

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-1096 of 2012

Date _____ Order with signature of Judge _____

1. For hearing of CMA No. 4805 of 2012.
2. For hearing of main case.

07th September 2020.

Mr. Abdul Qadir Khan, advocate for petitioner.

M/s. Kamran Memon and Ghulam Akbar, advocates for respondent No.1.

Through instant petition concurrent findings passed through impugned order /judgment in rent jurisdiction have been challenged, whereby while allowing the rent case fair rent was fixed by the Rent Controller, against which appeal was preferred by the petitioner, which has been dismissed.

2. Heard learned counsel for the respective parties.
3. Admittedly, petitioner was declared exparte and learned Rent Controller on the plea that petitioner is exparte allowed the rent application and fixed the fair rent without considering the pleadings as narrated in the application for fixation of fair rent as well affidavit in evidence. In similar fashion appellate court also maintained the order of the Rent Controller and failed to adjudicate the issue of fair rent. Admittedly, in fair rent cases courts are bound to examine the pleas taken by the respective parties and adjudicate the issue, however, surprisingly, such exercise was not undertaken by both the courts below, which has rendered their order/judgment to be not in accordance with law, since while doing so the courts below have travelled beyond their jurisdiction.

4. 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 facts of matter, I am of the view that penal action (meaning deprivation of guaranteed right of fair trial) by the Rent Controller was harsh one and such aspect should have been considered by the appellate Court, which has failed to do so.

5. In view of the above, both order and judgment passed by the *fora* below are hereby set aside and the case is remanded back to the Rent Controller with directions to allow the present petitioner to file his objections as well parties shall be permitted to lead their evidence and thereafter the issue shall be adjudicated in accordance with law.

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

SAJID

J U D G E