

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**C.P No. S- 519 of 2023**

[Ali Abid v. Muhammad Ayoub and others]

Petitioner : through Bashir Ahmed  
Almani, Advocate.

Respondent-1 : through Sikandar Ali Shah, Advocate.

Date of hearing : 29.04.2024

## **ORDER**

**YOUSUF ALI SAYEED, J.**- The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Judgment rendered by the Model Civil Appellate Court-II/VIth Additional District Judge-Hyderabad on 04.11.2023, dismissing 1<sup>st</sup>Rent Appeal No. 37 of 2023 filed by him against the Order made by the VIIIth Senior Civil Judge/Rent Controller Hyderabad on 08.07.2023, allowing Rent Application No. 172 of 2021 filed by the Respondent No.1 under Section 16(2) of the Sindh Rented Premises Ordinance (the “**SRPO**”).

2. The facts and circumstances underpinning the proceedings and giving rise to the aforementioned Order have been recorded in the impugned Judgment of the Appellate Court, with the relevant excerpt thereof reading as follows:

“10. The perusal of record shows that the learned Rent Controller passed an order on the application under section 16(1) SRPO 1979, whereby dismissed the same application vide order dated 20.08.2021. The applicant being aggrieved & dissatisfied with that order preferred a First Rent Appeal through FRA No.35 of 2021 against the order dated: 20.08.2021 which was also dismissed. The record further transpires that the applicant challenged both the impugned orders by filing CP No. S-585 of 2021 before Honorable High Court of Sindh Circuit Court Hyderabad which was disposed of vide order 28.04.2023 whereby the opponent was directed to pay monthly rent before learned Rent Controller

within one week. For convenience the operative paragraphs of the order passed by Honourable High Court of Sindh Circuit Court, Hyderabad are reproduced as under;

"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"

11. Further perusal of record clearly transpires that the tentative rent order was passed on 28.04.2023 by the Honorable High Court of Sindh Circuit Court Hyderabad and the report called from Nazir of the Court dated: 08.07.2023 shows that the opponent had not deposited the rent amount in due compliance of order dated: 28.04.2023, which shows that opponent/appellant did not comply the directions. Therefore, the learned rent controller had rightly relied upon the case laws and also rightly held that non submission of a single penny towards payment of rent after clear directions in the order passed by the Honourable High Court of Sindh Circuit Court, Hyderabad is a negative element.

12. In this regard I find no illegality or irregularity in the observations made in the order passed by the learned Rent Controller, therefore, such cannot be disturbed hence required no interference of this court. The point under discussion is answered in "Negative".

3. On query posed to learned counsel for the Petitioner as to whether the rent had been deposited by way of compliance, he conceded that the same had not been done, but sought to argue that the impugned Order of the Rent Controller and Judgment of the ADJ were bad in law as there was no underlying relationship of landlord and tenant between the Petitioner and Respondent No.1 in respect of the subject premises in as much as his wife had purchased the same through a Sale Agreement.

4. Conversely, learned counsel for the Respondent No.1 submitted that said Respondent had acquired the premises through a registered Sale Deed and thereafter had served a notice under Section 18 of the SRPO on the Petitioner, who had nonetheless failed to tender payment of rent, necessitating filing of the Rent Case, with the course of events narrated in the Judgment dated 04.11.2023 having ensued during the course of that proceeding.
5. Having examined considered the submissions made by learned counsel in light of the record, it is apparent that the principal ground raised in the Memo of Petition and the main thrust of the Petitioner's case during the course of arguments gravitates around the denial on the part of the Petitioner as to the relationship of landlord and tenant between him and the Respondent No.1, and the contention that the fora below had failed to appreciate that, in the face of such a denial, a specific issue was required to be framed in that regard after which evidence was required to be produced by the Respondent No.1 to conclusively establish the relationship.
6. Such a contention is patently misconceived in view of the fact that the Petitioner was bound to comply with the Order made by this Court on 28.04.2023 in C.P. No. S-585 of 2021, but willfully failed to do so, with the Order made by the Rent Controller on 08.07.2023 then logically following as a consequence. That assessment is fortified by the judgment of the Supreme Court in the case reported as Muhammad Iqbal Haider v. 1<sup>st</sup> ADJ, Karachi Central and others PLD 2018 SC 35, where it was held that it was incumbent on a party to comply with a tentative rent order that has attained finality. The defense taken in the matter that a suit for specific performance of a sale agreement was pending along with another suit for cancellation of the sale deed in favour of the landlord was also repelled.

7. Under the given circumstances, it is apparent that there is no illegality or irregularity in the approach of the fora below that warrants correction in exercise of the writ jurisdiction of this Court.
  
8. In view of the foregoing, the Petition is dismissed along with the pending miscellaneous application, with no order as to costs. The office is directed to return the R&P of the Rent Case to the concerned Court.

Karar\_Hussain/PS\*

JUDGE