

# IN THE HIGH COURT OF SINDH, KARACHI

CP No. S-1168 of 2019

*[Syed Iftikhar Haider Rizvi vs. VIth Additional District and Sessions Judge,  
Karachi Central and others]*

Date of hearing : 24.01.2024, 12.02.2024,  
and 27.02.2024

**Petitioner**

*[Syed Iftikhar Haider Rizvi]* : Through Mr. Sami Ahsan,  
Advocate.

**Respondents No.1 and 2**

*[VIth Additional District and  
Sessions Judge, Karachi  
Central and VIIth Rent  
Controller/Senior Civil Judge,  
Karachi Central.*

: Nemo

**Respondent No.3**

*[Izharuddin through Legal Heirs;*

*3(a) Mst. Rehana Begum*

: Through M/s. Irfan Ahmed  
Usmani and Saira Erum  
Khan, Advocates.

*3(b) Mst. Shahnaz Parveen*

*3(c) Mst. Farzana Parveen*

*3(d) Mst. Kausar Parveen*

*3(e) Mst. Rukhsana parveen*

*3(f) Mst. Farhana Parveen*

*3(g) Mst. Shabana Begum*

*3(h) Mst. Rizvana Parveen*

*3(i) Mohammad Iqbal*

: Nemo

## **DECISION**

**Muhammad Faisal Kamal Alam, J:** This Constitutional Petition has called in question the three Decisions passed by the learned Rent Controller [dated 22.02.2019], the Appellate Court {of 23.10.2019} and in the Execution Proceeding, vis-à-vis striking off defence of the Petitioner for non-compliance of the earlier Order dated 13.12.2018, passed under Section 16(1) of the Sindh Rented Premises Ordinance (SRPO), 1979.

2. The stance of the Petitioner's Counsel is that the rent has been regularly deposited in the MRC Nos.465 and 466 of 2018, before the IXth learned Rent Controller, Karachi Central so also in the Rent Case No.289 of 2018 and the impugned Orders have been passed by overlooking the Record, which is an illegality, ought to be corrected in this Constitutional Jurisdiction through a Writ of Certiorari; that the first Order [*ibid*] under Section 16(1) was passed in a slip shop manner, where the fact about the earlier rent already deposited was neither considered nor adjustment was allowed in determining the amount of Rs.26,000/- (*rupees twenty six thousand only*) to be paid as Tentative Rent.

3. Learned counsel for the Petitioner cited the following Case Law to support his arguments\_

- i) **1987 SCMR 1013**  
*[Major (Rtd.) A.S.K. Samad vs. Lt.-Col. (Rtd.) A. Hussain and another]*
- ii) **1998 SCMR 2085**  
*[Dr. Aftab Ahmed Khan vs. Mst. Zaibun Nisa]*
- iii) **1988 SCMR 970**  
*[Abdullah Ghanghro and another vs. Mst. Tahira Begum and another]-Abdullah Ghanghro and Mst. Tahira Begum Cases.*
- vi) **PLD 1991 Supreme Court 711**  
*[Noor Muhammad and another vs. Mehdi]*
- v) **2022 YLR 2255 [Sindh]**  
*[Messrs Adamjee Impex through Hamza Anwar Lakhani vs. Shaikh Muhammad Khalid and 4 others]*
- vi) **2001 MLD 27 [Karachi]**  
*[Gul Muhammad through Legal Heirs vs. Kazim Imam Jan through Attorney and another]*
- vii) **1991 SCMR 1031**  
*[Mst. Fatima Bibi vs. Jan Muhammad]*

4. On the other hand, learned counsel for the Respondents (Landlord) has supported all the impugned Orders; *inter alia*, argued that there is violation of earlier Tentative Rent Order passed under the above provision,

hence the consequence of the striking off defence, as mentioned in Subsection-2 of Section 16 of the Sindh Rented Premises Ordinance, 1979, has to follow.

5. The Case Law relied upon by the learned counsel of the Respondent is as follows\_

- i) **2001 SCRM 130**  
*[Ashiq Ali and another vs. Mehar Elahi and 13 others]*-**Ashiq Ali Case.**
- ii) **PLD 2018 SC 35**  
*[Muhammad Iqbal Haider vs. Ist ADJ, Karachi Central]*-**Iqbal Haider Case.**
- iii) **SBLR 2017 Sindh 148**  
*[Niaz Hussain Shah vs. Mrs. Shamim Akhtar and others]*
- iv) **PLD 1995 Karachi 31**  
*[Muhammad Umer Khan vs. Haji Muhammad Sultan Siddiqui and others]*
- v) **2018 CLC Note 105**  
*[Syed Asghar Hussain vs. Muhammad Owais and 2 others]*

6. Arguments heard and record perused.

7. Précis of the Case Law cited by the Petitioner's Counsel is, that if a Tenant is depositing the rent in a Miscellaneous Rent Case, then this cannot be termed as violation of a Tentative Rent Order; if the Tentative Rent Order itself is vague, uncertain, did not quantify the amounts lying deposited in miscellaneous or other proceedings, then, unless an element of contumaciousness is patent on the record, should not, ordinarily, be made the foundation for striking off the defence of a Tenant in terms of Section 16 [2] of the Sindh Rented Premises Ordinance; depositing of rent in a Miscellaneous Rent Case instead of the Rent Case in which the Tentative Rent Order is passed, can be termed as a technical default and not a willful, justifying the eviction from the demised premises. Although, normally a Court would not be inclined to disturb the existing state of affairs when the

person in possession has a *prima facie* claim to retain it, but, Possession of the tenant was restored where a patent fraud was played by the purported subsequent owner in obtaining the possession couple with the fact that the relationship of Tenant and Landlord was in dispute; Section 144 of the Civil Procedure Code is applicable to Rent proceeding, *inter alia*, where both Parties are claiming ownership in respect of a Tenement, regarding which revisional proceeding is also *sub judice*.

