

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-897 of 2022.

Date: Order with signature(s) of the Judge(s)

Hg/Priority.

1. For Hearing of MA No.6173/2022.
2. For Hearing of Main Case.

18th May, 2023.

Mr. Zahid F. Ebrahim advocate for the Petitioner.
Mr. Waleed Khanzada advocate for Respondent No.1.

Salahuddin Panhwar, J:- Learned counsel for Respondent No.1 files counter affidavit to the petition, which is taken on record and copy whereof provided to learned counsel for the Petitioner.

2. Heard learned counsel for respective parties and perused record. Case of the Petitioner is that he preferred application under Section 16(1) of SRPO 1979 during pendency of Rent Case No.579/201 that application was decided by order dated 04.03.2022 whereby Respondents were directed to pay 50% amount. Being relevant last para is reproduced herewith:

***“It will be seen that the applicants have claimed the arrears of the rent w.e.f. 09.07.2018 till 28.05.2021 amounting to Rs.5,14,99,493.00/- and the 50% of the said arrears will be Rs.2,57,49,746/- which the opponent is directed to deposit in this court within 45 days of this order. the opponent is directed to pay the future/current rent of the demised premises at the 50% of rate of rent which comes to Rs.10,98,075/- per month from the month of March 2022 on or before every 10th day of English Calendar month till final disposal of the rent case.*”**

The arrears of the rent and future rent determined and ordered to be paid by the opponent are tentative in nature in order to regulate the proceedings of the rent case and the same is 50% of full rate of the rent as provided under para No. 6 of the application in hands while the recovery of remaining 50% of rent is deferred for he prescribed period as provided under the Section 2(f), (h) & (i) and Section

3(2)(d) and sub Section 3 & 4 of the Section 3 of Sindh Covid-19 Emergency Relief Act, 2020'.

3. Accordingly, Respondent challenged that order in writ petition bearing No. S-470/2022, that was decided on 30.05.2022 whereby writ petition was dismissed meaning thereby order passed on application under Section 16(1) of SRPO 1979 has attained finality. Thereafter due to non-compliance of 16(1) order, order passed by Rent Controller on application under Section 16(2) of SRPO 1979 whereby defence of Respondent was struck off with direction to vacate the premises within 30 days. Accordingly, Respondent challenged the same through impugned First Rent Appeal No. 185/2022. While deciding FRA learned appellate court in Para-7 remand the case, which is re-produced herewith:

"7. The record shows that the respondents filed rent case on the ground of default in payment of rent under section 15 of Sindh Premises Ordinance, 1979. In Pura-10 of the eviction application the respondents alleged that a sum of Rs.20,483,500/- was received till 20.04.2021 on account of rent and Rs.36,293,000/- was still outstanding. The record further shows that in in application under section 16(1) of Sindh Rented Premises Ordinance, 1979, the respondents mentioned a different amount of rent received and allegedly outstanding. In Para 12 of the said application the respondents claimed that they had received a sum of Rs.29,483,507/- as rent whereas Rs.51,499,493/- was allegedly outstanding. The learned counsel for the respondents during arguments contended that the respondents were not aware about the payment of rent. His contention reveals that the Respondents calculated the arrears of rent on presumption. The Applicant has also submitted various cheques and contended that the payment mentioned in the cheque were not reflected in the schedule of payment of rent mentioned in the eviction application or in the application under section 16(1) of Sindh Rented Premises Ordinance 1979. From perusal of these cheques it appears that payment in favor of Sana Hussain through cheque No. 1799866506 amounting to Rs.1,250,000/- is not reflecting in the schedule of payment mentioned in the application under section 16(1) of Sindh Rented Premises Ordinance 1979. Similarly, the payment in favor of Qurat-ul-Ain through cheque No1799866503 dated 15.04.2021 amounting to Rs.1,250,000/- is also reflecting in the schedule of payment contained in the application under section 16(1) of Sindh Rented Premises Ordinance, 1979. Hence; the payment of rent is disputed and it is the own

averment of respondents/landlords that they are not aware of payment of rent. In such circumstances; the matter requires evidence; therefore it would be in the interest of justice that the matter should be remanded to the learned Rent Controller for decision afresh on all legal and factual issues involved in the case.

The authorities relied upon by the learned counsel for the respondents are different from the facts and circumstances of the present case

Resultantly the impugned order dated 29.07.2022 is set-aside. The instant FRA is allowed accordingly. All the pending application become infructuous and dismissed accordingly”.

4. Leaned counsel for the Petitioner contends that appellate court was not competent to disturb the findings of 16(1) order passed by the Rent Controller as the same attained its finality by the order of high court. Whereas, learned counsel for Respondent contends that 16(1) order was interim order and eviction application was not decided on merits. Even order passed on application under Section 16(2) of SRPO 1979 was not in accordance with law as amount are required to be paid by the Respondent were not calculated by the Rent Controller and summarily allowed the application whereby Respondent was knocked out to contest the case on merits and eviction application was allowed.

5. While discussing the arguments of learned counsel for respective parties and minutely examined Para-7 wherein learned appellate court has referred to two cheques dated 15.04.2021 with regard to payment of by tenant [Respondent] as well as learned counsel for Respondent has given schedule of payment which reflects that payment made from September 2017 to 2021. Needless to mention that order with regard to 16(1) whereby directions were given that stipulated amount to be paid / deposited within time, that was challenged before this court and said petition was dismissed. Admittedly, payment reflecting in impugned order and in chart of counter affidavit are showing that majority of payments are before the order passed on 16(1) application as well as appellate court has referred to two cheques which are also before the order passed on 16(1) application. When there is no compliance of 16(1) order, Rent Controller was empowered to invoke provision under Section 16(2) of

SRPO 1979, hence, appellate court wrongly mentioned and referred the cheques for payment which were before the order passed on 16(1) hence, case was remanded back which is unwarranted under the law. In order to highlight importance of the point, it would be expedient to reproduce Section 16(2), of the *Sindh Rented Premises Ordinance, 1979*, as follows:-

"(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under sub-section (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".

6. In Case of ***Syed Asghar Hussain v. Muhammad Owais and others (2018 SCMR 1720)***, it has been held by the Honourable Supreme Court of Pakistan that *"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"*. Thus, the respondent committed willful default in payment of rent and also not complied with the tentative rent Order passed by the Rent Controller.

7. Accordingly, impugned judgment passed by the Appellate Court is hereby set-aside and order passed by the Rent Controller on application under Section 16(2), of the *Sindh Rented Premises Ordinance, 1979* being well-reasoned and in consonance with law is hereby maintained.

Petition is allowed.

JUDGE