

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-936/2010

Petitioner : Dr. Shiakh Riwaz Akhtar,
through Mr. Abdul Waheed Kanjoo, advocate.

Respondents : Swami Narain Temple estate trust and others,
through Mr. Ghulam Mustafa Shaikh, advocate
for respondent No.1.

CP NO.S-937/2010

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through Mr. Abdul Waheed Kanjoo, advocate.

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through Mr. Ghulam Mustafa Shaikh, advocate
for respondent No.1.

Date of hearing : 02.05.2018.

Date of announcement : 30.05.2018.

J U D G M E N T

SALAHUDDIN PANHWAR, J. By way of instant petition, the petitioner has challenged the *legality* of orders of two courts below i.e:

- i) order dated order dated 08.3.2010 passed by learned Rent Controller (learned VII-Rent Controller Karachi South) thereby allowing application u/s 16(2) SRPO, 1979 and directed the petitioner / opponent to hand over the vacant and peaceful possession of the demised premises to the applicant within 30 (thirty) days of this order...
- ii) judgment dated 05.8.2010, passed by learned Appellate Court thereby dismissing the appeal, so filed by the petitioner / opponent challenging the above order;

Precisely, the relevant facts are that respondent /landlord filed an application for ejection of the petitioner / opponent from *premises* in

question i.e office No.T-95 Sawami Narain Temple Estate Trust Building; on service of notices the petitioner / opponent appeared. Meanwhile, the respondent / landlord filed application u/s 16(1) seeking a direction to petitioner / opponent to deposit the arrears of rent at the monthly rate of rent Rs.450/- w.e.f July 2005 to October 2006 as well future rent. The petitioner / opponent filed counter affidavit stating therein that he has paid the rent in respect of the demised premises till December 2006; the rent receipt from July 2005 are being kept by the applicant in order to get the opponent agreed for making the payment of rent at the rate of Rs.1000/-. In consequence to hearing parties, the learned Rent Controller allowed the said application and directed the petitioner / opponent to pay arrears of rent from July 2005 till August 2008 within 45 days from date of order as well future monthly rent at the same rate from September 2008 in advance by 10th of succeeding month. The respondent / landlord *however* was forbidden to withdraw the arrears of rent till final disposal of this case. The petitioner / opponent *however* not deposited /paid the arrears of rent which resulted in filing of application U/s 16(2) of Ordinance, seeking direction for handing over peaceful possession of the premises in question; counter affidavit filed thereto which *however* was allowed by *impugned* order. A challenge to such by the petitioner / opponent before appellate Authority also failed by judgment of appellate court, impugned through this *petition* too

2. Heard the respective sides and carefully examined the available material.

3. At the outset, I would like to refer the Section 16(1) of the Ordinance which reads as:-

“16. **Arrears of rent. (1)** Where a case for eviction of the tenant has been filed, the Controller shall, on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in this behalf and further direct the tenant to deposits monthly rent regularly on or before the tenth of every month, until final disposal of the case:”

The above *prima facie* permits an inquiry by the Controller on question of **due arrears of rents** and even vests jurisdiction to order for deposit / payment thereof but such *exercise* has been restricted (made applicable) to ejection proceedings *only*. However, I would make it clear here that where a question of *relationship* of landlord and tenant is *involved*, it would always be better to determine such question *first* because only an *affirmative* answer to such question would vest *competence / jurisdiction* in Rent Controller to pass any order, permissible in Ordinance, which includes Section 16.

Such exercise can be exercised at any stage of the proceedings because such exercise has not been *limited* by any such words / phrases. Such order, *in no way*, would prejudice the final determination / adjudication of issue of *due arrears of rent* which shall entitle the landlord for withdrawal of *temporary* amount as well recovery of deficiency, if any. The *order*, passed under section 16(1) of the Ordinance is always in nature of *tentative* and does not control or effect the result of proceedings. Such conclusion is with guidance of the case of Chaudhry Rahimuddin v. Chaudhry Jalaluddin PLD 1991 SC 484, drawn with reference to following cases:-

In the case of Mrs. Zarina Khawaja v. Agha Mahboob Shah P L D 1988 SC 190, wherein the following observations were made by Muhammad Afzal Zullah, J. (as his Lordship then was):---

"It is true that some unnecessary change has been made in the use of words in section 16 of the Sindh Rented Premises Ordinance, 1979, vis-a-vis section 13(6) of the repealed Sindh

Rent Restriction Ordinance, 1959, but for the present discussion no practical difference has been made in the re-enacted law. **The determination of the rent under section 16 also has to be tentative and approximate.** Firstly, it is *for a temporary purpose* of the Controller regulating rent payment during the proceedings only. **It has no effect on the prior period or the period after the rent proceedings including the appeal stages.** Secondly, its determination is **in a summary manner.** Thirdly, if the Controller embarks upon the full trial of the issue regarding rate/arrears of rent without which final determination would not be fair or even possible, it would frustrate one of the purposes of the provision of the law itself, viz. the speedy disposal of the cases. In that event a considerable time would be consumed on this issue without in the meanwhile the Controller having any power to regulate the payment of rent by the tenant. And lastly, the final determination of the rent has been made possible by subsection (3) of section 16. It is not correct to say that this provision deals only with the disposal of the deposits of rent. Its extended meanings are not only possible but also beneficial to the parties. **There are no barring words indicating that the Controller will not be able to determine the due rent finally, after the stage of the tentative determination.** The use of the words like: 'determine' and 'due' in the above light do not lead to the conclusion that it is in the context of finality necessarily and not "tentativeness". The omission in this behalf can legitimately be supplied as the intention is very clear and the omission seems to be inadvertent. First question is answered accordingly."

