

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

C.P. No. S 498 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

24.11.2023.

FOR ORDERS ON M.A. 1818/2023.
FOR ORDERS ON OFFICE OBJECTION.
FOR ORDERS ON M.A. 1819/2023.
FOR ORDERS ON M.A. 1820/2023.
FOR HEARING OF MAIN CASE.

Mr. Rashid Nizam Advocate for the Petitioner.

1. Urgency Granted
3. Exemption allowed subject to all just exceptions.

2,4&5. The Petitioner has assailed two interlocutory orders; dated 25.10.2023 respectively. The first order determines an application under Section 16(1) of the Sindh Rented Premises Ordinance 1979 and the second order determines an application for framing of preliminary issue.

At the very outset learned counsel confronted as to how this petition can be entertained in respect of interlocutory orders rendered in rent proceedings. He submits that since there is no provision of appeal in the statute, therefore, this petition is maintainable.

Heard and perused. It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided¹, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. No such infirmity could be identified before this court in the orders impugned.

It is apparent that no final judgment has been passed and no grievance, incapable of being remedied post final judgment, has been demonstrated before this Court. The superior courts have consistently maintained that writ jurisdiction ought not to be ordinarily invoked against interim or interlocutory orders. If the intention of the legislature is to preclude the possibility of an appeal then entertaining the matter in writ could amount to defeating the manifest intent of the legislature².

If a statute does not provide any right of appeal against an interim order, then the law ought not to be circumvented by resort to writ jurisdiction. An aggrieved person party may wait till final judgment and then approach the appellate forum for examining the validity of the said order³. It is trite law that interlocutory orders may not be ordinarily assailed to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice,

¹ Per *Ijaz ul Ahsan J in Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

² *Dr. Aqueel Waris vs. Ibrahim Aqueel Waris* reported as *2020 CLC 131*.

³ *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

curtailing remedies available under the law; even reducing the right to Appeal⁴. The law⁵ requires that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. Unmerited interference could make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which *prima facie* is not the mandate of the Constitution⁶.

This Court has recently disapproved the invocation of writ jurisdiction to unjustifiably assail interlocutory / tentative orders per Section 16(1) of Sindh Rented Premises Ordinance, 1979, in the *Imran Khalid case*⁷, and observed as follows:

“Through this Petition, the Petitioner has impugned order dated 09.03.2023 passed by the Rent Controller, Malir Karachi, whereby, the application filed by Respondent No. 1 under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (“Ordinance”) has been allowed. On 18.5.2023, an order to maintain status quo was obtained by the Petitioner.

Today, at the very outset, the Petitioner’s Counsel has been confronted as to maintainability of this Petition against an interlocutory / tentative rent order under Section 16(1) Ordinance and in response, he, by placing reliance on certain reported cases⁸ has contended that the relationship of landlord and tenant was denied; hence, no such order could have been passed.

I have heard the Petitioner’s Counsel on merits as well the very maintainability of this Petition and have perused the record. Insofar as the order in question is concerned, it cannot be disputed that such order under Section 16(1) of the Ordinance can be passed by the Rent Controller by making a tentative assessment of the proceedings before him. Per settled law, while passing a tentative rent order, the Rent Controller was not required to hold a full-fledged enquiry and can always pass such an order after taking into consideration the versions of the parties⁹. In the instant matter, the learned Rent Controller has come to the conclusion that there is an agreement between the parties, whereas, periodical payment of rent and utility bills has been made duly supported from perusal of the Bank Statement which *prima facie* establishes a relationship of landlord and tenant. In view of such position, a mere assertion of the Petitioner to the contrary, by denying relationship on one pretext or the other; including that the property in question was purchased by the uncle of the Petitioner from Petitioner No. 1 who has then put him into possession is immaterial as time and again, it has been held by this Court as well as the Hon’ble Supreme Court that the order passed under Section 16(1) has to be complied with, whereas, in case of failure, the right of defence can be struck off under Section 16(2) *ibid*. Mere institution of civil suits, *per se*, would not be sufficient to refuse compliance of an order of the Rent Controller under section 16(1) of the Ordinance pending final determination¹⁰. No exception to such settled principle of law has been made out.

It may also be noted that the impugned order only requires deposit of the rent in question with the Court and cannot be paid to the Respondent until the case is decided. In such a situation the Petitioner was thus, required to have complied with

⁴ *Benazir Bhutto vs. The State* reported as 1999 SCMR 1447; *Mushtaq Hussain vs. The State* reported as 1991 SCMR 2136.

⁵ Per *Faqir Muhammad Khokhar J. in Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

⁶ *Muhammad Hussain Munir vs. Sikandar* reported as PLD 1974 SC 139.

⁷ Per *Muhammad Junaid Ghaffar J in Imran Khalid vs. Munazza Rizvi* – Judgment dated 16.10.2023 in CP S 341 of 2023.

⁸ *Qudratullah Raisani and another Vs. Abdullah (2023 M L D 121)* and *Ghulam Rasool Vs. Mian Khurshid Ahmed (2000 S C M R 632)*.

⁹ *Chaudhry Rahimuddin v Chaudhry Jalaluddin* (PLD 1991 SC 484)

¹⁰ *Muhammad Iqbal Haider Vs. Vth Rent Controller Central (2009 S C M R 1396)* reiterated in *Muhammad Iqbal Haider v 1st ADJ, Karachi Central* (PLD 2018 SC 35); *Nazir Ahmed v. Mst. Sardar Bibi* (1989 SCMR 913); *Mst. Bor Bibi v. Abdul Qadir* (1996 SCMR 87), *Waheedullah v. Mst. Rehana Nasim* (2004 SCMR 1568), *Haji Jumma Khan v. Haji Zarin Khan* (PLD 1999 SC 1101), *Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan* (PLD 1986 Karachi 74), *Habib Khan v. Haji Haroon-ur- Rasheed* (1989 CLC 783); *Gohar Ali Shah v. Shahzada Alam* (2000 MLD 82), *Iqbal and others v. Mst. Rabia Bibi and another* (PLD 1991 SC 242) and *Syed Imran Ahmed v. Bilal and another* (PLD 2009 SC 546)

the tentative rent order which could be adjusted and substituted by a final order on the determination of issues, whereas, any avoidance and breach of the order in question, entails penalty of striking off his defence and that being the statutory penalty, could not be avoided unless good reasons were given and sustained¹¹.

Lastly, even otherwise, practice of challenging interlocutory orders of the Rent Controller has been deprecated time and again and it has been held that Constitutional petitions are not maintainable notwithstanding that no remedy of appeal has been provided against such orders as this would not *ipso facto* make such petitions competent¹². It is also settled that Constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision¹³.

In view of the above, no case for indulgence is made out, whereas, even otherwise, this Petition which impugns an interlocutory order, does not appear to be maintainable and therefore, the same is hereby dismissed with pending applications. The learned Rent controller shall proceed further in accordance with law.”

The judgment in the *Imran Khalid case* is squarely applicable in the present matter, therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed *in limine* with pending applications.

Judge

A.

¹¹ Dr Arshad Kamal Khan v Mrs. Saeeda Khalid Kamal Khan (1993 SCMR 1360)

¹² Seema Begum v Muhammad Ishaque (PLD 2009 SC 45)

¹³ President All Pakistan Women Association v Muhammad Akbar Awan (2020 SCMR 260)