

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No.S-716 of 2016**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Mst. Surayya Sultana, through  
Mr. Muhammad Nazir Tanoli, Advocate.

**Versus**

Respondent No.1 : Mst. Khairunnisa. (Nemo).

Respondent No.2 : IIIrd Additional District Judge, (Central)  
Karachi.

Respondent No.3 : VIth Rent Controller Karachi Central Karachi

Date of hearing : **29.01.2019**

Date of Decision : **14.02.2019**

**JUDGMENT**

**NAZAR AKBAR, J.** The petitioner through this constitution petition has challenged the Order dated **26.03.2016** passed by the III-Additional District Judge, Central Karachi in FRA No.204/2012, whereby the appeal filed by the Petitioner against the order dated **28.08.2012** passed by the VI-Rent Controller, Central Karachi dismissing the application for setting aside exparte judgment dated **26.05.2011** was dismissed.

2. Briefly stated the facts of the case are that Respondent No.1 filed ejectment application under **Section 15** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) against the Petitioner/ Opponent on the ground of default in payment of monthly rent as well as personal bonafide need. The learned trial Court by judgment

dated **26.05.2011** exparte allowed ejectment application filed by Respondent No.1. On **25.10.2011** the Petitioner/opponent appeared before the trial Court and filed an application for setting aside the exparte judgment dated **26.05.2011**. The learned trial Court after hearing the learned counsel for the parties, dismissed the said application being meritless. The Petitioner filed **FRA No.204/2012** against said order before the appellate Court which was also dismissed by order dated **26.03.2016**. The Petitioner has preferred instant constitution petition against the said Judgments/Orders.

5. I have heard learned counsel for the Petitioner and perused the record.

6. Learned counsel for the Petitioner has mainly contended that no notice of rent case was sent to the Petitioner by the Rent Controller through courier service and the bailiff report available on record is managed/ fabricated. He further contended that the Petitioner first time came to know about the institution of rent case and exparte order when bailiff of trial Court pasted notice of execution application on the outer door of the Petitioner on **10.10.2011**, then the Petitioner immediately approached the trial Court and filed application for setting aside the exparte judgment. In support of his contentions, he relied upon the following case-laws:-

- i. *Ismail vs. Subedar Gul Inayat Shah (PLD 1991 Supreme Court 997);*
- ii. *Mst. Fehmida Begum vs. Muhammad Khalid and another (1992 SCMR 1908);*
- iii. *Shajar Islam vs. Muhammad Siddique and 2 others (PLD 2007 Supreme Court 45);*
- iv. *Muhammad Nawaz alias Nawaza and others vs. Member Judicial Board of Revenue and others (2014 SCMR 914);*

- v. *Ghulam Nabi through Attorney vs. Noushad Ali and 2 others (2010 MLD 1543);*
- vi. *Messrs Ford Rhods Sidat Hyder and Company through Chairman vs. James Finlay Ltd and another (2013 YLR 2541).*

7. I have perused the orders of the trial Court as well as the appellate Court. The record shows that the exparte order was passed by the Learned Rent Controller on **26.05.2011** whereas the application for setting aside the exparte order was moved by the appellant before the Rent Controller on **25.10.2011** after about **five months** of passing the exparte order without any application for condonation of delay in filing the said application. The order dated **28.08.2012** passed by the VI-Rent Controller, Central Karachi on application for setting aside the judgment dated **26.5.2011** is worth reproduction which is reproduced below:-

*Record shows that the notices were served through bailiff and the same were served upon the opponent but the despite service the opponent failed to appear and filed objection. It further appears that the court in order to make service were more effective ordered for publication of notice in daily newspaper as such the notices were published in daily Pakistan Dt: 25.11.2010, but the opponent again failed to proceed exparte against the opponent. Thus it appears that there appears no any fraud having been committed by the applicant upon the court while seeking ejectment order. The application is therefore dismissed being meritless with no order as to costs.*

From perusal of the above order it is clear that the learned trial Court despite the fact that the Petitioner/opponent has been duly served by the bailiff has ordered the notice for publication in daily newspaper and, therefore, service upon the Petitioner/opponent was held good. The learned appellate Court has also very elaborately discussed the issue of service upon the Petitioner/opponent by relying various case-laws of superior Courts and observed that:-

*Perusal of record further shows that in the present case, the appellant was served personally and the statement of bailiff was recorded on oath before the learned trial court, and the learned trial court after recording the statement of bailiff passed order for substitute service. **It is matter of record that the address of opponent/appellant given in the title of rent application as well as in the execution application are same and the signatures of appellant available on the bailiff report dated 09.10.2010 & application filed by her before the learned trial court for setting aside the exparte order are similar,** therefore the contention of learned counsel for the appellant is without force that no any notice of the rent case has ever been served upon the opponent nor the institution and pendency of present ejectment application came in her knowledge by any other source at any time, for the reason that the notice of execution application was served and she appeared before learned trial Court and filed application for setting aside but notice of rent application on the same address was not served upon her, which does not attract in common mind. Further more, **the exparte order was passed by the learned rent controller on 26.05.2011 whereas the application for setting aside the exparte order was moved by the appellant before the learned rent controller on 25.10.2011 after about five months of passing the exparte order, without any condonation application,** instead of filing rent appeal before any appellate forum, hence the application moved by the appellant before the learned trial Court was also time barred.*

8. It is pertinent to mention here that the case-law relied upon the learned counsel for the Petitioner are distinguishable from the facts and circumstances of the present case. The case-law at serial No.(i) and (ii) are on the application under **Section 12(2) CPC** while the other case-laws are on the point of constitutional jurisdiction in the cases where the lower forums have misread the evidence but the facts and circumstances of the present case are totally different from the case-laws relied upon by the learned counsel for the Petitioner.

9. In view of the above, since the application for setting aside the exparte judgment was time barred, therefore, the trial court as well

as appellate court have rightly passed the impugned judgments/orders. Even on facts when the two courts below did not find the excuse advanced by the Petitioner as a sufficient cause or plausible explanation, this Court in exercise of constitutional jurisdiction cannot come to a different conclusion on the same facts.

10. In view of the above facts and discussion the findings of the two Courts below do not call for any interference by this Court in constitutional jurisdiction, therefore, instant constitution petition is dismissed with no order as to costs. However, the concurrent findings of the two Courts below have been suspended by this Court by order dated **03.5.2016** and, therefore, the Petitioner is directed to vacate the demised premises within **30 days** from today and in case the Petitioner fails to vacate the demised premises within **30 days**, the executing Court seized of execution application No.18/2011 shall issue writ of possession with police aid and permission to break open the locks without further notice to the Petitioner.

JUDGE

Karachi  
Dated:14.02.2019

Ayaz Gul/P.A