

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C. P. No. S -15 of 2021

Date	Order with signature of Judge
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Petitioners: **Iftikhar Hussain and another**
through Mr. Sarfraz A. Akhund,
Advocate

Respondents No.1 & 2: **Mst. Zahida Parveen and**
another through Mr. Faisal
Naeem, Advocate

Date of hearing: 28.08.2023

Date of Order: 18.09.2023

ORDER

ARBAB ALI HAKRO, J: Petitioners (*tenants*) have impugned the Order dated 23.10.2020, passed by the Appellate Court, whereby the Order passed by the Rent Controller dated 18.9.2019 in Rent Case No.30 of 2016 striking of defence of the Petitioner under Section 16(2) of the Sindh Rented Premises Ordinance, 1979 (**'SRPO, 1979'**) was maintained.

2. Facts leading to file instant petition are that Respondent No.1 was the owner of property bearing C.S. No.D-1324 measuring 31-2 sq. yards to the extent of 92.08 and C.S No.D-1322/A, measuring 39-6 sq. yards situated at Muqam Road, Sukkur, consisting a shop on the ground floor and a residential portion on the upper floor, which was hired by the petitioners under tenancy agreement since 2006. Subsequently, Respondent No.1 agreed to sell out the said property to petitioner No.1 through an agreement to sell dated 03.05.2016; thus, the tenancy came to an end. However, later on, deviating from a contract, Respondents No.1 & 2 filed Rent Application No.30/2016 against the petitioners, wherein

while filing a written statement, the *relationship* of landlord and tenant from the agreement to sell was denied. After that, Respondents No.1 & 2 proceeded with the application under Order 16(1) of SRPO, 1979, which was dismissed vide Order dated 10.04.2017, which was assailed by Respondents No.1 & 2 through Constitution Petition No.S-902/2017, which was allowed vide Order dated 20.07.2018, with direction to the Petitioners to deposit the arrears of rent within 30 days; besides ordered to deposit future monthly rent regularly till final disposal of the rent application. The Petitioners preferred a Civil Petition for leave to appeal before the Hon'ble Apex Court, which was dismissed, thereby maintaining the Order of this Court. After that, in order to avoid default in the payment of arrears of rent, petitioner No.1 approached the Rent Controller with the request to calculate the amount to be deposited; the Nazir of the Rent Controller calculated the same as Rs.8,64,000/-, which was accordingly deposited on 27.08.2018, so also future rent from 01.09.2018 onwards; however in-spite of depositing rent, Respondents No.1 & 2 filed an application under Section 16(2) of SRPO, 1979 on the ground of late payment of arrears of rent for seven days, against which objections were filed. However, such application was allowed vide Order dated 18.09.2019, and accordingly, an Order of eviction of the Petitioners was also passed. Subsequently, the petitioners filed an appeal against the Order of the rent controller, but the same was met in dismissal, hence this petition.

3. At the very outset, learned Counsel representing the Petitioners submits that the Courts below failed to consider that the Petitioners deposited the rent amount with the Nazir, which was accepted and late payment thereto was due to circumstances beyond his control. He further argued that

19.8.2018 was a holiday, i.e Sunday; therefore, he appeared before the Rent Controller on 20.8.2018 and moved an application for a grant of time to deposit the rent arrears due to financial crisis. However, the Rent Controller refused the same; therefore, the Petitioners filed the same application before this Court. He also contended that the holidays were declared by the Government on account of Eid-ul-Adha, w.e.f 21.8.2018 to 23.8.2018 and soon after holidays viz. 26.8.2018, the Petitioners arranged the amount and deposited it on 27.8.2018. However, such a fact has not been considered by both the Courts below. Learned counsel for the petitioners also argued that both the Courts below failed to consider that there was no statutory limitation for deposit of arrears of rent, but only the Order of this Court whereby thirty (30) days was given to the Petitioners for depositing rent. It is urged that the petitioners had fully explained the reasons for a delay in payment of arrears of rent in the application under Section 16(2) of SRPO, 1979, but the same was not considered by the Courts below. He has also contended that Respondent No.1 & 2 withdrew the amount from the Rent Controller. It is contended that after the insertion of Article 10-A of the Constitution, it is a fundamental right of the Petitioners to have a fair trial. However, in this matter, the Petitioners have been technically knocked out. In the end, Counsel for the Petitioners submits that the impugned orders are neither based on facts nor law, hence the same being unsustainable, liable to be set aside.

