

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

CP S-1026 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hg. of case / Priority

1. For orders on office objection
2. For order on CMA No.5282/2024
3. For hearing of CMA No.7454/2023
4. for hearing of main case

**08.08.2024**

Mr. Abdul Khalique Nawat, Advocate for the Petitioner.  
Mr. Khalid Ahmed, Advocate for Respondent.  
Mr. Shehreyar Qazi, Addl. A.G.

MUHAMMAD KARIM KHAN AGHA.J., Petitioner through her attorney has assailed judgment dated 18.11.2021 passed by the Sr. Civil Judge / R.C-III Karachi South, in Rent Case No.653/2020 and order in appeal passed by District Judge Karachi South in FRA No.Nil/2023 dated 13.9.2023 through this petition.

2. The brief facts of the case are that the landlord filed a rent case against the tenant who is petitioner in this case claiming ownership of Flat No.A-1, Ground Floor, Dawood B.D Compound, situated at Plot No.AK-24-3-S-50, (New No.2201 and 2202/A) Gali No.5, New Kumharwara, near Gabol Park, Lyari Town, Karachi for possession of the aforesaid property (the Property) on the basis of non-payment of rent and the ground that he required the return of the Property because his son had no other accommodation to live in and needed to live in the Property.

3. Learned counsel for the Petitioner (tenant) filed vakalatnama in the ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979 (hereinafter SRPO), however he did not appear during the course of the hearing and as such he was debarred from filing his written statement and he choose to take no further

part in the proceedings despite being fully aware of the same.

Accordingly, the trial Court proceeded to decide the matter ex-parte

so at paragraph-6 the following conclusion was reached:-

"I have heard arguments of learned advocate for the applicant and perused the record available before me very carefully. There is no rebuttal to what has been deposed by the applicant in his ex parte evidence. The applicant has produced documentary evidence in support of his contention and corroborated contents of ejectment application that there is default in payment of rent. The applicant also examined himself on oath and produced affidavit of evidence/Exparte proof and there is nothing in rebuttal from the side of the opponent. Resultantly the contention of the applicant remained unchallenged and un-rebutted. There is no reason to disbelieve the content of eviction application, affidavit in evidence and documents produced on oath. The willful default in payment of monthly rent of demised premises is prima facie proved by the applicant. The opponent has not turned to prove that he paid rent on time without any default."

4. And as a result of the above discussion reproduced above the ejectment application was allowed and the petitioner was directed to vacate the Property within a period of 30 days from the date of the order and handover vacant possession to the landlord. After a period of 18 months the petitioner moved an appeal before the District Judge Karachi South, against the aforesaid judgment which was dismissed on 13.09.2023 by District Judge Karachi South on the ground that the appeal was hopelessly time barred.

5. Being dissatisfied with the aforesaid judgment dated 18.11.2021 the petitioner filed an appeal in the Court of District Judge Karachi South, in FRA No.Nil/2023 on the ground and fact that this was an ex-parte order and that he wanted the right to have his case decided on merits.

6. Learned counsel for the petitioner with regard to the impugned judgment dated 18.11.2021 has contended that the respondent was represented during the case and since negotiations were taking place

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between the parties who were apparently closely related he failed to take further part in the proceedings and since the negotiations failed, he now wanted to proceed with his case on merits.

7. On the other hand, learned counsel for the applicant/landlord in proceedings produced all relevant documents to prove that rent had not been paid in time and he required the Property for the use of his son which was un-rebutted. The trial Court therefore, decided case on that evidence produced by the applicant.

8. I have heard learned counsel for the parties and been assisted by Addl. Advocate General Sindh and have also considered the record.

9. It was duty of counsel for the petitioner to attend to the case notwithstanding that any negotiation was going on between the parties however for the reason best known to himself he has failed to do so despite having knowledge of the proceedings. This being the case he cannot now comeback to this Court and say he wants to be heard in the case because he failed to attend his professional duty. I find that the judgment dated 18.11.2021 has no legal infirmity in the same and learned counsel for the petitioner has not been able to point out any error as such it is upheld.

10. With regard to the judgment dated 13.09.2023 in appeal this appeal exclusively concerns the delay in filing of the appeal under Section 21 of the Sindh Rented Premises Ordinance 1979 (S.R.P.O.) Section 21 of SRPO provides that an appeal against the judgment needed to be filed within 30 days of the date of the judgment. In this case the appeal is filed approximately after a period of 18 months of the date of judgment. The Appellate judgment dated 13.09.2023 elaborately deals with the point that the SRPO is special law and

overrides the Limitation Act, and as such its provisions needed to be adhered to. In this case the appeal was filed approximately 18 months after the date of the judgment. Learned counsel for the appellant had tried to contend that the delay was because his client was performing Umrah and was out of the country. I have gone through the relevant sections of law that applied and found that the appeal was hopelessly time barred. The appeal might have been sustainable, if it had been filed a few days late and the delay for those few days had been fully explained. In this case no reasonable explanation has been given for such a long delay, let alone for each specific day of the 18 months period. Such a long delay is inexplicable. This appears to be in line with the conduct of the petitioner throughout the course of these proceedings, which do not seem to have been pursued very diligently. This being the case, I find that there is no legal infirmity in the judgment dated 18.11.2021 and order in appeal dated 13.09.2023 and uphold the same and dismiss this petition.

11. Petition stands disposed of in the above terms.

SM