

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-453 of 2021
(Niaz Ahmed - vs - Farouq Inayat & Ors.)

Date	Order with signature(s) of Judge(s)
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Hg:/Priority.

1. For orders on office objections.
2. For hearing of Misc. No.2900 /21
3. For hearing of main case.

21.08.2026.

Barrister Sarmad Khan, for the Petitioner.

Mr. Zubair Farooq, Advocate for Respondent No.1.

Mr. Abdul Wajid Wyne, Advocate for the Intervenors.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the concurrent findings of the facts whereby the learned VIIth Rent Controller (South) Karachi allowed the Rent Case No.727/2019 (re: Farouq Inayat v Niaz Ahmed & Another) vide its order dated 09.03.2021 and First Rent Appeal No.64 of 2021 filed by the petitioner/tenant (re: Niaz Ahmed & another vs. Farouq Inayat) vide its order dated 07.05.2021.

2. Perusal of the impugned order reveals that it was passed ex parte; however, paragraph 7 thereof reflects that the only ground which persuaded the learned Trial Court to allow the rent case was that the petitioner could not produce any convincing or inspiring evidence in rebuttal. It further transpires from the record that the petitioner appeared before the learned Trial Court but failed to file a written statement, whereupon his right to file the same was closed after affording him several opportunities. Although the petitioner made attempts to have his right restored, he remained unsuccessful. Respondent No. 1 filed an affidavit in evidence, and an opportunity to cross-examine the deponent was afforded to the petitioner. Thereafter, the rent case was allowed. Section 19 of the Sindh Rented Premises Ordinance, 1979 lays down the procedure to be followed by the Rent Controller. For ease of reference Section 19 of the SRPO, 1979 is reproduced herein below:-

19. Procedure. (1) *Where an application other than the application under section 14 has been made to the Controller under this Ordinance, he shall, unless the application is summarily dis-missed by him for reasons to be recorded, issue a notice to the respondent to file written reply, if any, within such period not exceeding fifteen days of the receipt of the notice.*

(2) *Where on the day fixed in the notice for the respondent to file written reply, it is found that the notice has been served but the respondent has failed to file his reply without any reasonable excuse, the Controller may, proceed to make an ex parte order and after such order has been made the Controller shall have no power to rescind such order.*

(3) Where the respondent has filed the written reply, the Controller shall proceed to receive evidence first of the applicant and his witnesses and then of the respondent and his witnesses.

(4) A party to a case under this Ordinance shall prove the evidence of his witness by producing the affidavit of such witness a copy of which shall simultaneously be supplied to the other party and such other party shall have the right to cross examine the witness on such affidavit and if the witness has been cross-examined the party producing the witness may re-examine him.

(5) The Controller shall, instead of formally framing issues arising between the parties, state them briefly in the judgment and shall record findings on each such issue separately.

3. From a perusal of the above provision of law, it transpires that, under subsection (5) of Section 19 of the SRPO, 1979, the Rent Controller is required to briefly state in the judgment the issues arising between the parties and record findings on each issue separately. From a perusal of the impugned order, it further transpires that no such issues were identified or discussed in the judgment, nor were any findings recorded with regard to the disputes between the parties. Rather, the rent case was allowed merely on the ground that there was no reason to disbelieve the contents of the eviction application, the affidavit filed in ex parte evidence, and the documents produced on oath. For the sake of convenience the relevant portion of the judgment from para-7 is reproduced herein under:-

“.....Hence, there is no reason to disbelieve contents of eviction application, affidavit in exparte proof and documents produced on oath as there is no such inconsistency between pleadings and evidence brought on record.”

4. When confronted with the above legal position, all the learned counsel for the parties failed to controvert the same. In the circumstances, where the learned Trial Court failed to adopt the procedure prescribed under Section 19 of the SRPO, 1979, a case for interference by this Court is made out, warranting the exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. In view of the above, this petition is allowed, and the orders dated 07.05.2021 and 09.03.2021 passed by the learned Courts below are hereby set aside. The matter is remanded to the learned Trial Court for a fresh decision after affording the parties an opportunity of rehearing, on the basis of the evidence already available on record, strictly in accordance with law and the procedure prescribed under Section 19 of the SRPO, 1979.

6. Office is directed to send copy of this order to the learned trial Court for compliance. Learned trial Court is expected to decide the fate of the case within two months from the date of receipt of this order. MIT to ensure compliance.

JUDGE