

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

C.P. No.S-356 of 2021

Muhammad Asif
Versus
Mst. Shahina Kanwal & others

Date	Order with signature of Judge
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1. For orders on CMA 2373/21
2. For orders on office objection No.31 as at "A"
3. For orders on CMA 2374/21
4. For hearing of main case

Dated: 26.04.2021

Mr. Hiader Raza holds brief for Mr. Huzaifa Khan for petitioner.

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Learned counsel by virtue of these proceedings has challenged tentative rent order passed by the Rent Controller under section 16(1) Sindh Rented Premises Ordinance, 1979. It is the case of the petitioner that the Rent Controller while considering application under section 161(1) of ibid law has not passed tentative rent order with regard to arrears of rent. It is only future rent that was taken into consideration and directions were given accordingly. Per learned counsel it is failure on the part of the Rent Controller for not passing tentative rent order with regard to arrears of rent.

I have heard the learned counsel and perused record.

In terms of provisions of Sindh Rented Premises Ordinance, 1979, being a special law, no appeal is maintainable in respect of an interim/ interlocutory order that is passed under the proceedings before the Rent Controller. The impugned order here is also one of those tentative rent orders where future rent was ordered to be deposited by the respondent. Since appeal is not available, petitioner has filed this petition directly invoking jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The recourse that

was not available and provided by Sindh Rented Premises Ordinance, 1979 cannot be exhausted alternatively by moving and filing a petition under Article 199 of the Constitution. The Rent Controller in its discretionary wisdom has decided the application by directing the respondent to deposit future monthly rent only. This tentative assessment of the Rent Controller under Sindh Rented Premises Ordinance, 1979 cannot be challenged either by an appeal or in terms of this petition under Article 199 of Constitution of Islamic Republic of Pakistan, 1973.

Perusal of orders shows that the Rent Controller considered the facts of the case as the premises was owned by previous landlord and rent of disputed period is claimed to have been tendered and then after application of mind the discretion was exercised. Rent Controller was not under compulsion to pass tentative rent order as prayed for, once the application was filed. The discretion exercised was only tentative and hence cannot be challenged.

The judgment that was cited by the learned counsel in support of his contention in the case of *Mst. Zahida Parveen v. Iftikhar Hussain* reported in 2019 YLR 474 is devoid of such reasoning as to why such interim order could be interfered under special law. It is only on the basis of a judgment that pertains to Banking laws where interlocutory orders were challenged and the principle was applied in the cited judgment. The cited judgment does not discuss the rationale applied while entertaining tentative rent order under writ jurisdiction. Apparently neither jurisdictional error was established nor is there any unlawfulness in the order. It is within the discretion to pass a tentative rent order as he may deem fit, which may not be of the choice of either landlord and/or tenant and hence cannot be termed as one without jurisdiction.

In view of the above no fundamental right of the petitioner appears to have been violated. This petition being misconceived and would frustrate the speedy proceedings of the case before the Rent Controller, is dismissed along with listed applications.

Judge