

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-1228 of 2018

Date	Order with signature of Judge
------	-------------------------------

Present: **Salahuddin Panhwar,J:-**

1. For hearing of main case.
2. For hearing of CMA No. 5096 of 2018 (Stay).

25th February 2020.

Mr. Mehboob Aftab Khan, advocate for petitioner.
Mr. Muhammad Arif Khan, advocate for respondent No.1.

Heard learned counsel for the respective parties.

2. The counsel for petitioner has challenged the order, *inter alia*, on grounds that findings with regard to default is not proper as well that ejectment petition was incompetent because of non-compliance of section 92 of the CPC.

3. On the other hand, the counsel for respondent no.1 has opposed the petition; argued that question of default has properly been attended and that ejectment petition does not fall within relief (s), provided by section 92 CPC, hence no permission was required.

4. As regard the first plea of counsel for petition, it is relevant to say that it is the duty of the tenant to pay or at least tender the rent to the landlord, as dictated by relevant provision, and can't avoid his liability by taking any plea including that the landlord did not make any effort to collect the rent because in such like situation the tenant is left with no option but to tender the rent through money order and in case of refusal to resort to last *legal* course i.e to deposit rent in Court. Reference is made to case of M/s Tar Muhammad Jnoo & Co. v. Taherali & others 1981 SCMR 93 wherein it is observed as:-

7. In cases where there is no rent deed or written agreement, a tenant would be a defaulter if he failed to pay the rent within two months of the date when the rent became due. It is the duty of the tenant to pay or at least tender the rent to the landlord and he cannot be allowed to plead that the landlord did not make any effort to collect the rent. The mere fact that a tenant has made it a habit not to pay the rent

unless the landlord comes and collects it. Nor does it absolve the tenant from paying the rent every month.

5. Failure to follow the commandment of law as well his *mandatory* obligation regarding payment of rent shall result into nothing but making the tenant a *defaulter*. Further, since it is also well settled that appellate authority in revenue hierarchy carries status of *final authority* therefore, unless it is shown that conclusion is entirely erroneous and against available material, the decision of appellate authority would not be interfered with. Reliance is placed on case of Shakeel Ahmed & another v. Muhammad Tariq Farogh & others 2010 SCMR 1925 wherein such legal position has been stamped as:-

8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

6. Now, it would be conducive to refer adjudication made by the appellate court in point No.2 so as to see if there has been any *glaring* illegality in conclusion. The same reads as:

“ 17. On the point No.2, the claim of the respondent is that the appellant has lastly paid the rent on 17.9.2013, thereafter since July, 2014 no monthly rent was paid and the later had committed willful default. On the other hand, the appellant has denied to commit alleged default. According to the appellant he repeatedly requested to respondent to receive the rent, thereafter, he sent money order, which was refused by the respondent, as such he started depositing the monthly rent in the court in MRC and committed no willful default.

18. I have considered the submissions of learned counsel for the parties on this point, urged before this court so also perused the entire record in perspective of relevant provision of law. Admittedly, there is no written tenancy agreement between the parties in respect of demised premises, therefore, the payment of rent must be followed as provided under statute viz: section 10 of Sindh Rented Premises Ordinance, 1979 which reads as under:-

Section 10 Payment of rent.... (1) The rent shall, in the absence of any date, fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than

the 10th of the month, next following the month for which it is due.

(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.

(3) Where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or be deposited with the Controller, within whose jurisdiction the premises is situate.

(4) The written acknowledgement, postal receipt, or receipt of the controller, as the case may be, shall be produced and accepted in proof of the payment of the rent:"

19. From the reading of above provision of law, it transpired that only 03 modes of payments of rent have been provided. Firstly the rent should be paid directly to the landlord, secondly, in case of refusal or avoidance on the part of the landlord, rent could be sent through postal money order, and thirdly the rent could be deposited with rent controller within whose jurisdiction the premises is situated. It is settled principle of law that tenant entitles to avail grace period of 60 days under section 15(ii) of the Ordinance, and in absence of mutual agreement between the parties, tenant could pay rent for a month by 10th of the month following the month for which the same was due; tenant would, thus, commit no default if he pays the rent for the month of within 70 days first day of the following month, for which rent is due. Reliance is placed on 1995 SCMR 330, 1992 SCMR 2400 and 1993 CLC 290.

20. I have anxiously gone through the entire available record, and evidence led by the parties. The record reflects that the payment of rent up the month of June, 2014 is not disputed. However, the default in payment of rent has been pleaded with effect from July 2014. The appellant during his cross examination categorically admitted that on 26.01.2015 he for the first time deposited the monthly rent of demised premises in MRC after 06 months and 25 days. This admission of the appellant clearly depicts that rent for the month of July 2014 was deposited by him on 26.01.2015, which in fact ought to have been paid by 10th of August, 2014, even could be deposited by 10th of October, 2014 by availing grace period of 60 day. In view of above circumstances, it is quite clear on record that the appellant deposited the monthly rent after committing willful default. Even otherwise, it is also a matter of record that the appellant pleaded that he personally offered the rent of the demised premises to the respondent for the month of July, 2014 many times but the later did not receive the same, thereafter, he transmitted the same through money order, which was too refused. It may be mentioned here that the appellant neither examined any witness in support of his contention that he offered the rent to the respondent nor produced any money order coupon to establish that he sent the rent to the respondent which was refused by the later. In these circumstances, I feel no hesitation to say that the appellant not only deposited the monthly rent of demised premises in MRC after committing the default, but such deposit is invalid for want of proof as discussed above.

21. In view of above circumstances, it is crystal clear that the appellant has committed willful default in payment of rent for disputed period the learned trial court committed no illegality in holding so. The point under discussed is answered accordingly.”

7. Perusal of judgment, passed by appellate court, *prima facie*, reflects that there is admission with regard to delay of six months in depositing rent, hence conclusion, so drawn by appellate Court, is proper, legal and within settled principles.

8. With regard to plea of learned counsel with regard to section 92 of the *Code* it would suffice to say that provision, *itself*, demands consent of the Advocate-General for those relief (s) *only* which are specifically specified in the provision itself. This stands evident from referral to section 92 CPC which reads as:-

“Section 92 Code of Civil Procedure 1908, Public Charities.

(1) In the case of any alleged breach of any express or constructive **trust created** for public purposes of charitable or religious nature, or where the direction of the Court is deemed necessary for **the administration of any such trust**, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the [Provincial Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree----

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged’
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1963, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-sections.”

9. The instant matter was of **ejectment** which, *nowhere*, involves any of the above stated relief(s), therefore, such plea is entirely misconceived. Even otherwise, this objection was not raised at lower forum(s) hence the petitioner was not legally justified in raising such *plea* at such stage which he, *himself*, never raised at any time even while entering into rent-relations. Here this is a rent application, therefore plea of learned counsel is of no help. Counsel for the petitioner has also relied upon the case reported as 1992 MLD 1021, which is distinguishable as it relates to filing of petition by heirs of dead tenant, hence is not helpful to the case in hand. Petition is dismissed alongwith pending application.

JUDGE

SAJID