

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No.1916/2017**

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

Petitioner : Muhammad Shahid Rizwan, through  
Mr. Muhammad Nazir Tanoli, advocate

Respondent No.1 : Jamia Binoria SITE  
Through Mr. Muhammad Akram, advocate.

Respondent No.2 : IIIrd Addl. District Judge, Central, Karachi.

Respondent No.3 : IInd Rent Controller, Central, Karachi.

Date of hearing : **19.11.2018**

Reasons/Decision: **19.11.2018**

**JUDGEMENT**

**NAZAR AKBAR, J.** This constitution petition is directed against the concurrent findings of Rent Controller as well as First appellate Court defence of the Petitioner under Section 16(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) was struck off for not depositing rent in terms of the tentative rent order of the trial Court.

2. Learned counsel for the Petitioner has claimed that there has been no default in payment of rent since rent has been deposited by the Petitioner in MRC. Learned counsel for Respondent No.1 claimed that after the order under Section 16(1), SRPO, 1979 the rent in MRC was not in accordance with the order and, therefore, cannot be treated as compliance of tentative rent order.

3. I have gone through the impugned orders, there is hardly any illegality or infirmity which can be entertained by this Court in the

constitutional jurisdiction against the factual controversy settled by the two Courts below. The record shows that the tentative rent order was passed on **18.01.2016** and the following was the operative of said order:-

*I have heard the both advocates for the parties and perused the records and called report from the concern COC in which COC submitted the rent amount @ Rs.3000/- per month deposited by the opponent up to 09.11.2015 in MRC 565/2010 vide Ledger No.62/2010 in this court. Since the opponent already deposit the rent in MRC No.565/2010 vided Ledger No.65/2010 before IV Rent Controller per month Rs.3000/- therefore the opponent directed to deposit the arrears of December 2015 with the same rate @ Rs.3000/- in this case and future rent from this month i.e January 2016 be deposited in this case with same rate @ Rs.3000/- per month. The rent amount deposited by opponent in this case will remain with held till the dispose of this case.*

4. Respondent No.1 filed application under Section 16(2), SRPO, 1979 to which objections have also been raised by the learned counsel for the Petitioner. The Rent Controller, after hearing learned counsel for both the sides, allowed the application for striking off the defence of the Petitioner on the basis of report of concerned COC which revealed that the opponent/Petitioner has deposited monthly rent in the rent case on **14.3.2016** whereas the tentative rent order was passed on **18.01.2016**. The appellate Court agreed with the findings of the Rent Controller in the First Rent Appeal No.48/2017 again by referring to the report of the Nazir in the following terms:-

The appellant/tenant was directed to deposit monthly rent w.e.f. December 2015 and future rent amount in rent application, vide tentative rent order dated 18.01.2016, but perusal of Nazir report reveals that appellant/tenant started depositing rent in rent case from 14.03.2016 for which he has not given any plausible reason that why he did not deposit rent amount in rent case in compliance of tentative rent order, which amounts violation of tentative rent order passed by the learned Rent Controller in rent case.

5. Learned counsel for the Petitioner after concluding his arguments attempted to rely on the case of Babar Parvez vs. Muhammad Saad reported in **2000 CLC 1134**. The citation is judgment of this Court in First Appeal No.529/1998 in which striking off the defence was considered as technical default. This citation does not help learned counsel for the Petitioner, since I am not the appellate Court and the constitutional jurisdiction cannot be exercised like an appellate Court to re-examine the evidence or record to come to a different conclusion on the basis of same facts on which the two Courts below have given their findings. The findings of the two Courts below, purely on the factual controversy in which the discretion has been exercised by the Courts in favour of Respondent No.1, cannot be interfered with by this Court in a constitutional jurisdiction.

6. In view of the above legal as well as factual position, instant constitution petition was dismissed alongwith pending applications by short order dated **19.11.2018** and above are the reasons for the same.

JUDGE

Karachi  
Dated:19.11.2018

Ayaz Gul/P.A