

HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1270 of 2015

J U D G M E N T

Date of hearing: 03.11.2015.

Petitioner: Farrukh Mehmood Cheema through Mr. A. Khursheed Khan, Advocate.

Res. No.1: Iftikhar Ali Osta through Mr. Zubair Ahmed Abro, Advocate.

Res. Nos.2 & 3: VIth Additional District Judge, South Karachi and VIIIth Rent Controller, South Karachi.

IRFAN SAADAT KHAN, J. The instant constitution petition has been filed with the following prayers:

- "1. To set aside, recall, suspend, reject the Judgment dated 13.07.2015 passed by the Respondent No.2 in the FRA 02/2015, Order dated 23.09.2014 and 10.12.2014 passed by the Respondent No.3 in the Rent Case No.12/2013.*
- 2. To pass order for stay and stop the proceeding of the Execution Application No.01/2015.*
- 3. To remand the Rent Case No.1218 of 2013 to the trial Court as Respondent No.3 to allocate full opportunity to the petitioner and trial on merit in the light of Respondent No.1 promise as written his own Under – taking dated 20 November 2012.*
- 4. To pass direction to the Respondent No.1 would be perform his duty, in the light of written promise Under – Taking dated 20 November 2012 and made effort for installation of Electricity three Phase Meter up on the Suit – Property.*
- 5. Any other relief(s), which this Honourable Court may deem fit and proper in the circumstances of the present civil suit".*

2. Briefly stated the facts of the case are that the petitioner is the tenant of the respondent No.1. Tenancy agreement was executed between the petitioner and the respondent on 15.05.2012 wherein it was agreed between the parties that the rent of the premises would be Rs.2,00,000/- P.M. The petitioner paid a total sum of Rs.19,00,000/- to the respondent out of which Rs.14,00,000/- was the advance rent whereas Rs.5,00,000/- was the security deposit. Thereafter an undertaking was made on 20.11.2012 between the parties wherein it was agreed that since some construction work is to be carried out on the premises which would be done by the respondent and the said work would be completed by

10.12.2012. It was agreed between the parties that the said work would be done to the satisfaction of the petitioner however the possession of the property was handed over to the petitioner. It was also agreed between the parties that monthly rent shall be charged by the landlord after one month of the installation of a three phase electric meter. It is an admitted position that the said three phase electric meter was not installed on the premises and what are the causes of the non-installation of the said three phase meter was subsequently found to be a contentious issue between the parties by the Rent Controller.

3. The respondent then filed a Rent Application under Section 15 of Sindh Rented Premises Ordinance, 1979 (hereinafter as SRPO) against the present petitioner on the ground that after March 2013. However, the respondent has not paid the monthly rent, hence he has committed default and is liable to be evicted. The matter proceeded before the VIIIth Rent Controller, Karachi (R.C) in rent Case No.1218/2013, when the said matter was pending the respondent moved an application under section 16(1) of the SRPO for fixation of tentative rent before the Rent Controller since according to the respondent the petitioner had not paid any rent after March 2013. The said matter was heard by the Rent Controller who vide his tentative rent order dated 23.09.2014 required the petitioner to deposit the rent after March 2013 onwards however with the condition that the respondent would not draw the same. The petitioner however defaulted in making the payment and on an application under section 16(2) of SRPO by the respondent, the Rent Controller vide his order dated 10.12.2014 struck off the defence of the petitioner and required him to vacate the said premises within 45 days of the passing of the order. Being aggrieved with the said order the present petitioner filed an appeal before the VIth Additional District Judge Karachi South who also vide order dated 13.07.2015 affirmed the order of the Rent Controller. It is against these orders that the instant petition has been filed.

4. Mr. A. Khursheed Khan, advocate has appeared on behalf of the petitioner and has submitted that the respondent has agreed that he would charge monthly rent after installation of the three phase electric meter, hence when the said meter was not installed therefore the question of payment of rent does not arise as per the undertaking. The learned counsel submitted that no default in payment of rent has been committed by the petitioner and the orders passed by the two courts below are not in accordance with law. The learned counsel while elaborating his view point invited my attention to the undertaking, which is available at page 75 of this petition, and submitted that the respondent has to keep his promise as has categorically mentioned in the said undertaking

that until and unless the said three phase electric meter is installed the petitioner could neither be evicted from the property nor could be held defaulter of the payment of rent. He submitted that in the said undertaking it has categorically been mentioned that the respondent No.1 would charge monthly rent from the petitioner after two months of the completion of the entire work and if the said work is not completed no rent would be charged for the subsequent two months if the work is not completed upto 10.12.2012. He submitted that the parties are bound by their promises and when the respondent has promised for installation of a three phase meter, which has not been installed even today, hence the respondent is not liable to pay any rent till such promise is fulfilled by the respondent. He submitted that the petitioner is ready to cooperate with the respondent, however it is the respondent who with mala fide intention has brushed side his promise and filed eviction application under Section 15 of SRPO and thereafter applications under section 16(1) and 16(2) of the SRPO against the petitioner and the two courts below in an arbitrary manner allowed the applications. He, therefore submitted that since no default has been committed by the petitioner therefore this petition may be allowed by setting aside the decisions of the two courts below.

