

ORDER SHEET
IN THE HIGH COURT OF SINDH,
 CIRCUIT COURT, HYDERABAD.

C.P. No.S-433 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on office objection.
 For Katcha Peshi.
 For hearing of MA-5969/14.

Date of hearing : 07.08.2014.

Date of decision: 16.09.2014.

Mr. Muhammad Jabbar Shaikh, Advocate for the Petitioners.
 Respondent No.1 is present in person.

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NAZAR AKBAR,J- The petitioners have challenged an order 15.5.2014 passed by Rent Controller in Rent Application No. 184 of 2013, whereby in terms of section 16(1) of Sindh Rented Premises Ordinance, 1979 (SRPO 1979) the petitioners have been directed to deposit arrears of rent from March 2009 at the rate of Rs.635/- per month and future monthly rent at the same rate with the Nazir of the Rent Controller.

2. The petitioner has filed an agreement dated 27.6.1997 before the Rent Controller and claimed that the relationship of tenant and landlord does not exist between the petitioners and the respondent, as the petitioners have purchased ögood willö. However, when asked whether ögood willö amounts to transfer of the property in which the petitioners are running their business. Learned counsel for the petitioner had no answer. The ögood willö of business cannot be treated as ownership of the premises in which ögood willö business is being run by the parties as ownership of the property continues to rest with the respondent who is not the seller of ögood will.ö The agreement of good will is between the petitioner No.1 and one Abdul Rashid Shaikh Kaley. The

landlord/owner of the property was not party to the agreement and, therefore, prima facie the excuse cannot be accepted that on the basis of so called agreement of sale of good will between the parties, the owner/landlord cannot claim rent of the premises he had rented out. The petitioners claimed to be in possession on the basis of good will agreement since 1997 and they have defaulted in payment of meager amount of rent of Rs.635/= per month from March, 2009. The Rent Controller is not supposed to accept every frivolous challenge to the jurisdiction on account of relationship of landlord and tenant as ground to refuse to exercise his authority as rent controller. Even otherwise, the order of rent controller has fully secured the interest of the petitioners when it is observed that the applicant /respondent will not be allowed to withdraw the rent deposited by them till final decision on the rent application. Such an order even otherwise interim in nature cannot be assailed in constitution petition as an appeal against the interim order is barred under section 21 of Sindh Rented Premises Ordinance, 1979 and the constitution petition cannot be entertained to circumvent the legal position that the interim order shall not be challenged. Therefore, for the foregoing reasons this petition is dismissed in limine. However, it must be clarified that since this petition has been fixed for hearing in Court for the first time after the time stipulated in the order impugned, this order will have no bearing on the application under section 16(2) of Sindh Rented Premises Ordinance, 1979 if already filed in the rent case on default in compliance of the impugned order.

In view of above facts and circumstances, this petition is dismissed as not maintainable.

JUDGE.