

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-1277 of 2018

Date	Order with signature of Judge
1.	For hearing of CMA No.7450/2018
2.	For hearing of CMA No.5262/2018
3.	For hearing of Main case

21.12.2018

Mr. Abdul Hamid Yousufi, advocate for petitioners.
Mr. Fasih-uz-Zaman Abbasi, advocate for Respondents.

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NAZAR AKBAR, J. The petitioner through this constitutional petition has challenged the order dated **30.04.2018** passed by XIIth Additional District Judge, South Karachi in FRA No.60/2018, whereby appeal filed by petitioner against the order dated **07.12.2017** passed by 1st Sr. Civil Judge & Rent Controller, South Karachi in Rent Case No.1122/2013 was dismissed and the Petitioner was directed to hand over the vacant and peaceful possession of the demised premises to Respondent No.3 within 60 days.

2. Briefly stated the facts of the case are that Respondent No.3 is owner / landlord and petitioner is his tenant in respect of shop Nos.15, 23 & 24 at Reizk Afza Manzil constructed on Plot No.345, A.M. Abu Bakar Road, Saddar, Karachi (hereinafter referred the demised shops) at the monthly rate of **Rs.1500/-**. The Respondent came to know that petitioner has sub-let the shops to one Akhter Ali and respondent sent letter to the petitioner dated 02.11.2013 to bring on record for short payment of rent through money order, none payment of KW&SB. The petitioner is in arrears of rent as well as KW&SB charges and has committed willful and deliberate default in payment of rent. Legal notice dated **01.12.2013** was sent to the petitioner through lawyer demanding that to clarify the

position of sub-letting of the rented premises which was served but he neither paid arrears of rent nor deliver vacant possession of the demised shops. Ultimately Respondent No.3 filed the rent case.

3. The Petitioner/opponent filed written statement and denied relationship of landlord and tenant between the parties. It was averred that Respondent No.3 is not owner of the demised shops and notice under **Section 18** of the SRPO, 1979 was not served upon him. It is further averred by the petitioner that Respondent No.3 has received rent from him and so also from other tenants by practicing fraud. The petitioner averred that all the tenants of building including the petitioner on mis-representation and fraud of Respondent No.3 had started paying rent to him form January, 2010 and thereafter the petitioner and other tenant started depositing rent in Court in the name of Respondent No.3 in MRC. The petitioner averred that since Respondent No.3 failed to prove his ownership as such no default is committed by the petitioner.

4. The trial Court after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by Respondent No.3. The Petitioner filed **FRA No.60/2018** before the appellate Court which was dismissed by order dated **30.04.2018**. Both the orders are impugned herein this constitution petition.

5. I have heard learned counsel for the parties and gone through the record.

6. Learned counsel for the petitioner was directed to read the impugned order on the point of default. Learned Courts below have found him guilty of default in payment of rent both on facts and law. The appellate Court affirmed the findings of default of the Rent Controller in the following terms:-

The respondent being landlord filed his affidavit-in-evidence and on oath claimed that the appellant has failed to pay rent since January, 2014 and so also water and sewerage charges.

*On the other hand the appellant filed his affidavit-in-evidence was cross examined and during cross examination he admitted he did not deposit rent in MRC after **January 2016**. Vol. says at present the respondent is not owner of the premises in question. He admitted that he started to render the rent to respondent @ Rs.250/- per month further admitted later on monthly rent was enhanced @ Rs.1000/- each. He denied that from the month of September, 2013 the respondent enhanced the rent from 1000 to Rs.1500/- each. He admitted that he personally offered the monthly rent @ Rs.1000/- each per month which was refused by the respondent. He denied that he did not sent money order. He deposed that he does not know if they are paying the charges to the respondent in respect of water and service facility. He admitted that he has not produced any receipt in respect of water and service charges.*

*Scrutiny of above aspects and admission on the part of the appellant filed MRCs upto January 2016 and thereafter failed to deposit rent in favour of respondent No.1 as such the appellant has committed default in payment of rent. Record speaks nothing is available to show that the appellant has deposited rent for the month of January 2014 as alleged by the respondent in MRCs. Moreover, no money order coupon has been filed and produced for the month from January 2014 in court to show the money order was sent and same was refused by the respondent No.1. such deposit of rent in MRCs without sending money order itself is not valid deposit of rent as held by the Hon'ble Supreme Court in a case reported in **2001 SCMR 1140 which is as under:-***

---S.15.—Default in payment of rent---where Landlord refused to accept rent it was mandatory for the tenant first to remit the rent through postal money order and if that was done, deposit of rent in Court would not absolve the tenant for being default for the relevant period.

7. Learned counsel for the petitioner was unable to dispute the above factual position. Once the Petitioner has started depositing rent in the name of Respondent No.3 in MRC, though without refusal from landlord to accept rent and without sending money

order, the Petitioner was estopped from alleging that Respondent was not owner.

8. In view of the above facts and circumstances no case is made out to interfere with the concurrent findings of facts by the Courts below in exercise of constitutional jurisdiction, therefore, petition is dismissed alongwith pending applications. The Petitioner is directed to vacate the premises within **30 days** from today. In case he failed to do so, the Executing Court will issue writ of possession without notice to the petitioner through police aid and permission to break open the locks. Copy of this order be sent to the learned Rent Controller forthwith.

JUDGE

SM