## ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P. No.S-213 of 2022

Date Order with Signature(s) of Judge(s) 1.For orders on CMA No.1385/2022.

2.For hearing of main case.

## 07.03.2022

Mr. Babar Ali Shaikh, Advocate for Petitioner.

Respondents No.1 and 2 herein filed rent ejectment application being Rent Case No.51 of 2020 against the petitioner before the Vth Rent Controller Karachi-South under section 15 of the Sindh Rented Premises Ordinance, 1979 ("S.R.P.O.") in respect of RC-5/86, 5th Floor, Hajira Ishaq Building, Jain Street, Ranchoreline, Gazdarabad, Karachi, (subject premises) on the ground of default in payment of monthly rent from March, 2016 at the rate of Rs.1600/- and making addition and alteration in the subject premises impairing its value and utility. The petitioner resisted rent case by filing written statement. The learned Rent Controller after recording evidence and hearing of learned counsel for the parties allowed rent ejectement application vide order, dated 14.09.2021, by attending the issue of relationship between the parties as landlord and tenant and directing the petitioner to vacate the subject premises and handover its possession to respondents No.1&2 within a period of 60 days from the date of the order. Against that, the petitioner preferred First Rent Appeal No.209 of 2021, which was dismissed by the learned Additional District Judge-XII/Model Civil Appellate Court District South Karachi vide order, dated 17.11.2021, for default/non-prosecution. The petitioner then filed an application under Section 151 C.P.C. for recalling the order dated 17.11.2021 which was also dismissed by the learned Appellate Court vide order dated 21.02.2022 holding the said application barred by limitation. It is against that order the instant petition has been preferred by the petitioner.

Heard the learned counsel for the petitioner and perused the material available on record.

It is an admitted position that the aforementioned FRA, filed by the petitioner, was received to learned Appellate Court by way of transfer on 20.10.2021, which was adjourned to 01.11.2021, on which date neither the petitioner nor his counsel appeared nor the cost was deposited; however, in the interest of justice the learned Appellate Court adjourned the matter to 17.11.2021. Again on said date neither appellant nor his counsel were present nor the cost for notices was deposited; hence, the FRA was dismissed by the learned Appellate Court for default/non-prosecution. It is also an admitted position that the application filed by the petitioner for recalling the order dated 17.11.2021 was barred by 58 days; hence, the same was also dismissed by the learned Appellate Court.

There is no cavil to the proposition that the High Court has wide jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; however, it does not mean that it can disregard the substantive provisions of a Statue and passed orders which can be settled only through a mechanism prescribed by the Statue. Once the petitioner failed to avail its remedy of appeal as per law duly prescribed under the Statue he cannot challenged the order through a Constitution Petition as the same is not alternate of an appeal.

Remedy of Appeal under Section 21 of the S.R.P.O. 1979 is creative of Statue. If the appeal was filed and the same was dismissed in default/non-prosecution and the remedy of its restoration was not availed within statutory limitation period of 30 days in terms of Article 168 of the Limitation Act, 1908 it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

For the forgoing facts and reasons, instant Constitution Petition is dismissed in limine being devoid of any merit alongwith pending applications.

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JUDGE