5. Mr. Zubair Ahmed Abro, advocate has appeared on behalf of the respondent and has submitted that firstly there is no dispute with regard to the relationship of a landlord and tenant between the petitioner and the respondent. He invited my attention to the letter of physical handing over /taking over wherein the petitioner has affirmed that he has taken the possession after inspection and full satisfaction. He submitted that this petition is not maintainable since the petitioner has committed a default upon which his defence was rightly struck off. He submitted that since the petitioner has defaulted in payment of monthly rent, therefore application under Section 15 of SRPO was filed which subsequently was followed by application under Section 16(1) of SRPO. The learned counsel further submitted that tentative rent order dated 23.09.2014 passed by the Rent Controller was an interim arrangement and due to its non-compliance an application under Section 16(2) of SRPO was filed. He submitted that respondent applied for three phase meter and the staff of the KESC thereafter surveyed the premises and found that the petitioner is consuming a heavy electricity load, hence the premises require a separate PMT thereafter application of the respondent was rejected. Learned counsel submitted that all these factors were brought in the knowledge of the petitioner that under the given circumstances the respondent since has no control over the affairs with regard to installation of three phase meter however the petitioner with mala fide intention by making this ground stopped the payment of rent and is still enjoying

the possession of the premises. Learned counsel further submitted that the petitioner also filed an application under Section 8 of SRPO which was dismissed for non-prosecution, which fact was concealed by the petitioner in the present petition. He further submitted that the issue of installation of a three phase meter raised in the instant petition is misconceived as this point was taken before Rent Controller who after hearing the parties found the same to be a moot and questionable point and thereafter passed the tentative rent order. According to the learned counsel this is not the issue to be decided in the instant petition but it is a simple case of non-compliance of a tentative rent order by the petitioner. He, therefore submitted that this petition is not maintainable hence the same may be dismissed with cost. In support of his above contentions, the learned counsel has placed reliance on the following decisions:

1. Chaudhry Rahimuddin Vs. Chaudhry Jalaluddin [PLD 1991 SC 484]
2. Mrs. Zarina Khawaja Vs. Agha Mahboob Shah [PLD 1988 SC 190]
3. Mst. Akhtar Jehan Begum Vs. Muhammad Azam Khan [PLD 1983 SC 1]
4. Mushtaq Hussain vs. Muhammad Shafi [1979 SCMR 496]

6. Mr. A. Khursheed, the learned counsel for the petitioner while rebutting the arguments of the learned counsel for the respondent stated that the decisions relied upon by the learned counsel are distinguishable and this petition is maintainable, since the petitioner has no other efficacious remedy available under the law.

7. I have heard both the learned counsel for the parties at considerable length and have perused the record and the decisions relied upon by the learned counsel for the respondent.

8. It is an admitted fact that since there was dispute between the petitioner and the respondent Rent Case No.1218/2013 was filed by the respondent in the Court of VIIIth Rent Controller Karachi South. It is also an admitted position that during the pendency of that case an application was filed under section 16(1) of the SRPO by the respondent for fixation of tentative rent till the matter is finally decided in the Rent Case. It is also an admitted position that in the order dated 23.09.2014 whereby the petitioner was directed to deposit the arrears of 9 months for the year 2013 and from January 2014 onwards at the rate of Rs.2,00,000/- P.M in the Court within 30 days after finding that the matter of the petitioner and the respondent is contentious which requires detailed deliberation. It is also an admitted position that no rent in compliance of the order dated 23.09.2014 was paid by the petitioner. In these circumstances the Rent Controller on application under Section 16(2) moved by the respondent struck off

the defence of the petitioner vide order dated 10.12.2014 which subsequently was challenged before the District Judge and the VIth Additional District Judge vide order dated 13.7.2015 affirmed the said order.

9. From the facts of the parties, it is an admitted position that there is no dispute between the parties they are not landlord and tenant but the only controversy in this regard is that whether the petitioner is liable to pay the rent to the landlord in view of the undertaking dated 20.11.2012. It is seen from the record that the Rent Controller vide order dated 23.09.2014 has categorically observed that the point regarding installation of three phase meter over the premises is questionable, meaning thereby that the said Rent Controller admitted the matter is contentious between the parties and as an interim arrangement only directed the petitioner to deposit the rent with the condition that the respondent will not withdraw the amount till the final disposal of that case.

