

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No. S-109 of 2020

Date	Order with signature of Judge
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1. For orders on CMA No. 533 of 2020 (U/A).
2. For order on office objection No. 18 as at "A".
3. For orders on CMA No. 414 of 2020 (Ex/A).
4. For hearing of main case.
5. For orders on CMA No. 415 of 2020 (Stay U/s 151 CPC)

24th January 2020

Mr. Zakir Hussain Bughio, advocate for petitioner.

Ms. Almas Zuhra, respondent No.1 present waives notice.

The instant petition has been filed impugning the judgment dated 20.11.2019 passed by the learned appellate Court (IX-Additional District Judge/MCAC- Karachi East) in FRA No. 66 of 2019 whereby, while upholding the order dated 22.03.2019 passed by the learned trial Court (Vth Rent Controller, Karachi East) on application under Section 16(2) of Sindh Rented Premises Ordinance, 1979 (SRPO) in Rent Case No.244 of 2018, the said FRA was dismissed and the appellant/petitioner (tenant) was directed to vacate the subject premises and hand over its possession to the respondent (landlord) within 60 days from the date of the above judgment. Hence this petition.

2. At the outset, learned counsel for the petitioner, *inter alia*, contends that petitioner is in occupation of the demised premises by virtue of sale agreement between the petitioner and husband of respondent No.1. Per counsel total sale consideration of the premises was Rs.4,50,00000/- (Rupees Four Crore Fifty Lac only); he paid Rs.50 Lac in cash, however, he is unable to submit any receipt thereof. Further, he also admits that husband of respondent No.1 is not owner of the subject matter property. It is also contended by the learned counsel for the petitioner that the order under Section 16(1) SRPO, 1979 was complied with but there was delay of only two days.

3. In contra, respondent No.1 contends that subject matter property is owned by Anusha Naseem and Simbal Naseem.

4. Heard learned counsel for the petitioner and respondent No.1 present in person.

5. It needs not be reiterated that in rent matter (s), the plea of *purchasing* the premises, is not of any help for a *tenant* to avoid legal consequences of the rent law. A tenant, if subsequently, takes a plea of *purchaser* etc. would always be required to put the landlord into possession and then to *proceed* for enforcement of his rights which he claims to have arisen from subsequent document of sell etc. Reference may be made to *Abdul Rasheed v. Maqbool Ahmed & others* 2011 SCMR 320 wherein it is held as:-

5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.

3. To give a referral to facts as well challenged findings, it would be conducive to refer relevant portion of order passed by the trial Court/Rent Controller, in Rent Case No. 244 of 2018, which is that:-

“As per order dated 24.01.2019, the opponent has to deposit the arrears of rent from September 2017 till January 2018 at the rate of Rs.100,000/- per month total amount Rs. 500,000/- and further arrears of rent at the rate of Rs.110,000/- from February 2018 till January 2019 total amount is Rs.13,20,000/- and future monthly rent at the rate of Rs.110,000/- for the month of February 2019 and onwards and the total amount from September 2017 till January 2019 is Rs.18,20,000/- and future monthly rent of February 2019 is Rs.110,000/- and same has to be paid on or before 5th English Calendar month total amount till 05.02.2019 is Rs.19,30,000/- but the opponent has deposited the less amount only Rs. 17,000,00/- through two pay orders dated 08.02.2019 out of which one pay order was deposited on 08.02.2019 and another was deposited on 09.02.2019 in Court and deposited less amount Rs.230,000/- and after the expiry of 15 days, as per order dated 24.01.2019, the opponent has again deposited less amount Rs.15,000/- on 09.02.2019 instead of depositing the amount Rs.230,000/- on 09.02.2019 and again deposited less amount Rs.80,000/- on 09.02.2019 and again same was deposited on 14.02.2019 vide bank voucher of Rs.100,000/- and total amount deposited Rs.19,50,000/- on 14.02.2019 and no explanation has been given in the counter affidavit of such delay of depositing less amount Rs.230,000/- within time nor moved any application for condone the delay of depositing less amount. The opponent has not deposited the monthly rent of February 2019 within time with arrears. This court prior to passing the order dated 24.01.2019 on application under Section 16(1) SRPO in presence of counsel of applicant

and previous counsel of opponent namely W.R Sheikh has obtained the signatures of the husband of applicant and opponent and sent the original tenancy agreement dated 01.03.2017 of applicant and sale agreement dated 22.11.2016 of opponent to the Handwriting Expert and at that time the previous counsel of opponent has not raised any objection for sending the sale agreement of opponent to the Handwriting Expert for his opinion and report nor till hearing the application under Section 16(2) SRPO, 1979 any counsel of both side have filed objections instead of the report of expert was delivered to the counsel of applicant and previous counsel of opponent on 24.01.2019. The opponent is claiming the demised property being purchaser and such facts has been denied by the applicant and her husband vide statement 10.01.2019 and there is settled law that the agreement of sale did not create any title, therefore, without determination of such title by Civil court and the Rent Controller on the basis of mere agreement of sale could not hold that there existed no relationship of landlord and tenant unless a suit for Specific Performance was decreed by civil court in favor of opponent/tenant. As per record of this case, the opponent has still not filed suit for specific performance of such agreement since 2016/2017 in the competent civil court to prove his sale agreement dated 22.11.2016. As per the decisions of the Superior Courts, the opponent denying such relationship on the basis of such sale agreement would be bound first of all to deliver the possession of demised premises to landlord and then contest his proprietary, rights therein and after getting decree from the Court could enforce same against landlord. The opponent has not complied the order dated 24.01.2019 in letter and spirit and he has deposited, the less amount Rs.230,000/- till 08.02.2019 and deposited less amount Rs.150,000/- on 09.02.2019 and also deposited the remaining less amount Rs.80,000/- on 14.02.2019 and no plausible explanation has been given in the counter (counter) affidavit nor during arguments of counsel of opponent has satisfied nor moved any application for condonation of delay."

4. *Prima facie*, the plea of purchase has rightly been appreciated, hence in such an eventuality it was obligatory upon the tenant to make compliance of order of the Rent Controller else to be ready to own the consequences thereof. It is held in the case of Syed Asghar Hussain v. Muhammad Owais & others 2018 SCMR 1720 as:-

"2..... Best course for the petitioner could have been to comply with tentative rent order under section 16(i) of SRPO, 1979 and to have contested the matter to his logical conclusion, but he chose not to comply with a tentative rent order losing his right of defence. "

5. It is also matter of record that the petitioner (tenant) does not deny paying / depositing rent but seeks an exception to legal consequences of *delay* in making compliance of the order. This plea shall stand satisfied with referral to case of M.H. Mussadaq v. Muhammad Zafar Iqbal & another 2004 SCMR 1453 as:-

“10. On this aspect of the matter, the legal position is very clear. According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or , as the case may be, before 5th of the month, his defence shall be struck off. **On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day’s delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same.** It is also observed that non-compliance with the tentative rent order is directly punishable and in consequence the defence of tenant can be struck off and eviction can be granted. In the case of province of Punjab and others v. Muhammad Jalil-ur-Rehman (1986 SCMR 1705) , **it has been held by this Court that the Rent Controller had no power to ignore the delay in making deposit of rent under section 13(6) of West Pakistan Urban rent restriction ordinance (VI of 1959).**

In view of above, no illegality is found to have been committed by both courts below. *Writ of certiorari* against the order passed in rent jurisdiction can be exercised only if order is beyond jurisdiction or patently illegal, which is not the present case. Accordingly, petition is dismissed alongwith listed applications.

JUDGE

SAJID