8. Summary of the Case Law relied upon by the Respondents' Counsel is, when a Tentative Rent Order is passed under Section 16 [1] of the SRPO, directing to deposit the arrears and future rent, non-compliance whereof would entail consequences provided in law. Even a delay of one day in depositing the rent would be default within the meaning of Section 16 [1] and the Rent Controller has no power to extend the time, but to pass an order under Section 16 [2], striking off the defence of the Tenant. Tentative Rent Order is quite specific, then plea of technical default is not acceptable on the ground that rent was continuously being deposited in a Miscellaneous Rent Case filed by the Tenant.

9. Mst. Rehana Begum, the predecessor-in-interest of the present private Respondents filed the Rent Case No.289 of 2018, for evicting the Petitioner from the Subject Premises, viz. Ground Floor of a residential House and the two Shops No.1 and 2, wherein the Petitioner was inducted as a Tenant through the Tenancy Agreements, which were renewed from time to time. The above Case was contested through the Written Statement of the Petitioner on various grounds. An Application under Section 16 (1) of the SRPO, was filed by the Respondent which after hearing was allowed to the extent, that the Petitioner was directed to pay the accumulated future rent [of the above premises] amounting to Rs.26,000/- (*rupees twenty six thousand only*) from January, 2019, onwards.

10. Subsequently, an Application under Section 16 [2] of the SRPO, was filed by the Landlady/Respondent(s) for striking off the defence of the present Petitioner, alleging default and noncompliance of the last Order. After hearing the Parties, the learned Rent Controller allowed the Application and struck off the defence of the present Petitioner, allowing him 30 (thirty) days' time to vacate the premises, which was challenged unsuccessfully before the Appellate Court, which passed the impugned Order. In the intervening period, the Execution proceeding was also allowed, and the possession was taken over by the Respondents.

11. In order to appreciate the rival contentions, a Report was called from the learned Rent Controller, which was submitted vide Correspondence dated 7<sup>th</sup> February 2024 along with the extract of the Ledger, showing payment of rentals from **February 2019 up to October 2019**. On a specific query that why the rent was stopped after the Month of October, it is replied by the learned counsel for the Petitioner, that since the possession has been taken over by the Respondents in the Execution Proceeding, thus, further rents were not deposited. Present record also shows that the Rent of January, 2019, for the above Premises was deposited in the MRC No.465 of 2018 and 466 of 2018 [**MRCs**], accumulated figure of which comes to Rs.26,000/- [the same figure which has been directed to be deposited through the above Tentative Rent Order]. In their Reply (by the Respondents) to the Petition, although this factual aspect has not been disputed, but it is stated [so also argued by the Respondents' Counsel], that default has been committed by the Petitioner when admittedly he deposited the rent of January 2019, in the above MRCs, instead of in the above Rent Case in which the tentative rent order was passed, a month before, that is, 13.12.2018.

12. The above argument of the Respondent's Counsel is correct. After filing of the above Rent Case [by the Respondent] on 10<sup>th</sup> May 2018, the Petitioner preferred the MRC on 8<sup>th</sup> September 2018 [as confirmed from the R&P] and mentioned the fact of the above Rent Case in his both MRCs; *whereas*, after passing of the Tentative Rent Order dated 13<sup>th</sup> December 2018 in the above Rent Case [Rent Case No.289 of 2018], the Petitioner deposited the rent of January 2019 in the above MRCs instead of the Rent Case. The Rule laid down in the Judgment of **Ashiq Ali case** [*supra*] handed down by the Honourable Supreme Court of Pakistan is relevant; because, facts of the said reported Decision are quite similar to the facts of present case, that rents were deposited in a Miscellaneous Rent Case even after passing of the Tentative Rent Order in a Rent Case preferred by the landlord; *held*, that non-compliance of an unambiguous order, is unjustified, thus, was a willful and deliberate and not a technical one [as argued by the tenant's counsel of the reported Case]. In a more recent Case of **Iqbal Haider** [*ibid*], the Apex Court is of the view that once a Tentative Rent Order is passed, whether it is considered as just, valid and fair, or not, is to be complied with, subject to a right to challenge the same before the forum provided under the law. Similar view has been followed in other cases by this Court, some of them are cited by the Respondent's Advocate. *Secondly*, this subsequent Judgment of **Ashiq Ali Case** has considered the earlier Judgments of **Abdullah Ghanghro** and **Mst. Tahira Begum** [as relied upon by the Petitioner's Advocate], but the Hon'ble Supreme Court arrived at a different conclusion, as discussed in the above lines. *Thirdly*, the Case Law of Petitioner's Counsel is distinguishable, because the Tentative Rent Order in the present *Lis* is unambiguous and does not suffer from any of the shortcomings as mentioned in the Judgments relied upon by the Petitioner's counsel, which was not complied with. *Fourthly*, the reported Decisions with regard to the restoration of possession are not

applicable to the facts of present case, because admittedly, there is no dispute about the relationship of landlord and tenant between the Parties here, nor, any fraud was played upon the Court by the Respondents while filing the above two Applications, resulting in eviction of the Petitioner; besides, couple of years have already been passed since handing over the possession to the Respondents.

13. In view of the above discussion, the Petitioner has committed a willful default. The impugned Decisions have considered these aspects, and no illegality is successfully pointed out by the Petitioner's Counsel, justifying interference in this Constitutional Jurisdiction. Consequently, this Petition is dismissed with no order as to costs.

**JUDGE**

Karachi.

Dated: 20.03.2024.

M.Javid PA