10. Section 16 of the SRPO states as under:

"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 any 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.

(3) Where the rent has been deposited under this section, it shall, subject to such order as the Controller may make in this behalf, be paid to the landlord at the conclusion of the case or on such earlier date as may be specified by the Controller".

Perusal of the section clearly reveals that only a summary inquiry is to be made by the Rent Controller and if he comes to the conclusion that an interim arrangement is to be made, he would determine the arrears of the rent due through an order asking the tenant to deposit a substantial amount of rent till the outcome of the matter. Needless to say that this arrangement is only temporary and have no bearing on the final outcome of the matter. The purpose of this section is to safeguard the interest of the landlord. In the instant case also the Rent Controller after finding the matter between the petitioner and the respondent to be contentious passed an interim order with the condition the landlord will not draw rent deposited by the tenant till the final decision of the

case, which would be passed after recording of evidence and examining other material. It is also to be seen that while passing a tentative rent order the principle of law of "audi alteram partem" has to be kept in view. Perusal of further record indicates that the order dated 23.09.2014 has been passed after fulfilling all the above mentioned legal requirements. It is also clear from the above section that in case a tentative rent order is not complied with the defence of the opponent side is to be struck off, which was done by the Rent Controller vide his order dated 10.12.2014. It is also to be noted that compliance of section 16(1) is mandatory and in case of non-compliance defence "shall be" struck off. It is a settled proposition of law that after passing of a tentative order under section 16(1) of SRPO the parties are under the obligation to pay the rent or the arrears as the case may be and in the case of non-compliance of the said order defence of the tenant under section 16(2) is liable to be struck off. It is also a settled proposition of law that while striking of the defence conduct of the parties is also to be kept in mind. Perusal of section 16 SRPO would further reveal that the Rent Controller has the power to direct the tenant to pay arrears of rent and future rent also on or before 10 of every month. Section 16(2) SRPO deals with the penal consequences that in case of non-compliance of the order defence would be struck off. The object of section 16(1) SRPO, in my view, is to secure the payment of rent to the landlord before the final determination of the issues between the parties and this order is always treated as a tentative rent order till the final determination.

12. Apart from the judgments relied upon by the learned counsel for the respondents I made a research of my own and was able to lay my hands on the following judgments:-

In the case of Muhammad Ramzan and another Vs. Inayatullah (1984 CLC 1942) Mr. Justice Ajmal Mian (as he then was) observed as under:

"3. It is an admitted position that the appellants till today have not complied with the above tentative rent order. The rent Controller had framed a preliminary issue on the question of relationship which was decided after recording of the evidence and hearing of the parties by an order dated 24.4.1983. After that tentative rent order was passed. The appellants were duty bound to comply with the above tentative rent order till decision of the main case on merits. Since they have not complied with the tentative rent order, the points raised by Mr. Siddiqui cannot be agitated in view of latest pronouncement of the Hon'ble Supreme Court in the case of Mst. Akhter Jehan Begum and 4 others v. Muhammad Azam Khan (1). It may also be mentioned that rent case was filed as far back as in 1975 in 1975 and we are in 1983. The appeal is dismissed in limine."

In the case of Maqbool Elahi Vs. S. Anwer Tauheed (1984 CLC 626) Justice Nasir Aslam Zahid (as he then was) observed as under:

"3. In my view a summary enquiry was held by the Rent Controller in each case as the objections of the appellants were taken into consideration. It was not necessary in the facts of these cases, to record evidence before passing the tentative rent orders. No request or application was made on behalf of the appellants for recording any evidence. Only a general vague statement was made in the objections that the appellants were in possession of certain evidence. No attempt was made to indicate what was the nature or substance of such evidence in possession of the appellants. No foundation was laid for requiring the Rent Controller to record any evidence before passing the tentative rent orders. Further, I find that the Rent Controller had placed a condition in his tentative rent orders passed by the Rent Controller. There is an admitted non-compliance by the applicants of the tentative rent orders."

In the case of Mrs. Khairun Nisa and another Vs. Mrs. Mehrun Nisa (1990 CLC 661) Justice Allahdino G. Memon (as he then was) observed as under:

"Once an order under section 16 subsection (1) was passed and it was found that the tenant had failed to comply with the same, the Rent Controller was bound to order that the defence of the tenant be struck off and possession of the demised premises be handed over to the landlord."

In the case of Hussain Trading Co. Vs. M/s Jalal Brothers (Pvt.) Ltd. (1993 CLC 2391) Justice Shoukat Hussain Zubedi (as he then was) observed as under:

"The appellant violated the terms of the tentative rent order and did not deposit any rent amount in the account of the "current ejectment case" but instead continued to deposit the rent in MRC No.108/1990. Thus the appellant has violated the order of the Rent Controller for a continuous period from 14-1-1990 up to date."

