

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No. S – 402 of 2021
Constitutional Petition No. S – 403 of 2021
Constitutional Petition No. S – 404 of 2021
Constitutional Petition No. S – 405 of 2021
Constitutional Petition No. S – 406 of 2021**

Date	Order with signature of Judge
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03.02.2022 :

Mr. Mushtaque Hussain Qazi, advocate for the petitioners.

Mr. Muhammad Khalid, advocate for respondent No.1.

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NADEEM AKHTAR, J. – Vide separate orders, all dated 05.03.2021, passed in the execution applications filed by respondent No.1 / landlord, the writ of possession in respect of the demised premises was ordered to be issued by the Executing Court / Rent Controller ; and, the appeals filed by the petitioners / tenants against the said orders were dismissed by the appellate Court through identical orders dated 15.03.2021. Through the present petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have impugned the concurrent findings of the learned Courts below. As the facts involved in these petitions and the orders impugned herein are similar, all these petitions are being disposed of through this common order.

2. Briefly stated, the relevant facts giving rise to these petitions are that respondent No.1 is the owner and landlord of industrial Plot No.543, S.I.T.E. Karachi, measuring about 1-00 acre, and the petitioners are his tenants in respect of separate sheds / portions of the said plot (**“demised premises”**). In the year 2016, respondent No.1 filed separate eviction applications against the petitioners seeking their eviction from the demised premises on the grounds of default in payment of the monthly rent, personal need and for impairing the value and utility of the demised premises by causing damage thereto. The said applications were resisted by the petitioners by denying the relationship of landlord and tenant between the parties on the ground that the demised premises were acquired by them from respondent No.1 on *pugree*. Accordingly, an issue was framed on this point, and issues on the questions of default in payment of the monthly rent and personal need were also framed. It appears that the issue on the question of impairment of the demised premises was not framed. Vide separate judgments delivered by the Rent Controller on 08.07.2019, the issue regarding the relationship of landlord and tenant between the parties was decided against the petitioners and the eviction applications were allowed on both the grounds of default in payment of the monthly rent and personal need by directing the petitioners to vacate the demised premises

within sixty (60) days. The said judgments were challenged by the petitioners, but their appeals were dismissed by the appellate Court vide separate orders dated 30.09.2019.

3. The petitioners assailed the concurrent findings of the learned Courts below by filing constitutional petitions before this Court. In their said petitions, they made a statement before this Court on 07.12.2020 that they were ready to vacate the demised premises if sufficient time is granted to them. In view of their aforesaid statement, their petitions were disposed of by this Court vide common order passed therein on 07.12.2020 with direction to them to vacate the demised premises and to hand over the peaceful possession thereof to respondent No.1 within one year, and to pay the rent as directed by the Court. It was observed in this order that if the petitioners fail in complying with the above directions, the Executing Court would be competent to proceed without being influenced by this order.

4. Thereafter, the petitioners filed miscellaneous applications in their above mentioned disposed of petitions which were dismissed by this Court vide common order dated 21.01.2021 as being not maintainable. While observing in this order that the Rent Controller would be competent to assess the rent as per the judgment, he was directed by this Court to ensure that the rent is received in four installments within one year and the first installment within one month. The petitioners did not stop here. They filed review applications in their said petitions which were dismissed by this Court vide common order dated 11.03.2021 which order was not challenged by them any further. However, the order dated 21.01.2021 was challenged by them before the Hon'ble Supreme Court in Civil Petition Nos.281-K, 300-K to 303-K/2021 which were dismissed by the Hon'ble Supreme Court vide order dated 08.04.2021.

5. Meanwhile, the impugned order dated 05.03.2021 was passed by the executing Court for issuance of the writ of possession in the execution proceedings filed by respondent No.1. It was observed in this order that a period of one year was granted by this Court to the petitioners to vacate the demised premises subject to payment of rent, and the petitioners did not deposit the installments of the arrears of rent as directed by the Court. The aforesaid order of the executing Court was maintained by the learned appellate Court vide impugned orders dated 15.03.2021 by dismissing the appeals filed by the petitioners. These concurrent findings of the learned Courts below have been impugned by the petitioners through the present petitions.

6. It was contended by learned counsel for the petitioners that the impugned order for issuance of the writ of possession is not justified in view of the order passed by this Court on 21.01.2021 in the earlier petitions and the order passed by the Hon'ble Supreme Court on 08.04.2021. However, he was

not able to show from any of the said orders as to why the Rent Controller ought not to have issued the writ of possession and how the aforesaid orders relied upon by him had restrained the Rent Controller from doing so. It was conceded by him that the petitioners themselves had sought time of one year to vacate the demised premises which was allowed by this Court vide order dated 07.12.2020 passed in their earlier petitions ; all the applications filed by them after disposal of their petitions in the above terms were dismissed ; the demised premises were not vacated by them within the time granted by this Court at their request ; the rent was not deposited by them as directed by the Court ; and, there was no restraining order in the field when the impugned order of issuance of the writ of possession was passed nor is there any such order in the field at present. According to him, the calculation / assessment made by the Rent Controller regarding the deposit of rent by the petitioners was wrong and due to such mistake on his part, the impugned order is liable to be set aside. However, he was not able to point out any such mistake or miscalculation from the record. In the end, it was contended by him that the period of one year granted by this Court to the petitioners to vacate the demised premises was to be computed from 21.01.2021 and not from 07.12.2020 as the order passed by this Court on 21.01.2021 had superseded the order dated 07.12.2020.

7. It is an admitted position that vide order dated 07.12.2020 a period of one year was granted by this Court to the petitioners to vacate the demised premises. Vide order dated 21.01.2021, the Rent Controller was directed by this Court to ensure that the rent is received in four installments within one year and the first installment within one month. Perusal of the impugned order dated 05.03.2021 passed by the Rent Controller for the issuance of the writ of possession shows that the said order was passed in view of the report submitted by the Nazir confirming that the first installment of rent for the period 01.01.2021 to 01.03.2021 had not been deposited by the petitioners within one month. This clearly shows that the petitioners did not comply with the order passed by this Court on 21.01.2021 which order was maintained by the Hon'ble Supreme Court. Thus, the Rent Controller was fully justified in passing the impugned order for the issuance of the writ of possession. Learned counsel for the petitioners has not been able to point out any illegality or infirmity in the impugned orders and as such they do not require any interference by this Court. Accordingly, all these petitions and the applications pending therein are dismissed with no order as to costs.

J U D G E