

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
FRA No. 10 of 2020

Date	Order with signature(s) of Judge(s)
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1. For orders on office objection as at "A".
2. For hearing of main case.
3. For hearing of CMA No. 1265 of 2020. (Stay).

03rd March 2020

Mr. Tahmasp Rasheed A. Rizvi, advocate for appellant.
Mr. Ahmed Masood, advocate for respondent No. 1 and 2.

Through instant petition, petitioner has challenged the order dated 12.12.2019, passed by learned Controller of Rents, Faisal Cantt: in Rent Case No. 45 of 2019 which is reproduced as under: -

"Case called. Counsels for the both parties are present. Today matter was fixed for filing for written statement by the opponent, but he did not file the same. Counsel for the opponent filed application for adjournment. Application is rejected. Opponent is side for filing of written statement is closed. Case is adjourned to 19.12.2019 for filing of affidavit in ex-parte proof."

2. At this juncture, learned counsel for the petitioner has emphasized over page Nos. 207 and 209 of the file, which reflect diaries that on 14.11.2019 learned counsel for the petitioner/ opponent filed undertaking and matter was adjourned for 28.11.2019 and on that date due to strike of lawyers, matter was adjourned for filing of *vakalatnama* and written statement; on 05.12.2019 again matter was adjourned as a last chance to file written statement, on that date vakalatnama was preferred, however, on the next date i.e. 12.12.2019 counsel for the opponent/petitioner failed to file written statement, thus petitioner/opponent was declared *ex-parte* and respondent/applicant was directed to file affidavit in *ex-parte* proof. He, however, added that such *failure* was not deliberate but *bona fide* one and even otherwise such knock-out result in deprivation of petitioner / opponent of his right to *fair trial*. Thus, he lasted that petition be allowed.

3. Admittedly, matter is fresh and main order reflects that within 30 days, petitioner was deprived of filing written statement which, failure, otherwise was *bona fide*; such plea is seriously negated by the learned counsel for the respondent/applicant with the arguments that petitioner has failed to file written statement after service, hence, delay is on the part of the petitioner. It is pertinent to mention that it is settled principle of law that *normally* no one can be

knocked out on technicalities rather administration of justice always insists decision of the *lis* on merits. I would take no exception to *legal* obligation of the parties to present its pleading well within time however when penal action is subject to the word '**may**' then the Court (s) *normally* are to make effort avoiding penal action unless it appears that this is being *exploited*. Keeping the fact of matter, being fresh one; order to have been passed within 30 days, I am of the view that penal action (meaning deprivation of guaranteed right of fair trial) is harsh one. Therefore, I find it in all fairness as well equity to set-aside the impugned order; case is remanded back to the Controller of Rent. At this juncture, learned counsel for the petitioner contends that written statement is already filed, same shall be taken on record by the trial Court and decide the *lis* on merits within three months.

Instant petition stands disposed of in the above terms alongwith pending applications.

J U D G E

Sajid