

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S-572 of 2019

Date	Order with Signature of the Judge
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Hearing of priority case.

1. For orders on office objection.
2. For hearing of CMA No.2200 of 2019.
3. For hearing of main case.

Heard on 11th January, 2021 & 16th August, 2021.

Mr. Khalid Mustafa, Advocate for the Petitioner.
Mr. Muhammad Asghar Malik, Advocate for Respondent No.3.
Syed Arshad Hussain Naqvi, A.A.G, Sindh.

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Kausar Sultana Hussain, J.:- By invoking the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan 1973, the petitioner/tenant has approached this Court with a prayer to set aside the order dated 31.01.2019 passed by the learned VIth Additional District Judge, Karachi Central in FRA No. 214 of 2018, whereby the ejectment order dated 03.09.2018, passed by the learned IIIrd Rent Controller, Karachi Central in Rent Case No. 165 of 2016, by allowing an application under Section 16(2) Sindh Rented Premises Ordinance, 1979 (S.R.P.O, 1979) filed by the Respondent No.3 was maintained.

2. Succinct facts leading to this petition are that the respondent No. 3/owner has filed an application under Section 15 of Sindh Rented Premises Ordinance, 1979 for eviction of the petitioner/tenant from demised premises/Shop No. 3, situated on a Plot bearing Nos. PT 45 & 46, F.B. Area, Karachi, on the ground of committing willful default in payment of monthly rent and personal need. The petitioner/tenant contested the aforesaid ejectment application. During such proceedings, on 18.02.2017 the respondent

No.3/landlord has also filed an application under section 16(1) of the **S.R.P.O, 1979**, praying therein that the petitioner/tenant may be directed to deposit the arrears as well as future monthly rent of the demised premises in the Court. The respondent No. 3, has provided details of alleged defaulted amount in the said application. On hearing both the learned counsel for the parties, the learned trial court in penultimate paragraph has passed the following tentative order dated 18.07.2017 on application filed under Section 16(1) of **S.R.P.O, 1979**:-

"From the tentative assessments at this juncture, it would be just and proper to direct the opponent to deposit the arrears of monthly rent as alleged by the applicant, as according to report of Nazir opponent has deposited total monthly rent amount Rs.56,000/- in between period 16th August, 2016 till 09th June, 2017, while the total period from January 2016 to July 2017 become 19 months, and total monthly rent amount at the Rs. 3,500/- PM of 19 months becomes Rs.66,500/- and after deduction of Rs.56,000/- deposited by the opponent in above mentioned MRC, now the opponent has to deposit arrears of monthly rent of Rs.10,500/-. In above circumstances opponent is directed to deposit the said amount Rs.10,500/- in this rent case instead of MRC within 15 days time from the date of this order hereof. Furthermore, opponent is also directed to deposit the future monthly rent of Rs.3500/- PM in this rent case from English Calendar month. However, applicant would not be entitled to receive the arrears of monthly rent till finalization of this rent

proceedings. Application is disposed off accordingly

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3. Since the petitioner/tenant has failed to deposit the arrears of monthly rent as ordered by the learned Rent Controller dated 18.07.2017, therefore, application under section 16(2) of the Sindh Rented Premises Ordinance, 1979 dated 14.05.2018 was filed by the Respondent No.3/landlord before the learned Rent Controller, who vide order dated 03.09.2018, under section 16(2) of the Sindh Rented Premises Ordinance, 1979 struck off the defence of the petitioner/tenant and directed him to vacate the tenement within sixty (60) days of that order. Being dis-satisfied with the said order, the petitioner/tenant has preferred an Appeal No.214 of 2018 under section 21(1) of **S.R.P.O, 1979**, before the learned District Judge, Karachi Central, who transferred that F.R.A No. 214 of 2018 to learned VIth Additional District Judge, Karachi Central, who after adopting due process of law and hearing arguments of both the side dismissed the said F.R.A No. 214 of 2018, vide order dated 31.01.2019 and against such orders the captioned petition has been filed.

4. Arguments heard and written synopsis examined. Record perused.

5. The learned counsel for the petitioner has submitted that the learned Rent Controller as well as appellate Court have failed to appreciate that the petitioner has promptly complied, with the tentative rent order dated 18.7.2017, passed on landlord's (respondent No.3) application filed under Section 16(1) of **S.R.P.O, 1979** by depositing arrears of rent of Rs. 10,500/- in Rent Case No. 165 of 2016 within the stipulated time of 15 days from the date of passing tentative rent order; however, due to bona fide mistake and oversight, the petitioner being layman has deposited few months

rent in M.R.C No.421 of 2016 instead of rent case, which tender of rent is not a willful default but is a TECHNICAL ONE. The learned counsel for the petitioner prayed that this bona fide mistake in depositing few month's rent in M.R.C may be ignored and, orders impugned in this petition may be set aside. He relied upon the judgments reported in 2010 YLR 902 (Karachi) (Re-Zafar H. Ismail v. Mrs. Rubina Ali Aamir), 2000 CLC 1134 (Karachi) (Re-BabarPervez v. Muhammad Saad).

