

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.1590 of 2018

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

Before: Mr. Justice Nazar Akbar

Petitioner : Sherdad Khan, through
Mr. Javed Ahmed Rajput, advocate

Versus

Respondent No.1 : Ikram Elahi through
Mr. Muhammad Hanif, advocate.

Respondent No.2 : XII Rent Controller, Karachi South.

Respondent No.3 : VIII Rent Controller, Karachi South.

Date of hearing : **13.12.2018**

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 **11.9.2017** on an application under **Section 16(2)** of the Sindh Rented Premises Ordinance, 1979 (SRPO 1979) in Rent Case No.163/2017 struck off the defence of the Petitioner for not depositing rent in terms of the tentative rent order dated **30.05.2017** and the VIII-Addl: District and Sessions Judge, South Karachi by judgment dated **31.5.2018** passed in FRA No.553/2017 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.163/2017 against the Petitioner for his eviction on the ground of default in payment of rent from the demised premises i.e offices No.1, 2 at 4th Floor and top room/cabin on plot No.MR-435

Zakaria Street, Moosa Lane, Adamjee Dawood Road, Jodia Bazaar, Karachi. The relationship of the tenant and landlord was not disputed and the learned Rent Controller on **30.5.2017** has passed the tentative rent order. The operative part thereof is reproduced below:-

*Admittedly, Opponents were depositing rent in the MRC, therefore, Opponents cannot be overburdened for the same payment. The perusal of the record/documents produced by the Opponents reveals that Opponents have been depositing the rent in MRCs No.615/2015 and 616/2015 in the name of the applicant, so the circumstances discussed above do not warrant that Opponents be again overburdened to deposit the rent of the previous months. **However, it will be in the interest of justice that only future rent to be deposited by the opponents before the Rent Controller from the date of this order at the rate of Rs.1359/- on or before 10 of each calendar month. The application is allowed accordingly.***

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 did not contest the said application and, therefore, subsequently he was debarred from filing counter affidavit. At the arguments on the said application it was contended by the counsel for the Petitioner that owing to bonafide mistake and lack of communication of the tentative rent order dated **30.5.2017** the Petitioner continued depositing rent in MRCs. However, the Rent Controller while striking of defense of the Petitioner by order dated **11.9.2017** observed the following violation of the tentative order:-

*Perusal of record shows that order on application under section 16(1) SRPO, 1979 was passed on 30.05.2017 however subsequent to it that matter was repeatedly fixed for as many as five dates of hearing with reasonable time gap despite of such ample opportunities the compliance of the order was not made. **The justification advanced by the learned advocate for opponents regarding non-compliance of Court order does not attract to a prudent mind because opponents cannot disown their responsibility to keep themselves abreast with the progress made in the proceedings.***

*In the light of available material on record, the dictum laid down by Hon'ble Supreme Court of Pakistan and Hon'ble High Court of Sindh I am of the considered opinion that **opponents have failed to comply with the direction contained in order passed by the rent controller on 30.05.2017 thus their defence is liable to be struck off and opponents are directed to hand over the vacant and peaceful possession of the demised premises to the applicant within 60 (sixty) days from the date of this order.***

4. The Petitioner challenged the said order by filing FRA No.553/2017 which was also dismissed by order dated **31.5.2018**. 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.

5. I have perused the record in the light of the arguments advanced by the learned counsel for both the parties.

6. Learned counsel for the Petitioner has not been able to advance a single proposition of law to point out any legal infirmity in the order passed by two Courts below. The only ground which he has advanced before the Courts below was that due to bonafide mistake, the order dated 30.5.2017 was not communicated to the Petitioner, therefore, the Petitioner deposited the rent as per routine in the same MRC. As per tentative rent order, the Petitioner was required to deposit only future rent before the Rent Controller from the date of tentative rent order at the rate of **Rs.1359/-** on or before 10th of each calendar month but the Petitioner failed to comply the tentative rent order and continued deposit rent in MRCs. In view of that clear default, the learned Rent Controller had no option except to strike off defence of the Petitioner. The appellate Court also had to affirm the order, since the compliance of tentative rent order was the statutory obligation on the Petitioner. The statutory default committed by the tenant, in fact,

takes away of the discretion available to judicial officer/Court and the use of the word “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 facts by 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 by the Courts below to maintain a case under constitutional jurisdiction of this Court does not arise against orders of eviction under Section 16(2) SRPO, 1979.

7. 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 was dismissed alongwith pending application(s) by short order dated **13.12.2018** whereby the Petitioner was 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. These are the reasons for the said short order.

JUDGE

Karachi
Dated:14.12.2018

Ayaz Gul/P.A