7. At this juncture, it may be pertinent to refer to another judgment of this Court in the case of Mrs. Akhtar Jehan Begum and 4 others v. Muhammad Azam Khan P L D 1983 SC 1, in which one of us (Zaffar Hussain Mirza, J.) has dilated upon the scope of enquiry under section 13(6) of the late Ordinance as under:--

"The plain reading of the above provision makes it abundantly clear, that for the purpose of passing the order of deposit under it, the Controller **has not to determine the question of quantum or rate of rent, finally,** if the same is in dispute, **but to determine such amount "approximately.** This is the clear import of the words underlined above. **Further this excludes final adjudication of this question.** In the premises the consequences of non-compliance of such approximate determination is the summary disposal of the case, without taking any further proceedings, ipso facto on the basis of such non-compliance by striking off the defence and passing the order of eviction. If the argument of the respondent is accepted, then in every case the Controller would be competent to order ejection of the tenant only on

his final determination of the question as to quantum of arrears of rent or rate of rent."

In view of above *guidelines* and *object* of Section 16 of the Ordinance, I would attempt to say that if:

- i) relationship of landlord and tenant is not disputed;
- ii) proceedings is that of *ejectment*;
- iii) there is no *prima facie* record / proof of payment of *rent* in shape of receipts of payment of rent or record of Misc. Rent application, of period, alleged by landlord to be *due* period of arrears;

then it would always be safe to order for deposit of rent of such period at undisputed *rate* of rent. Since such order shall not cause any harm or prejudice to the *tenant* as same, being tentative, would be subject to final determination in *affirmation* or otherwise. Thus, I would conclude that such order, if *otherwise* not found to be completely in negation to record, should be complied with particularly where such *determined due arrears* are only ordered to be paid / deposited with restriction of its withdrawal. A failure to comply with such direction would bring its own consequences which are nothing but striking off of defence and *even* includes an order of ejectment.

Reference is made to the case of *M.H. Mussadaq v. Muhammad Zafar Iqbal & another* 2004 SCMR 1453 wherein it is held as:-

"10. On this aspect of the matter, the legal position is very clear. According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or , as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same. **It is also observed that non-compliance with the tentative rent order is directly punishable and**

in consequence the defence of tenant can be struck off and eviction can be granted...

4. Now, I would revert to merits of the case. For this, it would be appropriate to refer the order of the *Rent Controller*, passed on application u/s 16(1) of the Ordinance. The operative part whereof is as follows:-

“I have heard learned counsel for the parties and perused the record. From the contentions of the parties, it is an admitted position on the record that the monthly rent from July 2005 to October 2006 whereas the opponent stated to have paid the monthly rent to the applicant’s rent controller till December 2006 and also alleged that the receipt from July 2005 has been kept by the applicant in order to compel the opponent to pay rent at the rate of Rs.1000/-. The said contention of the opponent regarding keeping the receipt by the applicant **requires evidence** and under the above circumstances, the opponent is directed to deposit the monthly rent at the **rate of Rs.450/-** per month in this court w.e.f. from **July 2005 till August 2008** within **45 days of this order** and future monthly rent at the same rate from September 2008 in advance by 10th of succeeding month. However, the applicant is forbidden to withdraw the arrears of rent w.e. from July 2005 till December 2006 till final disposal of this case.

Application under discussion is disposed off in the above terms with an observation that the discussion herein above are tentative and will not effect the final decision of this case which will be made after considering all the material on merits.”

From above, it is quite clear that there was / is no *prima facie* record of the payment of the rent for period of ‘**July 2005 till December, 2006**’ therefore, order for payment of such *period* was not open to any exception particularly when petitioner / opponent never denies his status as ‘*tenant*’ as well ‘**Rs.450/-**’ is admitted by petitioner / opponent as *undisputed monthly rent*. The above order further makes it clear that same was *tentative* and was of no bearing upon final determination of such issue and even respondent / landlord was restrained from withdrawing such amount. Accordingly, I would conclude that the petitioner / tenant was having no exception but to

make compliance of said order or face the consequence of his such *deliberate* omission / failure i.e **ejectment even**. Since, it is a matter of record that the petitioner/ tenant failed in making compliance of order, passed under section 16(1) of the Ordinance hence he (petitioner / tenant) legally cannot escape the consequences, so detailed in Section 16(2) of the Ordinance. The position, being so, also makes the subsequent order of the Rent Controller, passed under section 16(2) of the Ordinance, not open to any exception nor can be said to be without *legal* justification and reasoning. Since, it is also a matter of record that such orders of learned Rent Controller stood stamped as *legal* by appellate Court which (appellate Court) is *final* authority in rent matters. *Normally*, in constitutional jurisdiction of this Court the findings of the two courts below in rent matters would not be disturbed unless it is shown that conclusion is either based on *no evidence / material* or is entirely against the settled principles of law. The petitioner / tenant has failed to establish any *prima facie* illegality in the orders impugned hence in absence thereof an approach to constitutional jurisdiction of this court *even* would be of no help for disturbing the concurrent findings of two courts as same *otherwise* would carry presumption of legality.

5. In consequence of what has been discussed above, I am of the clear view that the orders of the learned Rent Controller and that of appellate Court are not shown to be suffering from any *illegality* or *jurisdictional* error hence the instant petition merits no consideration. Accordingly, the captioned petitions are hereby dismissed.

J U D G E