

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 1131 of 2019

[**Sanaullah Thahim** *versus* **Saeed Ahmed Brohi and others**]

Dates of hearing : 15.01.2024 and 04.03.2024.

Petitioner : Sanaullah Thahim, through Mr. Abdul Wajid Wyne, Advocate.

Respondent No.1 : Saeed Ahmed Brohi, through Mr. Muhammad Salman Noor, Advocate.

Respondents No.2 and 3 : *Nemo.*

JUDGMENT

Muhammad Faisal Kamal Alam, J: Petitioner has challenged the Order dated 02.10.2019 passed by the learned Appellate Court in F.R.A. No.206 of 2017, whereby, the Orders dated 14.12.2016 and 05.04.2017, passed by the learned Rent Controller in Rent Case No.601 of 2016, under Section 16(1) and 16(2), respectively, of the Sindh Rented Premises Ordinance, 1979 [the “**Rent Law**”], were upheld.

2. Succinctly, Respondent No.1 [Applicant] filed an Ejectment Application against the Petitioner [Opponent] on the ground of default for the period from 23.03.1985 till the filing of Rent Case in the month of May 2016, but, stated that he is not claiming arrears of rent beyond three years. It was contested by the Petitioner through his Written Statement, and in the intervening period, an Application under Section 16[1] of the Rent Law, was filed seeking directions that Petitioner should deposit arrears from May 2013 till 30.05.2016 [date of the Application], at the rate of Rs.5,000/- per month in addition to 10% increase every three year and to deposit future monthly rent with 10% increase, every three year. It was opposed by the Petitioner by filing Counter Affidavit, but vide Order dated 14.12.2016,

Application was allowed, to the extent that Petitioner was directed to deposit Rs.5,000/- per month as rentals with effect from May 2013 till the passing of Order, within thirty [30] days and to deposit future rent till the disposal of the Rent Case, which was followed by another Application under Section 16[2] of the Rent Law for striking off defence of Petitioner on the ground of default/ non-compliance of the above Order, which was granted vide Order of 5-04-2017, and the same was challenged in First Rent Appeal, but without any success, hence, this Petition.

3. The facts averred are that initially, present Petitioner purchased the demised premises, viz. Flat No. 7-A, in a Building 'Siddique Court', at Plot No.3/1, Gulshan-e-Faisal Co-operative Housing Society, Bath Island, Karachi – **the Demised Premises**, under the Agreement to Sell dated 23.07.1983, from the [Late] Father of Respondent No.1, but that Agreement was not fulfilled, and in terms of Clause- 4, whereof, the Petitioner continued in the possession of the Demised Premises as Tenant. It is stated in the Rent Application [Paragraph-8] that Suit for Specific Performance [Suit No.584 of 2015] filed by Petitioner against the Respondent No.1 after twenty six years after the above date of Sale Agreement, was unsuccessful when the Plaint was rejected, which fact is not disputed by the Petitioner in his Written Statement, with the addition that Appeal was preferred against the said Order [*however, till the conclusion of hearing of this Petition, no further information is given about the fate of the above Appeal*]. In his Written Statement the above Sale Agreement is not disputed by the Petitioner, while stating that the entire sale price was paid to the Late Father of Respondent.

4. Main argument of the Petitioner's counsel is that Tentative Rent Order is illegal and violative of Article of 110 of the Limitation Act, because it has directed to deposit the arrears of rent beyond three years.

Petitioner's counsel has cited the following case law to support its arguments_

- i. **1989 M L D 2294**
[*Haji Muhammad Alam Baluch versus Pakistan Steel and another*];
- ii. **P L D 1968 SC 230**
[*Ashfaq-ur-Rahman versus Chaudhri Muhammad Afzal*]; and
- iii. **1990 C L C 804**
[*Noor Hussain versus Pakistan Steel*].

5. *Whereas*, learned counsel for Respondent No.1 has supported the Tentative Rent Order and has stated that the conduct of Petitioner has throughout remained *mala fide* and he is not entitled for any lenient view.

6. The crux of the Case Law cited by the Petitioner's counsel, the Courts have interpreted the expression 'Rent Due', as mentioned in erstwhile West Pakistan Urban Rent Restriction Ordinance, 1959 [Section 13, Sub-Section 6 whereof] and the present Rent Law is that a Rent Controller cannot give directions for depositing of arrears of rent beyond three years from the date of the Rent application. In such nature of controversy, Constitutional Jurisdiction should be exercised to correct the illegality.

7. This Court earlier dismissed the C. P. No. S – 193 of 2017 [Order dated 28th March 2017] preferred by the same Petitioner against the Tentative Rent Order under Section 16 [1] of the Rent Law, with the reason that the Order under challenge was well balanced and protected the right of both Petitioner and Respondent [Tenant and Landlord, respectively], which was maintained by the Honourable Supreme Court, with the observation that the Tenant [Petitioner] did not comply the Tentative Rent Order. These Orders are referred by the Respondent Counsel and available in Court Record.

8. *Whereas*, the learned Advocate for Petitioner has laid much emphasis on the Order dated 23rd October 2019 passed in the present Proceeding, which was complied with, by the Petitioner and lump sum rent was deposited with the learned Rent Controller. Record of the present *Lis* shows that in compliance of the above Order, initially an amount of Rs.400,000/- was deposited on 28.10.2019, where after Rs.60,000/- was deposited on 21st January 2020; Rs.30,000/- deposited on 16.07.2021.

9. The other defence of Petitioner's Advocate about non-framing of issue of relationship, is misconceived in nature, inter alia, because the above Sale Agreement is not disputed, Clause 4 thereof, has specifically mentioned the payment schedule and in the event of default rupees fifty thousand would be deducted from the advance money as **Rent**; so, the relationship of landlord and tenant is established. With regard to the other contention about illegal direction [given in Tentative Rent Order] to pay the arrears of Rent beyond three years, the same was considered by this Court in the above Constitutional Petition so also by the Hon'ble Supreme Court, and no illegality was found in the above Tentative Rent Order. The Apex Court has even observed that for the afore-referred Sale Agreement, a Suit for Specific Performance can be instituted, which was done by the Petitioner and Plaintiff whereof has been rejected by the learned Trial Court, which is challenged in Appeal by the Petitioner [as mentioned in the foregoing Paragraphs].

10. With regard to the contention that a substantial amount is already deposited by the Petitioner in compliance of the Order of this Court [*ibid*], it is ruled, that nowhere it is observed in the above Order or any subsequent Order(s) that the deposit of arrears of Rent tantamount to curing the default in non-depositing the Rentals as directed by the learned Rent Controller in

the Tentative Rent Order, which was passed three years before the above Order of 23.10.2019 [of this Court]. The Order dated 5th April 2017, whereby, the defense of Petitioner was struck off, is also very relevant, in which it is determined, that when the Report from Nazir Office was called, it showed that till the passing of the above Order no amount was deposited by the Petitioner in compliance of the Tentative Rent Order. Such a contumacious behavior cannot be condoned, which can result in giving a license to occupy the Demised Premises free of charge.

11. The conclusion of the above discussion is, that the Petitioner has failed to comply with the Tentative Rent Order and no illegality exists in the Impugned Orders of the Appellate Court and that of the learned Rent Controller, including the striking off defense of Petitioner; thus, this Petition is dismissed along with all pending application(s), if any, with no order as to costs.

Judge

Karachi.

Dated: 21.04.2025.

Riaz / P.S.