is remanded to the appellate Court to give specific finding on the question of default in payment of rent, as already observed by the Hon'ble Supreme Court of Pakistan. All the three petitions are disposed of in the above terms.”

On second remand the learned First Rent Controller through the impugned order dated **16.3.2010** held that there was default in deposit of rent amount at the rate of Rs.90/- and 180/- per month from **1960 to 1990**. This last order is impugned in the instant constitution petitions.

5. I have heard learned counsel and perused the record. The burden was on the learned counsel for the petitioner to show from the record that finding of default was on account of misreading and non-reading of evidence.

7. He has referred to the Nazir Report dated 22.2.1984 available at pages-167 to 171 which clearly indicates that the petitioners have

deposited rent at the rate of Rs.90/- from October 1978 and not prior to that. The perusal of Nazir report with the help of the petitioner confirms that prior to October 1978 rent was not deposited at the rate of Rs.90/- per month and arrears of difference too have not been deposited. Nor there is any record of deposit of rent at the rate of Rs.180/- per month in respect of the other premises. Learned counsel for the petitioners has made several attempts to persuade me to appreciate that I should accept his interpretation of the order of the Hon'ble Supreme Court dated **13.9.1978** reproduced in para-1 above that according to the said order, the petitioners were required to tender rent at the rate of Rs.90/- and Rs.180/- per month from the date of order of Hon'ble Supreme Court.

8. Learned counsel for the respondents has contended that since the appellate Court has upheld the judgment passed by the Rent Controller on the factual controversy of facts on the question of "default in payment of rent" these petitions are not maintainable. There is cavil to this proposition, but this proposition is subject to the proper appraisal of evidence by the Court below. In case of clear mis-reading and non-reading of documentary evidence when it is so obvious that, if the mis-read or the evidence not read by the Courts below is taken into consideration, the conclusion drawn by the Courts below could be reversed, such finding of facts can be interfered with by this Court in exercise of its constitutional jurisdiction. If any authority is needed on this proposition one may refer to the case of Mohammad Ramzan versus Mian Fazal Elahi & another reported as **1988 SCMR 1312**.

9. The learned counsel for the petitioner is conscious of his limitation. He has, therefore, only referred to the document which relates to tender of rent in Court. Unfortunately, he has not been able to show any misreading of evidence on the question of "default".

Admittedly the petitioners have deposited rent at the rate of Rs.90/- and Rs.180/- per month and it was so determined by the Hon'ble Supreme Court in its order dated 13th September, 1978, relevant portion of which has already been produced above. Learned counsel for the petitioners himself has referred to the Nazir report at page-167. This must be noted that the said Nazir report is from **C.P No.04/1963** meaning thereby that the dispute about the rate of rent payable by the petitioners was already pending between the parties and it goes without saying that the orders for depositing rent in court pending the dispute between the tenant and landlord is always tentative in nature. It may be tentative both in terms of the rate of rent payable by the tenant or the period for which the rent was not paid by the tenant. In either case once the courts find that the tenant has committed default, the consequences are eviction and eviction alone. The perusal of the Nazir report shows that the rent at the rate of Rs.90/- was deposited with effect from **10.10.1978** and prior to October, 1978 lessor amount of rent was deposited in terms of earlier order in the said **C.P No.4 of 1963**. The petitioners had been depositing rent since **18.9.1965** and the rate of rent was judicially decided by Hon'ble Supreme Court in 1978 to be applicable from **27.9.1964**. pending the **C.P No.4/1963** between the parties. The record does not show that the difference of the rent for the period starting from the date of assessment order (**27.7.1964**) to September, 1978 has been offered by the petitioners to the respondents or it was deposited in **C.P No.04/1963** which was already pending. It was clear-cut default in payment of rent for the period from August, 1964 to September, 1978. The First Appellate Court has declared that the petitioners were in default for the period from 1960 to 1990 is incorrect and contrary to the record. However, the impugned judgment showing incorrect period of default is not fatal to the final conclusion drawn by the Courts below that the petitioners were

defaulters in payment of rent. Therefore, mere mis-calculation of period of default in the impugned order is not that grave misreading of evidence which could result in reversing the finding of “default” for some other but certain period of default which is borne from the record. The petitioners have not been able to make out a case of “No default” by showing documentary evidence of payment of rent in terms of the order of the Hon’ble Supreme Court dated 13.9.1978 in CPLA No.K-190 of 1978. Therefore, in my humble view there was no error in the findings of the Courts below that the petitioners were guilty of “default” in payment of rent. In the case in hand the conclusion drawn by the two courts below that the petitioners were defaulters in payment of rent is not erroneous rather it is proved from record.

10. In view of the above facts and discussion, the impugned order dated **16.03.2010** passed by the Appellate Court upholding the judgment of the Rent Controller dated **12.7.1993** are maintained. The petitioners are directed to vacate the premises within 60 days from today and it is clarified that in case of failure in vacating the premises within 60 days, executing Court already seized of the execution proceedings, may issue writ of possession without further notice to the petitioners with police aid.

11. Both the petitions are dismissed and pending applications have become infructuous.

J U D G E