

**ORDER SHEET****IN THE HIGH COURT OF SINDH BENCH AT SUKKUR****Constt. Petition No. S-233 of 2022**

Date of hearing	Order with signature of Judge
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Petitioner: Muhammad Asif  
Through Mr. Khan Muhammad Sangi,  
Advocate.

Respondents: P.O Sindh and others  
Through Mr. Faisal Naeem, Advocate.

Date of Hearing: 22.05.2023.

**ORDER.**

**ZULIFQAR AHMAD KHAN, J.** Admitted facts of the case are that the petitioner is a tenant of respondent No.4 (acting through respondent No.5 who is her son) in respect of shop bearing No.C.S No. D-755 situated at Jhamandas Road Gharibabad Sukkur.

2. The respondents Nos. 4 & 5 filed ejectment application against the petitioner on the ground of default in the payment of rent as well as for personal use of the shop by the respondent No.5 and at the same time moved an application under section 16(1) of the Sindh Rented Premises Ordinance, 1979 which application was disposed of by directing the petitioner to deposit the rental arrears w.e.f July-2021 to November-2021 at the rate of Rs.12,000/- per month. The petitioner was also directed to deposit future monthly rent. In fact once the petitioner conceded that he would deposit the rent in MRC from July 2021 without any default and where the landlord was empowered to withdraw the rent from the said MRC bearing No.49/2021, the 16(1) application was disposed of with the joint undertaking, however seemingly the petitioner failed to deposit the arrears of rent which led the Rent Controller to pass an order under Section 16(2) of SRPO.1979 upon a report submitted by Nazir of the Rent Controller/Court which provided that the tenant had not

deposited the rent as per the joint undertaking upon him failing to deposit the rent for the month of May-2022 whereupon the impugned order was passed under section 16(2) of SRPO, 1979 to vacate the premises within a month from the date of order.

3. The petitioner later filed an appeal against the said order which was also dismissed against which the petitioner has approached this Court in constitutional petition.

4. Learned counsel for petitioner submitted that there has been no default as the petitioner was depositing rent in different M.R.C bearing No.54 of 2021 opened before the appellate Court and submitted that the tenant during pendency of appeal attempted to send money orders in the sum of Rs. 12,000/- as rent for the month of November-2022 and also handed out a cheque in the sum of Rs.2,88,000/- for future rent but the appellate Court did not consider this aspect. The learned counsel has placed reliance on the Judgment of Hon'ble Supreme Court rendered in the case of Major (Rtd) A.S.K SAMAD v. Lt.-Col.(Rtd) A. Hussain and another (1987 SCMR 1013) which shows that tenant could not be condemned if the rent was paid in different MRC as compared to the MRC created in the first instance.

5. Learned counsel for respondents to the contrary stated that there are concurrent findings of the Court below against the petitioner i.e the Court of Rent Controller as well as of the appellate Court which has fully considered these aspects and have come to the conclusion that the tenant has committed default. He placed reliance on the Judgment of Hon'ble Supreme Court in the case of Ashique Ali and another v. Mehar Elahi and 13 others (2001 SCMR 130) wherein it was held that non-deposit of the rent in the appropriate M.R.C was nothing but a default.

6. Head the counsel of parties and perused the record.

7. First of all it is important to keep in mind that Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 opens a very restrictive window to look into the affairs of landlord and tenant particularly arising out of the order passed under Section 16(2) of SRPO 1979. It is a fact that rent was deposited during the pendency of the appeal in a different MRC of which the landlord had no recollection. The appellate Court in paragraph No.11 has fully dealt with this aspect, which is reproduced hereunder:-

*“ Learned counsel for the appellant during pendency of the above appeal in hand, has submitted the photocopies of the money order receipts with regard tendering the rent in the year, 2021 and five money orders each for Rs. 12000/- during the month of November-2022 after filing of the above Rent Appeal and original cheque valued Rs. 2,88000/- dated 13.12.2022 and such efforts on behalf of the appellant were made after passing the impugned order are of no use at this stage as the appellant did not bother to approach the Rent Controller within 15 days of Order dated 12.03.2022 for the same or moving application for adjustment of his rent which he was being depositing in MRC No.49/2021 particularly when, he was specifically directed to withdraw the rent from MRC No.49/2021 and deposit the same in Ejectment Application No.54/2021 and such non-compliance was held being willful and deliberate and not a technical one as discussed above.”*

8. The truth is that the very purpose of establishing an MRC is that the landlord has an opportunity to withdraw the rent therefrom. Deposit of rent in different MRC for which the landlord has no knowledge do not fulfill the requirement of Section 16(1) of SRPO, 1979. The alarming fact is that the petitioner even after filing of the instant petition has not offered to deposit the rent to this Court. Rent is the consideration for occupying the property of the landlord by the tenant. It is tenant's responsibility that rent is properly pocketed in landlord's account or in the designated MRC

established by the Court concerned which enabled rent to have been withdrawn by the landlord. In these proceedings the landlord has remained empty handed by the tenant which gives the fatal blow to the case of tenant in the light of the recent judgment of the Apex Court in Ashique Ali (supra) case. I, therefore, dismiss this constitutional petition being meritless along with pending application.

J U D G E

Irfan/PA

