

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-1989 of 2016

Date	Order with signature of Judge
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1. For hearing of CMA No.3724/2018 (U/o.1 Rule 10)
2. For hearing of CMA No.9050/2016 (stay)
3. For hearing of main case

23.11.2018

Mr. Muhammad Ramzan Tabassum, advocate for the Petitioner.
Mr. Mumtaz Hussain Bhatti, advocate for Respondent No.1.
Mr. Muhammad Aurangzeb, advocate for Intervener.

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1. Listed application is dismissed in limine as not maintainable. The instant petition is arising out of rent proceeding in which the applicant/intervener was not party. If he has acquired any rights in the tenement, his right will be determined in Civil Court independent to the finding of default committed by the petitioner and fate of the instant petition.

2&3 This constitution petition is directed against the two orders, the first order is an order of Rent Controller dated **09.9.2016** on an application under **Section 16(2)** of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) in Rent Case No.467/2014 whereby petitioners' defense was struck off and his two other applications for review of the order under **Section 16(1)** of SRPO, 1979 were also dismissed. The petitioner was given 30 days' time to vacate the premises in question. However, he did not file an appeal within 30 days and on **9.11.2016** he filed an appeal after delay of two months and ten days. Learned appellate Court in FRA No.Nil/2016 dismissed the application under **Section 5** of the Limitation Act, 1908 and the order of Rent Controller against the appellant was therefore, maintained for vacating the premises in question.

Through this constitution petition he seeks to set aside both the orders.

On the question of limitation learned counsel attempted to rely on the case law dealing with the limitation against void abinitio orders. One such case law he has referred is the case of *Mst. Parveen Begum ..Vs.. Habib Gul and another (1997 MLD 2473)*. Unfortunately this case law is not relevant rather it is against the petitioner whose one grievance is that his two Review applications were also dismissed by common order on the application under **Section 16(2)** of SRPO, 1979. In the reported case the Rent Controller had reviewed its order under **Section 16(1)** of SRPO, 1979 after compliance of his earlier tentative rent order and on the basis of order on review he declared the tenant was defaulter under **Section 16(2)** of SRPO, 1979. While holding that appeal was not time barred, the Court made the following observation:-

Lastly, the learned counsel for the respondent No.2 urged that the appeal is time-barred. Needless to say that **I have already held that the order of review is not available to the Rent Controller as no power of review has been conferred on her.** The orders, therefore, on the face of it are void orders and it is well-settled legal principle that the limitation does not run against the void orders.

In the case in hand instead of comply with the tentative rent order, learned counsel on behalf of petitioner himself has filed two applications for Review of order under **Section 16(1)** without realizing that Rent Controller had no power to review his order under **Section 16(1)** SRPO, 1979. The Rent Controller has rightly passed a judicial order on an application under **Section 16(2)** SRPO, 1979, it cannot be held that said order was without jurisdiction to term it an order void ab-initio since it was within the power conferred on Rent Controller to pass such order. Petitioner before the appellate Court had not taken the plea that limitation

was not applicable as the order was void ab-initio. Only ground raised before appellate Court for condonation of delay in filing appeal was that the petitioner was out of city, that was not sufficient ground. When in his absence the business run by the petitioner can be continued then why rent could not have been deposited or appeal could not have been filed by anyone since he knew that rent case was pending against him.

Be that as it may, once the appellate Court came to the conclusion that appeal was time barred, the appellate Court has in fact lost the jurisdiction to go further. The right accrued to the respondent on passing of an order by the Rent Controller under **Section 16(2)** was a statutory right and **Section 3** of the Limitation Act, 1908 provides another statutory right to the respondent whereby on expiry of time prescribed for appeal, the right acquired by the order of the Rent Controller is protected perpetually. The Courts of law are meant to implement the law and protect the rights of the parties in accordance with law. It goes without saying that “right” of the parties may survive but once the right to sue for enforcement of such right is barred by limitation the aggrieved party cannot knock the door of the Court of law for enforcement of his/her even legitimate right. In this context **section 3** of the Limitation Act, 1908 is very clear.

3. Dismissal of suit, etc. instituted etc. after period of limitation:- subject to the provisions contained in section 4 to 25 (inclusive), **every** suit instituted, **appeal preferred** and application made **after the period of limitation prescribed** therefore by the First Schedule **shall be dismissed**, although **limitation has not been set up as a defence**.

The use of word “shall” in **Section 3** of the limitation act makes it mandatory for the Court to dismiss the appeal which was filed after lapse of two months and 10 days from time prescribed for filing such appeal against the impugned order. How can

constitutional jurisdiction of this Court be exercised to take away two statutory rights of Respondent No.1 which rights he has acquired through the Court of law?

In view of the above, this petition is dismissed. Petitioner is directed to vacate the premises within 30 days from today. If premises is not vacated within 30 days, Executing Court may issue writ of possession with permission to break open the locks and police aid without notice on completion of 30 days from today.

JUDGE

SM