4. Conversely, learned Counsel for Respondents No.1 and 2 contends that Respondents No.1 & 2, being owners/landlords of aforesaid property, filed an eviction application under Section 15 of SRPO, 1979 against the Petitioners on the ground of default in payment of rent and

their requirement for personal bonafide use. It is next contended that along with said eviction application, another application under Section 16(1) of SRPO, 1979 was also filed for depositing entire arrears of rent and future rent at the rate of Rs.32000/- per month and against said application, the petitioners/tenants filed their written statements and counter affidavit, admitting the rate of rent of the said property @ Rs.32000/- per month, so also relationship of a tenant and landlord. He further argued that this Court was also directed to the Petitioners to deposit the entire arrears of rent from April 2016 at the rate of Rs.32000/- per month, which comes to Rs.8,96,000/- on or before 19.08.2018, but the Petitioner after the expiry of the stipulated period had deposited an amount of Rs.8,64,000/- towards arrears of rent, hence such delay and default being made deliberately without any plausible reason cannot be condoned. Lastly, he argued that both the Courts below have rightly passed the impugned orders by evicting the Petitioners from the tenement on the ground of default in payment of arrears of rent and future monthly rent as ordered by this Court in earlier proceedings. Hence, this petition, devoid of merit, may be dismissed accordingly.

5. I have given anxious thought to the abovementioned arguments of the parties and have gone through the record, proceedings, and impugned orders.

6. It is a matter of record that respondents No.1 & 2 (*landlords*), filed an application under Section 16(1) of SRPO, 1979, seeking direction against the Petitioners to deposit arrears of rent before the Rent Controller, which was dismissed vide Order dated 10.4.2017. The said Order was challenged by respondent No.1 & 2 before this Court by filing C.P No.S-902 of 2017, which was allowed vide Judgment

dated 20.7.2018. It would be conducive to reproduce the operative part of the above Judgment as under: -

"In view of the above discussion, both the impugned orders are hereby set aside. The respondents in both these petitions are directed to deposit arrears of rent within thirty (30) days and to deposit future monthly rent regularly till the final disposal of the rent applications filed by the petitioners. The amounts deposited by the respondents with the learned Rent Controller shall be invested in some profit bearing Government scheme and shall be paid / disbursed / released along with profit to the successful party. These petitions are allowed in the above terms with no order as to costs."

7. The Petitioners challenged the above Judgment of this Court before the Hon'ble Apex Court in Civil Petition No.923-K of 2018, but the same was dismissed vide Order dated 28.8.2018. Thus, above Judgment of this Court attained the finality. According to the Judgment of this Court referred to above, on 20.7.2018, the Petitioners were directed to deposit rent arrears within (30) days alongside future rent regularly until the final disposal of the rent application. Meaning thereby the Petitioners were required to deposit rent arrears on or before 19.8.2018. However, as per the Order of Rent Controller passed on application under Section 16(2) of SRPO, 1979 and as per the report of Nazir submitted by the Petitioners along with the statement shows that the Petitioners deposited arrears of rent amounting to Rs.864,000/- on 27.8.2018, after a delay of about 08 (*eight*) days. The contention of learned Counsel for the Petitioners is that 19.8.2018 was a Public holiday, i.e Sunday; therefore, he appeared before the Rent Controller on 20.8.2018 and moved an application for a grant of time to deposit rent arrears due to financial crisis. However, the Rent Controller refused the same, and then he filed the same application before this Court. His further contention is that from 21.8.2018 to 23.8.2018 were declared a public holiday by the Government

on account of Eid-ul-Adha, and soon after Eid on 26.8.2018, the Petitioners arranged the amount and deposited on 27.8.2018. It appears that the Petitioners have deposited the arrears of rent after a delay of about 08(eight) days, for which learned Counsel for the Petitioners had tried to explain taking advantage of the Eid holidays for failure to deposit the rent. Be that as it may, if such excuse be accepted, the petitioners still had two days, viz: 24.8.2018 and 25.8.2018 (Friday and Saturday), for compliance of order, but no plausible explanation was provided. I, therefore, find that the Petitioners had violated the directions of this Court. Hence, there is no defect in the Order passed subsequently under Section 16(2) of the SPRO, 1979, whereby the Rent Controller struck off the defence of the Petitioners. Later, in Rent Appeal No.13 of 2019, the Appellate Court upheld the Order of the Rent Controller. In the case of **Safeer Travels (Pvt.) Ltd. v. Muhammad Khalid Shafi (PLD 2007 SC 504)**, the Hon'ble Apex Court has held as under:-

