ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-2169/2018

Date	Order with signature of Judge

14.02.2020

Mr. Zakir Hussain advocate for petitioner.
Mr. Maqbool-ur-Rehman advocate for respondent.

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Heard learned counsel for respective parties.

2. At the outset learned counsel for petitioner has emphasized over order dated 11.05.2018, passed on application under section 16(1) of the SRPO 1979, wherein learned rent controller after calling report of MRC, observed that the petitioner was continuously depositing the rent in MRC so Rent Controller, being satisfied, directed to pay the rent of future respectively but was also directed to pay the utility charges. Subsequently application under section 16(2) was moved on the plea that petitioner has failed to clear outstanding of utility bills and that was violation of above referred order and learned rent controller after hearing the parties allowed application under section 16(2).

3. I am quite conscious of the legal position that term ***'rent'*** is defined by the Ordinance as:

> "**2(i). "rent"** includes water charges, electricity charges and such other charges which are payable by the tenant **but are unpaid**".

4. From above definition it needs no further discussion is needed in saying that *legally* such charges (utility charges) do include in the term **'rent'** hence default towards such liability would be a ***default.*** However, since there is also a practice of fixing rent amount, inclusive of *utility* charges, therefore, what needs to be appreciated at all material times is that :

> " whether, per agreement, such charges are made payable directly to department or to landlord?

If the charges are payable *directly* to the department then such *plea* could not be pressed unless it is shown that such failure resulted in disconnection of such *utility* connection because *normally* the tenant, while parting with *tenancy* would require to clear all dues of utility charges which (services) he (tenant) availed but concerned department *exclusively* can competently extend time in payment of such charges as well can competently receive charges in installment (s). Further, in direct payment of such charges, the relaxation and extension in time towards payment of charges *squarely* rests with concerned department *even* without any notice or consent of the landlord. The extension, if allowed and availed, would rip away the consequence of non-payment in *time*. This had been the reason that such ground would be available for pressing when such *failure* costs disconnection of utility service connection which (*disconnection)*, in other term, is a declaration that such failure resulted into consequences. However, in *later* condition any failure towards such charges would be a ***default***. Reference may be made to the case of *M/s Pearl Leather Product (Pvt.) Ltd v. Mst. Feroza Khatoon* 2001 YLR 2604 wherein it is observed at Rel. P-2609 as:-

> "In the present case, the charges for the consumption of the utilities such as water, gas and electricity were payable directly to the concerned agency and not to the landlord, it is the responsibility of the tenant to pay the same directly. The ground f default in payment of utilities could be taken by the landlord if on account of non-payment, the utilities have been disconnected thereby, impairing the utility and value of the premises. Following the rule laid down in Badruddin (supra), in my view, the respondent cannot press into service the ground of default on the basis of non-payment of water charges, which was to be paid directly to the concerned department unless on account of non-payment, the utilities were disconnected, thereby impairing the utility and value of the tenant in terms of sectin 15(2) , sub clause (iv),

Thus, even while passing an order under section 16(1) and 16(2) of the Ordinance, the Rent Controller is required to appreciate this legal position. The perusal of the order on application under section 16(2) reflect that issue of utilities was not adjudicated by the rent controller. On the contrary, it was observed that petitioner is defaulter in payment of rent whereas MRC was not reflecting so and mandate of section 16(2) was of compliance of order under section 16(1) that was not exercised in accordance with law. However appellate court has examined the bills submitted by respective parties which shows that there is balance amount of outstanding payments regarding K-electric and SSGC bills. Learned counsel for petitioner has filed statement showing therein that there are no dues on the demised premises whereas counsel for respondent contends that petitioner was on defaults as he was depositing the utilities bills in installments. Such controversy, in view of concluded legal position, appears to have never been appreciated by the Courts below, hence order on application under Section 16 (2) of Sindh Rented Premises Ordinance, 1979 passed by the rent controller and appellate court appears to be against the principle of *"a communi observantia non est recedendum"* (There should be no departure from common observance or usage).

5. In consequence to above discussion, I find it appropriate to remand the matter back to Rent Controller for passing fresh order on application U/s 16(2) of the Ordinance, keeping in view the above legal position within a month.

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