

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

C.P No.S-585 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>28.04.2023</u>	

Petitioner Muhammad Ayoub in person

Mr. Abdullah Langah, advocate for respondent

Mr. Rafique Ahmed Dahri, Assistant A.G Sindh

ORDER

ADNAN-UL-KARIM MEMON, J.- The captioned petition has been directed against the concurrent findings of the two Courts below. Petitioner had filed rent proceedings against respondent through Rent Application No.172 of 2021 [**Re: Muhammad Ayoub vs. Ali Abid Ballade**), wherein he also moved an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979, seeking directions against opponent/respondent to deposit monthly rent @ Rs.60,000/- before the Rent Controller till final adjudication of rent proceedings. The Rent Controller after hearing the parties declined the said interim relief vide Order dated 20.08.2021, which was challenged by the petitioner before the Appellate Court through FRA No.35 of 2021, the said appeal was also dismissed vide impugned Judgment dated 04.10.2021. An excerpt of the appellate order is reproduced as under:-

9. Admittedly, the instant first rent appeal is directed against an interim order and if it being so, it is against the spirit of Section 21(1) SRPO, 1979. Having regard to settled proposition of law, learned counsel for appellant was required to be heard on this particular point also who simply argued that ground of pendency of suit filed by respondent for specific performance of contract, cannot be made basis to withheld his request as such the interim order passed and impugned through instant appeal can be challenged pending eviction application. His like argument, to my humble opinion, has no substance in it because not only it is against the spirit of Section 21(1) SRPO 1979 but it is also against the dictum laid down by our own Honourable High Court of Sindh in the case law reported as 1998 CLC 1987, in which it has been held that:-

“S.21---Constitution of Pakistan (1973), Art.199---
Interlocutory order--- Constituitn petition against such
order----Maintainability---Trail court passed interim order
on an interlocutory application filed by the tenant. No
appeal having been provided against interim order under
S.21, Sindh Rented Premises Ordinance, 1979, High Court

dismissed the petition assailing such order with observations that if Constitutional petition was to be entertained at such stage the very purpose of S.21 of the Ordinance would be defeated---Tenant would have opportunity to file appeal if the final order went against him and then he could raise this ground too”

10. In two other case laws reported as 2016 MLD 806 (Sindh) and 1983 CLC 998 (Karachi) also same view is taken. Thus the arguments advanced by learned counsel for appellant have no force in them and the case laws (supra) relied upon by him, to my humble opinion, are on different footings to that of the facts and circumstances of present case. Having so, instant appeal being directed against an interim order is not maintainable and impugned order at this stage does not call for interference. However, the appellant is at liberty to question the same after final decision of the eviction application. The point under discussion is answered in negative.

POINT NO.II

11. In the light of the discussion held in the preceding point, the instant appeal is dismissed and the impugned order shall hold the field. The parties to bear their own costs. Let true copy of judgment be transmitted to learned trial Court along with R&Ps for information.

2. Prima-facie, the issue raised in the application Section 16(1) of Sindh Rented Premises Ordinance, 1979, and the counter version recorded by the respondent need to be dealt with by the Rent Controller, for the reason that parties are at loggerheads over the subject premises; and their claim and counterclaim needs to be looked into by the trial court, keeping in view the tentative assessment of documentary evidence brought on record.

3. Both the parties after arguing the matter at some length, agreed for disposal of the captioned petition on the premise that opponent / respondent shall deposit the monthly rent before the learned Rent Controller within one week as directed and then the learned Rent Controller shall decide the matter within one month from today in accordance with law.

4. In view of consent of the parties, this petition stands disposed of in the above terms. Consequently, opponent / respondent is directed to deposit monthly rent before learned Rent Controller till final adjudication of rent proceedings and learned Rent Controller shall expedite conclusion of the proceedings within one month after receipt of this Order.

JUDGE