In the case of Muhammad Umer Khan Vs. Haji Muhammad Sultan Siddiqui (PLD 1995 Kar. 31) Justice Abdul Rahim Kazi (as he then was) observed as under:

"I find no defect with the order of the Rent Controller passed on 18.4.1993. The non-compliance of the said order, calls for the invoking of penal clause as provided in section 16(2) of the Ordinance which has been rightly resorted to by the Rent Controller. The present appeal is accordingly dismissed with no order as to costs. The appellant shall hand over the vacant possession to the respondent within two months from the date of this order."

In the case of Shahid Mehmood Vs. Mst. Nasreen Masood (PLD 2007 Kar. 178) Justice Muhammad Moosa K. Leghari (as he then was) observed as under:

"4. In the impugned judgment dated 27th January, 2005 passed by the learned III-Additional District Judge, Karachi East, it has clearly been observed that the, "office has reported that the appellant has not deposited the arrears of rent". Nothing has been placed on record to controvert the above finding. Neither in the appeal, nor during the course of arguments learned counsel for the petitioner disputed such fact. The provisions of section 16(2) are mandatory in nature. Subsection (2) of section 16 of S.R.P.O, 1979 provides that, "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" (Emphasis laid). In the circumstances, the impugned judgment is quite just and proper. Indeed the appellate Court was vested with all the powers of Rent Controller, transgression of jurisdiction or lack of jurisdiction has been noticed or pointed out to warrant any interference and/or to declare the impugned judgment illegal, invalid or coram non judice"

The Hon'ble Supreme Court of Pakistan in the case of Mst. Zarina Khawaja Vs. Agha Mahboob Shah (PLD 1988 SC 190) has observed as under:-

"The determination of the rent under section 16 of the Sind Rented Premises Ordinance, 1979 also has to be tentative and approximate. Firstly, it is for a temporary purpose of the Controller regulating rent payment during the proceedings only. It has no effect on the prior period or the period after the rent proceedings including the appeal stages. Secondly, its determination is in a summary manner. Thirdly, if the Controller embarks upon the full trial of the issue regarding rate/arrears of rent without which final determination would not be fair or even possible. It would frustrate one of the purposes of this provision of the law itself—viz., the speedy disposal of the cases. In that even a considerable time would be consumed on this issue without in the meanwhile the Controller having any power to regular the payment of rent by the tenant. And lastly, the final determination of the rent has been made possible by subsection (3) of section 16. It is not correct to say that this provision deals only with the disposal of the deposits of rent. Its extended meanings are not only possible but also beneficial to the parties. There are no barring words indicating that the Controller will not be able to determine the due rent finally, after the stage of the tentative determination. The use of the words like; 'determine' and 'due' in the above light does not lead to the conclusion that it is in the context of finality necessarily and not 'tentativeness' The omission in this behalf can legitimately be supplied as the intention is very clear and the omission seems to be inadvertent"

In the case of Chaudhry Rahimuddin Vs. Chaudhry Jalaluddin (1991 SC 484) the Hon'ble Supreme Court has observed as under:

*"8. We are, therefore, of the view that the learned Single Judge in chambers was not justified in holding that the Rent Controller was to hold a full-fledged enquiry by examining the witnesses who have filed affidavits in evidence in the man case. The tentative rent order was in consonance with the provision of section 16(2) of the Ordinance. We would, therefore, allow the above appeal and set aside the order of the High Court and would restore the order of the learned Rent Controller.
9. Before parting with the above discussion, we may observe that before allowing the appellant to withdraw the rent already deposited by the respondent, the learned Rent Controller would deal with the matter in terms of subsection (1) and (3) of section 16 of the Ordinance, as to the rate of rent and as to the period."*

In the decision given in the case of Ibrahim Vs. Shaheen (PLD 2011 SC 331) the Hon'ble Supreme Court of Pakistan has observed as under:-

"There is no cavil to the proposition of law that unless strict compliance of order of the Rent Controller passed under section 16(1) of the Ordinance of 1979, is made by the tenant, he makes his defence liable to be struck off."

13. Now coming to the facts of the case, it is an admitted position that on the application given by the landlord a tentative rent order was passed after hearing the parties and the petitioner has not complied with the said order meaning thereby that he has rendered himself liable that his defence be struck off as per section 16(2) of the SRPO. I therefore do not find any merit in the instant petition and dismiss the same accordingly. However, 60 days' time is allowed to the petitioner to vacate the premises in question and handover peaceful possession to the respondent from the date of this order. Petition therefore stands dismissed along with the listed application.

14. So far as sending the matter to the handwriting expert is concerned suffice to say that the respondent has not disputed that the signature on the undertaking is not that of the respondent hence this application bearing CMA No.683/2015 is also found to be meritless hence dismissed.

JUDGE