6. On the contrary, the learned counsel for the respondent No.3 (landlord) has admitted that the petitioner in compliance of tentative rent order dated 18.07.2017 deposited arrear of rent of Rs.10,500/- in the rent case No. 165 of 2016 within the stipulated time but on 24.10.2017 he has deposited future monthly rent in M.R.C No. 421 of 2016 in violation of the tentative rent order dated 18.07.2017. The learned counsel for the respondent No.3 has further argued that the avoidance to deposit future monthly rent in rent case No. 165 of 2016 is willful default and it could not be taken as technical default. Per learned counsel for the respondent No.3 on this point the Apex Courts are clear that after order passed under Section 16(1) **S.R.P.O, 1979** even the delay of one day in payment of monthly rent is not liable to be condoned unless specific reason. It is further argued by the learned counsel for the respondent No.3 that the petitioner once again deposited future monthly rent in M.R.C No. 421 of 2016 for December 2017 on 21.12.2017 and then for two months rent on 18.04.2018 in violation of the order of Rent Controller dated 18.07.2017, which is willful default in payment of future monthly rent on the part of petitioner, as such the late payment or non-payment of monthly rent in violation of the order of the Rent Controller cannot be treated as technical default, hence the instant Rent Petition of the

petitioner may be dismissed. The learned counsel for the respondent No.3 has relied upon the judgments reported in 1999 CLC 771 (Re-Zaheerullah Khan v. Abeda Begum), 2018 SCMR 1720 (Re-Syed Asghar Hussain v. Muhammad Owais and others), 2017 CLC Note 67 (Sindh) (Re-Niaz Hussain Shah v. Mrs. Shamim Akhtar and others), 2016 MLD 86 (Sindh) (Re-Ahsan Asad v. Mrs. Rubina Naeem and others).

7. After hearing arguments/written, examining synopsis and perusal of record and the judgments relied upon by the learned counsel for both the side, I am of the view that there is no cavil with the legal proposition that under Section 16(1) of the S.R.P.C, 1979 the Rent Controller is legally bound to make summary enquiry and to pass tentative rent order directing the tenant to deposit the arrears of rent as well as future rent. Before discussion further, I would like to reproduce here the relevant provision of section 16(1) & (2) of S.R.P.O, 1979 for ready reference as follows :-

"16. Arrears of rent. (1) Where a case for eviction of the tenant has been filed, the Controller shall, on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in this behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case.

Provided that the Controller may direct that the arrears of rent and approximate rent may be paid to the landlord through pay order or by other mode agreed to by the parties or as directed by the Controller.

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his

defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.

8. In instant case record shows that the Rent Controller has provided opportunity to the learned counsel for the parties to bring on record their respective views regarding payment or non-payment of rent as the case may be and he also made summary enquiry in respect of deposit or payment of rent by the petitioner to the respondent No.3 and in this regard Nazir report was also called and then he passed the tentative rent order dated 18.07.2017 by issuing clear directions to the petitioner to deposit arrears of rent of Rs.10,500/- within 15 days' time from the date of order, so also future monthly rent in the Rent Case No. 165 of 2016. Admittedly, the petitioner made compliance of the said tentative rent order dated 18.07.2017 by depositing arrears of rent of Rs.10,500/- on 01.08.2017 in the rent case, but after that in-spite of having knowledge of the impugned order and making compliance of the said order partly to the extent of depositing arrear of rent in rent case, the petitioner once again started to deposit future monthly rent, in the M.R.C No. 421 of 2016 instead of Rent Case No.165 of 2016 and continue this practice of depositing future monthly rent in M.R.C on three dates i.e. 24.10.2017 (Rs.3,500/-), 21.12.2017 (Rs.3,500/-) and 18.04.2018 (Rs.7,000/-) in violation of tentative rent order dated 18.07.2017, which cannot be ignored or treated technical default. The Hon'ble Supreme Court in the judgment reported in **1986 SCMR 1714** in the similar circumstances of the case has refused leave to appeal and maintained the order of the Rent Controller, whereby the tenant had failed to comply with the tentative rent order passed under Section 16 of the **S.R.P.O, 1979** and was depositing the

rent regularly in Miscellaneous Rent Case. The Hon'ble Supreme Court in the case of Syed Asghar Hussain v. Muhammad Owais and other (2018 SCMR 1720) has decided that **"Best course of the petitioner could have been to comply with tentative rent order under section 16(1) of S.R.P.O, 1979 and to have contested the matter to his logical conclusion, but he chosen not to comply with a tentative rent order loosing his right of defence. No factual and legal infirmity is apparent on the record. Accordingly, the petition is dismissed and leave refused."**

9. The learned counsel, who relied upon such judgments mentioned supra, based upon technical default, but instant matter in the light of the factual circumstances of the case cannot be treated as technical default, hence the facts of said judgments are distinguishable from the facts of instant case.

10. Suffice is to decide that there is no illegality or gross irregularity and infirmity in the concurrent findings of both learned lower Courts, more particularly, the impugned orders are not passed without jurisdiction. I found no occasion and justification to interfere in the concurrent findings of both the Courts below, resultantly, the captioned petition is dismissed with no order as to cost, having no merits for consideration.

Faheem/PA

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