"In this case the tenant has committed default by not depositing both the arrears and the rent for the month of February before the 5th as directed by the Rent Controller but instead deposited it on the 6th as the 4th was a public holiday and, which could have been deposited on the 5th, the next day of the due date. The learned High Court, while interpreting the word default, was of the view that the legislature has intentionally employed the word 'default' instead of 'not complied with' the Order of the Rent Controller as to give an edge to the tenant that if the non-compliance of the Order has occurred on account of unavoidable circumstances, which is beyond his control for example while he on his way for deposit of the rent met an accident. However, such a circumstance was not found in the case, and the Order of striking off defence passed by the Rent Controller was upheld.

This Court, on several occasions, has held that the High Court, in its constitutional jurisdiction, can interfere with the Judgment and Order of the appellate Court if the view taken by the appellate Court was not only contrary to the established principles of law but also contrary to evidence on record or had flouted the provisions of statutes or failed to follow the law relating thereto as held in the case of Lal Din Masih v. Mst. Sakina Jan and another 1985 SCLR 1972."

(emphasis added)

In the case **M.H Mussadaq v. Muhammad Zafar Iqbal and another) it has been (2004 SCMR 1453)**, it has been held by the Hon'ble Apex Court as under: -

"It has been established on record that the Petitioner has not complied with the tentative rent order in letter and spirit but defaulted in its payment. As per tentative rent order, he was directed to deposit the rent for the months of August and September, 2002 within seven days positively which was admittedly deposited on 25-9-2002 instead of 23-9-2002 thus a clear default of three days occurred. So far the rent of the month of October, 2002, which was to be deposited before 5th October, 2002 was deposited on 15-10-2002 for which delay no justification of any sort was shown. Moreover, the Petitioner has not been able to bring on record to show that the default was unavoidable, willful and beyond his control."

8. So far, the contention of learned Counsel representing the Petitioners is that respondent No.1 & 2 withdrew the rent amount deposited by the Petitioners. Undisputedly, the Petitioners deposited arrears of rent in terms Judgment dated 20.7.2018 *supra*, whereby the successful party was entitled to withdraw the said amount along with profit. Admittedly, respondent No.1 & 2 had applied to the Rent Controller on 04.11.2019, when the eviction application had already been decided vide Order dated 18.9.2019. Therefore, such contention of learned Counsel for the Petitioners has no force.

9. Notwithstanding, the controversy of delay in the deposit of rent was purely a question of fact that could be reviewed by an Appellate Court. However, it could not be interfered with by the High Court in constitutional jurisdiction unless and until decision given by the appellate Court in conflicts with the settled principles of law on the subject or contravention to evidence on record or unable to comprehend the law relating thereto as held in the case **Safeer Travels (Pvt.) Ltd** *ibid*. Unlike the appellate forum provided under the relevant statute, the High Court, in the constitutional jurisdiction, was neither competent to exercise re-appraising evidence to come

to its own conclusion nor findings of facts drawn by courts below could be substituted.

10. Needless to say, the jurisdiction of this Court to interfere in matters of the kind involved in the present case is a very limited one and confined only to ascertain whether the Courts below have not ignored the provisions of the relevant statute or have failed to follow the law relating thereto as laid down by the Superior Court. Hence, this Court cannot interfere in matters where the two Courts below have given concurrent findings against the Petitioners.

11. In view of the above discussion and exposition of law, the Petitioner did not comply with the tentative rent order. Therefore, the Rent Controller had no option but to strike off their defence and to order their eviction. The impugned orders are in accord with the law, and the Petitioners have not been able to point out any illegality or infirmity in the concurrent findings of the Courts below calling for any interference by this Court under its constitutional jurisdiction. In the above circumstances, the petition, being misconceived and not maintainable, is hereby dismissed.

JUDGE