

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.318 of 2013

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

Before: Mr. Justice Nazar Akbar

Petitioner : Mst. Rehana Bano, through
Mr. Muhammad Farooq Hashim, advocate

Versus

Respondent No.1 : Muhammad Ashfaq. (Nemo).

Respondent No.2 : Mst. Nasim Khatoon. (Nemo).

Respondent No.3 : Senior Civil Judge/Rent Controller No.4,
East Karachi.

Respondent No.4 : 3rd Additional District Judge Karachi East.

Date of hearing : **29.11.2018**

Reasons/Decision: **14.12.2018**

JUDGEMENT

NAZAR AKBAR, J. This constitution petition is directed against the concurrent findings of Rent Controller as well as First appellate Court. The Rent Controller by order dated **14.3.2011** on an application under **Section 16(2)** of the Sindh Rented Premises Ordinance, 1979 (SRPO 1979) in Rent Case No.266/2009 struck off the defence of the Petitioner for not depositing rent in terms of the tentative rent order dated **05.10.2010** and the III-Additional District Judge by judgment dated **18.2.2013** passed in FRA No.84/2011 maintained the said order of striking off defence of the Petitioner by the Rent Controller.

2. Brief facts of the case are that Respondents No.1 had filed rent case No.266/2009 against the Petitioner for his eviction on the ground of default. The relationship of the tenant and landlord was

not disputed and the learned Rent Controller on **15.3.2010** has passed the tentative rent order. The operative part thereof is reproduced below:-

*Under such circumstances, since the opponent has already deposited the rent in MRC discussed above, therefore, I hereby direct the opponent to deposit the **future rent at the rate of Rs.494/- with the increment of 10% with the Nazir of this court in this rent case before 10th of each English Calendar** months. So far as, water charges is concerned, the applicant produced the copy of bill in respect of arrears towards water and conservancy charges, while the opponent denied the same. Therefore, so far as arrears of water and conservancy charges are concerned it may be considered at the time of final order. However, **the opponent is directed to deposit the future water and conservancy charges as per his share with the Nazir of this court in this rent case.***

3. When the Petitioner failed to comply the above order, Respondent No.1 filed an application under **Section 16(2)** of SRPO, 1979. The Petitioner filed objection to the said application and he contended that by that time the tentative rent order was passed on **15.3.2010**, he has already deposited rent in **MRC No.514/2001** under ledger No.136/2001 upto **December, 2010**. Therefore, future rent from **January, 2010** was deposited in the rent case and he filed rent receipts of deposit of rent in Rent Case in respect of future rent. However, the Rent Controller while striking of defense of the Petitioner by order dated **14.3.2011** observed the following violation of the tentative order:-

*In compliance with the court order, the opponent deposited rent Rs.544/- with the Nazir on **08.04.2010** for only one month i.e January, 2011. Even if he had deposited rent of the premises in the MRC in advance, **it was at the previous rate. The difference of rent at the enhanced rate is not shown.** This tantamount to default. The learned counsel for the **opponent failed to comment/argue on the point of deposit of water and conservancy charges. Silence in this regard impliedly means admission of***

***facts.** The opponent is thus defaulter on this account also.*

4. The Petitioner challenged the said order by filing FRA No.84/2011 which was also dismissed by order dated **18.2.2013**. The Petitioner against the concurrent findings filed instant constitution petition and claimed that the evidence in respect of the default in payment of rent has been misread by the two Courts below. He has also attacked tentative rent order by claiming that it was vague order since calculation was left to be done by the Petitioner for compliance. In the tentative rent order, according to the Petitioner, the Rent Controller has directed the Petitioner to deposit future rent at the rate of **Rs.494/-** with 10% increase but the Rent Controller did not specify the month. He claimed that it was ambiguity in the rent order and similarly there was no calculation/exact figure determined by the Rent Controller towards payment of water and conservancy charges. Respondent No.1 in his application under **Section 16(2)** of SRPO, 1979 has not identified any specific default in terms of tentative rent order. Both the courts below have failed to appreciate this legal aspect of the order said to have been violated by the Petitioner. Beside he also relied on a similar case between Respondent No.1 and another tenant in the same building in which identical orders were passed by the Rent Controller under **Section 16(2)** of SRPO, 1979 which was upheld to High Court level, however, it was set aside by the Hon'ble Supreme Court in Civil Appeal No.88/2012 (Mst. Phool Bano vs. Muhammad Ashfaq & others).

5. I have perused the record in the light of the arguments advanced by the learned counsel for the Petitioner and also arguments submitted by him in writing. Anything discussed in detail in the written arguments with reference to the payment made by the Petitioner in MRC was irrelevant since learned Rent Controller has

not passed any order for deposit of arrears of rent or arrears of water and conservancy charges in the tentative rent order. As far as contention of learned counsel that the tentative rent order was ambiguous or vague and, therefore, its non-compliance could not entail penal consequences is concerned, suffice to say that the conduct of the Petitioner shows that there was no ambiguity in the orders since the monthly future rent has been categorically mentioned as **Rs.494/-** plus 10% increase which comes to **Rs.544/-** per month. The record shows that the Petitioner, after tentative rent order dated **15.3.2010** before 10th of next calendar month, himself without any hesitation on **08.4.2010** has deposited one month's rent at the rate of **Rs.544/-** for the month of **January, 2011** and subsequently placed copy of such challan in Court which is available at page 215 annexure J/5. The date mentioned on the challan deposited slip is **08.4.2010** and it is also written on this deposit that it is ***"in compliance order dated 15.3.2010"***. Admittedly the Petitioner has already deposited rent upto **December, 2010** in the previous MRC and the Rent Controller has **not** declared him defaulter for depositing rent for the months from April, 2010 to December, 2010 in the previous MRC **nor** the Rent Controller has observed that rent for the month of January, 2011 was short payment or it was not compliance of tentative rent order for the month of **January, 2011**. The tentative rent order was that the future monthly rent is payable at the rate of **Rs.494/-** with 10% increase and the order was passed in **March**, 2010 and, therefore, monthly rent from **April** was **Rs.544/-** per month whereas the rent already deposited was at the rate of only **Rs.494/-** per month. The Rent Controller, therefore, rightly observed that ***"the difference of rent at the enhanced rate is not shown. This tantamount to default"***. It means the Court did not refuse to consider or take into

