

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-101 of 2020

Date	Order with signature of Judge
------	-------------------------------

1. For hearing of CMA No. 373 of 2020.
2. For hearing of main case.

20th October 2020.

Syed Ali Ahmed Tariq, advocate for petitioner.
Mr. Sufyan Zaman, advocate for respondent No.1.

Through instant petition concurrent impugned orders passed in rent jurisdiction have been challenged, whereby upon non-compliance of tentative rent order passed under Section 16(1) of Sindh Rented Premises Ordinance 1979 (SRPO) the defense of the petitioner [opponent] was struck off under Section 16(2) of SRPO by the Rent Controller directing it [petitioner] to vacate the demised premises, against which appeal was preferred by the petitioner, which has been dismissed.

2. Heard learned counsel for the respective parties.

At the outset, legally established principle with regard to scope of *constitutional jurisdiction* of this Court in rent matter(s) need to be reiterated which makes it quite clear and obvious that this Court, *normally*, does not operate as a Court of appeal therefore mere possibility of another conclusion can't be a ground to invoke Constitutional jurisdiction of this Court which, in rent matters, could only disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. Reference may be made to the case of Shakeel Ahmed & another v. Muhammad Tariq Farogh & others 2010 SCMR 1925

8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979.

In another case of Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors PLD 2006 SC 214.

“8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court.

The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible. The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

Thus, the responsibility lies upon the challenger (*petitioner*) to, *prima facie*, show that order(s) of two competent forums committed some glaring illegality in forming their conclusion either with reference to record or by making *wrong* interpretations.

Here in the present case, claim of the petitioner [M/s. Tradeserve International (Pvt) Ltd] is that he is not the tenant of respondent No.1 [Ms. Tanya Khan] and in fact he, being tenant of respondent No.2 [M/s. Park Evenue Building Association], is paying the rent to the Association in respect of the demised premises. Comments of respondent No.2 are on record, according to which the petitioner is not its [respondent No.2] tenant and petitioner's tenancy is with respondent No.1, as well it is contended that petitioner has failed to pay any amount as rent to respondent No.2. Whereas, learned counsel for the respondent No.1 has emphasized over the tenancy agreement between the parties and earlier litigation as well. At this juncture, it would be relevant to refer the case of **Syed ASGHAR HUSSAIN Vs. MUHAMMAD OWAIS and others** (2018 S C M R 1720) whereby the

Hon'ble Apex Court while upholding the order passed under Section 16(2) of Sindh Rented Premises Ordinance 1979 has observed that:

2. Best course for the petitioner could have been to comply with tentative rent order under section 16(1) of SRPO, 1979 and to have contested the matter to his logical conclusion, but he chose not to comply with a tentative rent order losing his right of defence. No factual or legal infirmity is apparent on the record. Accordingly, the petition is dismissed and leave refused.

Under the circumstances, I am of the view that both the courts below have reached at right conclusion that petitioner has failed to comply with order passed under Section 16(1) of SRPO and no illegality is found to have been committed by them in this behalf. *Writ of certiorari* against the order passed in rent jurisdiction can be exercised only if order is beyond jurisdiction or patently illegal, which is not the present case. Accordingly, petition is dismissed alongwith pending application(s), if any. However, petitioner shall hand over peaceful possession of the demised premises to the respondent No.1 within two months from today.

J U D G E

SAJID