

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.S-1648 of 2018

Abdul Rehman & others

Versus

Illrd. Additional District & Sessions Judge & others

Date	Order with signature of Judge
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1. For orders on office objection as at 'A'
2. For hearing of CMA 6832/18
3. For hearing of main case

Dated: 13.04.2021

Mr. Ameeruddin for petitioners.
Mr. Abdul Irfan for respondent No.3.

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In the first round of litigation, the eviction application No.67 of 2018 was filed on the ground of default for the period of September, October, November, December 2007 and January 2008. While the case was pending and contested on merit, the Rent Controller observed that the rent for the month of February, March and April 2008 was paid on 18.04.2008 in defiance of law and since default was committed of subsequent period in terms of Nazir's report and for which no explanation was provided, the eviction application was allowed in consideration of aforesaid default of February to April 2008. Aggrieved of it, petitioners filed FRA No.50 of 2012 which was also dismissed with no orders as to costs and rented premises was ordered to be handed over to respondent No.3 in 30 days' time.

Again aggrieved of above concurrent findings of two Courts below, petitioners preferred a C.P. No.1334 of 2012. The petitioners/tenants took the defence that the main eviction application did not cover the period of default i.e. February, March and April, 2008, as observed by the Rent Controller. It is case of the petitioner that the eviction

application covered period of September, October, November, December 2007 and January 2008 whereas findings of the Rent Controller were in respect of February, March and April, 2008. Such defence was considered by this Court in the aforesaid petition and the case was remanded to the “appellate Court”.

Heard counsel and perused record.

In my view default committed during pendency of rent application and/or deposit of rent in the MRC, which default is subsequent to the filing of the rent application and other than one disclosed in main application, can also to be looked into by Rent Controller and the Rent Controller may pass appropriate orders after default of subsequent period is established and committed, which has been done in the instant case. This Court remanded the case back to the appellate Court and not to trial Court, for fresh arguments in respect of default for the month of September to December 2007 and January 2008. However, this Court in the aforesaid petition did not set aside the order of Rent Controller, which held tenants defaulter for the month of February to April, 2008.

In consequence of such remand however the petitioners instead of arguing the appeal in terms of directions of the Court, as stated above, withdrew their appeal, which order dated 29.04.2015 is available at page 97 of the file. It provides that petitioners, as being appellants, did not wish to proceed with the case and hence the FRA was dismissed. Earlier the executing Court in execution application No.4/2012 on 20.09.2014, in the light of the order passed by this Court in the aforesaid petition, was pleased to dismiss the execution application having become infructuous however the executing Court has not commented about the order of High Court passed in CP No.S-1334 of 2012, which never set aside the order of the Rent Controller.

The subsequent execution application as Execution No.3 of 2018 was then filed and the question about its maintainability was raised.

Since the default for the period of February, March and April 2008 has become absolute and nothing in that regard was and/or is pending before this Court or appellate Court, therefore, the order of the Rent Controller in respect of default of February, March and April 2008 has attained finality. It does not lie in the mouth of the petitioners now to challenge the order of the Rent Controller as they themselves withdrew their appeal against the findings of Rent Controller, as stated above.

The earlier order of the executing Court whereby it was observed that the execution application has become infructuous was not lawful. At the best it could have adjourned it sine die as the lis was still pending in shape of appeal as FRA No.50 of 2012 which was subsequently withdrawn on 29.04.2015 i.e. subsequent to the order of the executing Court. Hence in my view a lawful procedure was adopted by respondent No.3 by initiating fresh proceedings in shape of subsequent execution application before the executing Court as the petitioners had withdrawn their appeal/FRA rendering the order of the Rent Controller as being final and executable.

This being situation, no interference in the orders of the Courts below in this second round of litigation in terms whereof the second execution application was found to be maintainable and not barred by time. The petition is accordingly dismissed along with listed application.

Judge