account deposit of rent in the previous MRC until **December, 2010**. The Petitioner was fully aware that the Court in **March, 2010** has determined rent at the rate of **Rs.544/-** payable before the 10th of next month of order and the next month was April, therefore, the Petitioner on **08.4.2010** himself deposited rent at the rate of **Rs.544/=** for one month. In fact the Petitioner was also required to deposit the difference of rent already deposited. I have noticed from the receipts filed with the Petition that after the striking off defence by order dated **14.3.2011**, the Petitioner himself on **21.3.2011** has deposited a sum of **Rs.260/-** with the Nazir of Rent Controller in rent case No.266/2009 (page No.213 annexure J/4) and mentioned on the said rent receipt that it is "*difference in compliance of order dated 15.3.2010*". These facts on record confirm that there was no confusion in the order and the Petitioner knew the exact amount of rent determined by Rent Controller in tentative rent order. This was first part of non-compliance of tentative rent order by the Petitioner to the extent of non-payment of monthly rent.

6. The second part of the findings of non-compliance of tentative rent order is regarding payment of water and conservancy charges to the extent of Petitioner's share in the building in which he has one tenement in his possession. The learned counsel for the Petitioner claimed that there was no specific amount mentioned in the tentative rent order for payment towards water and conservancy charges and, therefore, the order was vague and ambiguous order. The Petitioner has not taken this plea before the Rent Controller that he has not complied the order of deposit of his share in the water and conservancy charges on account of being ambiguous. This contention even otherwise is misconceived in the context of payment of utility charges which are also part of rent as defined in **Section 2(i)** of the SRPO, 1979. It is reproduced below:-

“rent” includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid.”

Such rent is neither specified in the tenancy agreement nor it can be fixed in tentative rent order. It is to be paid by the tenant on the basis of consumption and bills coming from the relevant department. The Petitioner himself has filed deposit receipts of payment of his share of water and conservancy charges in the office of Nazir of Rent Controller and I again refer to the annexures of such payments of water and conservancy charges filed by the Petitioner himself. First such receipt showing payment of water and conservancy charges in rent case No.266/2009 is dated **26.3.2011** towards payment of water and conservancy charges from **January, 2010** to **June, 2010**. It is annexure J/2 at page-209 and it is written on it that **“in compliance order dated 15.3.2010 water and conservancy charges”**. There are also other receipts of payments of water and conservancy charges showing date of payment on **21.5.2012** and **21.12.2012** meaning thereby there was no confusion or ambiguity in the mind of the Petitioner that from where to get the amount of water and conservancy charges and what was his own share to be deposited in Court in compliance of tentative rent order. The Petitioner neither in his objection to the application under **Section 16(2)** SRPO, 1979 before Rent Controller has offered any explanation nor his counsel has advanced any argument that why his share of water and conservancy charges was not paid in terms of tentative rent order. The Rent Controller has categorically noticed it in the order when he termed it “silence” of the Petitioner about non-compliance of order of payment of water and conservancy charges. He observed that:-

*The learned counsel for the opponent failed to comment/argue on the point of deposit of water and conservancy charges. **Silence in this regard impliedly means admission of facts. The***

opponent is thus defaulter on this account also.

The payment of water and conservancy charges after the date of striking off the defence confirms that the non-compliance of tentative rent order was willful and deliberate. It also confirms that there was no confusion in the mind of the Petitioner that from where these amounts of rent have to be find out for depositing with the Nazir in terms of the tentative rent order.

7. The contention of the learned counsel for the Petitioner that Hon'ble Supreme Court has set aside a similar order passed by the first appellate court and the High Court is also misconceived. I have gone through the unreported judgment passed in **Civil Appeal No.88/2012** (*Mst. Phool Bano vs. Muhammad Ashfaq & others*) and the facts of the case in hand and the facts of the orders in Civil Appeal No.88/2012 are distinguishable. There is no observation of Hon'ble Supreme Court that the tentative rent order was vague or ambiguous, and, therefore, it was not required to be complied. Every case is to be decided on its own merits on the basis of the pleadings of the parties. I do not find enough facts from the said judgment to appreciate that in the said case the conduct of defaulter was identical to the conduct of the Petitioner herein and, therefore, facts and circumstances of the case in hand are distinguishable. There is no discussion on the conduct of the Petitioner in the said case which I have discussed from the record of the file in the case in hand.

8. In view of the above facts, the findings of two Courts below are not impeachable. There is no misreading and non-reading of the evidence by the two Courts below, therefore, the concurrent findings of the Rent Controller and the Appellate Court do not call for any interference. Consequently, this constitution petition is dismissed

alongwith pending application(s). The Petitioner is directed to vacate the demised premises within **30 days** from the date of this order. In case of his failure to vacate the same, the executing Court should issue writ of possession with police aid and permission to break open the locks without even notice to the Petitioner.

JUDGE

Karachi
Dated:14.12.2018

Ayaz Gul/P.A