

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1230 of 2017

Present: Mr. Justice Nazar Akbar

Petitioner : Muhammad Amin
Through Mr. Abdul Irfan, Advocate.

Respondent No.1 : M/s Modern Motors (Pvt.) Ltd. (Nemo)

Respondent No.2 : IIIrd Senior Civil Judge West Karachi. (Nemo)

Respondent No.3 : The District & Sessions Judge, West,
Karachi. (Nemo).

Date of hearing : 18.5.2018

Date of decision : 30.5.2018

J U D G M E N T

NAZAR AKBAR, J:- The Petitioner has invoked the constitutional jurisdiction of this Court to challenge the concurrent findings of the Rent Controller as well as Appellate Court striking off defence of the Petitioner in Rent Case No.35/2014 on account of non-compliance of tentative rent order for depositing the arrears of rent in terms of Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (hereinafter SRPO, 1979).

2. To be very precise the Petitioner is tenant of shop bearing No.6, Situated at Plot No.24, Nabi Ahmed Building, West Wharf Road, Karachi on monthly rent at the rate of Rs.6358/-. The Respondent filed rent case No.35/2014 against the Petitioner, amongst others, on the ground of default in payment of rent. The Petitioner contested the matter. The relationship of landlord and tenant was not denied by the Petitioner and as usual the Respondent filed an application under Section 16(1) of the SRPO, 1979 for deposit of rent as well as arrears of rent in the Court of Rent Controller. Such an application after contest from both the sides was allowed by order dated **21.5.2016**. It was followed by application under Section 16(2) of SRPO, 1979 on

account of failure of the Petitioner to comply with the tentative rent order.

3. The Petitioner has not filed any reply or objection in writing to the application under Order 16(2) of the SRPO, 1979 to justify his non-compliance of the tentative rent order, therefore, the learned trial Court after hearing the Petitioner struck off the defence of the Petitioner and directed him to vacate the premises by order dated **8.12.2016**. The Petitioner filed First Rent Appeal No.01/2017 under Section 21 of SRPO, 1979 and since there was no defence, the appellate Court by order dated **8.5.2017** has also dismissed the appeal with directions to handover the premises within 15 days. The Petitioner has filed this Petition on **3.6.2017** and I am surprised that it has never been listed for even formal orders in Court for almost 11 months and it was listed for hearing on **18.5.2018** for the first time.

4. I have heard learned counsel for the Petitioner and he has not been able to advance a single proposition of law to find any legal infirmity in the order passed by two Courts below. The only ground which he has orally advanced before the Courts below was financial crises, which was the basis for the failure to deposit rent in terms of the tentative rent order. It is strange that before the appellate Court he has stated that the appellant has arranged the finance and he may be allowed to deposit the same before the trial Court but in support of his frivolous plea he has not even produced any pay order or bank draft or statement of bank account to justify seeking mercy of the Court for recalling the order of the trial Court. Even in this constitution petition for almost one year he has not even repeated the offer to deposit the rent. Be that as it may, statutory default committed by the tenant, in fact, takes away of the discretion available to judicial officer/Court and the use of the “shall” in Section

16(2) of the SRPO, 1979 makes it mandatory for Court to pass an ejectment order once the Court comes to the conclusion that the tenant has failed to comply with tentative rent order. Even otherwise, constitution petition does not lie against the concurrent findings of the two Courts below in rent cases in particular when order of ejectment is on the ground of statutory default under Section 16(2) SRPO, 1979. The ground of misreading and non-reading of the evidence does not arise in such orders.

5. In view of the above, this Petition is dismissed alongwith pending applications.

JUDGE

Karachi
Dated: 30.5.2018

*Ayaz Gul/P.A**