ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-1279 of 2018

Date	Order with signature of Judge
	1. For hearing of CMA No.751/2018 2. For hearing of CMA No.7555/2018 3. For hearing of CMA No.5291/2018 4. 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.58/2018, whereby appeal filed by petitioner against the order dated **06.12.2017** passed by 1st Sr. Civil Judge & Rent Controller, South Karachi in Rent Case No.676/2013 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 Flat No.14, 3rd Floor, situated in Reizk Afza Manzil constructed on Plot No.345, A.M. Abu Bakar Road, Saddar, Karachi (hereinafter referred the demised flat) at the monthly rate of Rs.1000/-. Respondent No.3 in the rent application averred that the petitioner paid rent upto **November, 2012** and such rent receipt was issued to the petitioner and since **December, 2012** 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 **07.3.2013** was sent to the petitioner through lawyer demanding arrears of rent from **December, 2013** which was served but he

neither paid arrears of rent nor deliver vacant possession of the demised flat. 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 flat 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 from 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.58/2018** 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, 2013 and so also water and sewerage charges.*

> *On the other hand the attorney of appellant filed his affidavit-in-evidence was cross examined and during cross examination he admitted that the appellant has deposited rent in favor of applicant for the period of January 2010 to November 2012.* ***He admitted that he deposited rent in MRC No.803/2013 w.e.f September, 2013 till June 2014****. He admitted that he has not produced any documentary proof with regard of payment with effect from July 2014 to 31st May, 2016.*
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> *Scrutiny of above aspects and admission on the part of the appellant that the appellant filed MRC w.e.f September 2013. He has also failed to produce any document that he has paid rent from July 2014 to 31.05.2016 meaning thereby the appellant has committed default.* ***Further record speaks nothing that the appellant offered rent personally to the respondent or any money order was sent to him.*** *Such deposit of rent in MRC without first offering personally and then through money order itself is not valid deposit of rent, moreover depositing rent by the appellant after nine months in MRC constitute default.*

7. Learned counsel for the petitioner was unable to dispute the 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