

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present  
Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S - 1377 of 2024

Muhammad Jawaaid & 2 others..... Petitioners

Versus

Muhammad Anas Zafar Soleja & another ..... Respondents

Constitution Petition No. S - 1378 of 2024

Muhammad Jawaaid & 2 others..... Petitioners

Versus

Muhammad Asim Zafar Soleja & another ..... Respondents

Mr. Faisal Aziz, Advocate for the Petitioners.  
Mr. Ayaz Ansari, Advocate for Respondent No.1 a/w  
M/S. Salman Sabir and Sana Abid Advocates.

Date of hearing : 29.03.2025, 18.04.2025 & 08.05.2025.  
Date of announcement : 04.08.2025.

J U D G E M E N T

**Muhammad Jaffer Raza, J:** Through this common Judgment, the  
aforementioned Constitutional Petitions shall be adjudicated. The common facts  
in both the above mentioned petitions are that they have impugned the orders  
dated 07.11.2024 passed by the learned Rent Controller on application under  
Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (“**the Ordinance**”).  
The details of the Rent Cases are tabulated as under:-

Rent Case	Parties name	Property /tenement
132/2024	Muhammad Jawaaid & 2 others versus Muhammad Asim Zafar Soleja	Shops No.1 and 2, ground floor at “Miraj Manzil”, Plot No.11, Survey Sheet No.35-P/1, Survey No.28, Central Commercial Area, Bahadurabad, Karachi.

133/2024	Muhammad Jawaid & 2 others versus Muhammad Anas Zafar Soleja	Shops No.1 and 2, Mezzanine floor at “Miraj Manzil”, Plot No.11, Survey Sheet No.35-P/1, Survey No.28, Central Commercial Area, Bahadurabad, Karachi.
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2. Brief facts of the case are that the Petitioners filed the above noted Rent Applications on the ground of default in payment of rent and utilities. Thereafter, an application under Section 16(1) of the Ordinance was filed by the Landlords/Petitioners. The said application was allowed vide the Impugned Order, however the Petitioners are aggrieved with the said order for the reason that no order has been passed regarding deposit of arrears of rent by the learned Rent Controller while allowing the above noted application.

3. It has been contended by the learned counsel for the Petitioners that he has no other alternate and efficacious remedy to impugn the said order and therefore he has invoked the writ jurisdiction of this court. He has further contended that the learned Rent Controller was mandated to pass a direction for depositing of arrears of rent and in failing to render such finding, the learned Rent Controller has failed to exercise the jurisdiction vested in him. He has argued that in such circumstances this Court under its constitutional jurisdiction has the power to set aside the Impugned Order and direct the Tenants to deposit arrears of rent. He has lastly contended that if orders are not passed for deposit of arrears of rent the Petitioner will be without a remedy in case his rent cases are allowed and the Respondent is directed to vacate the tenements in question.

4. Conversely, learned counsel for the Respondent has argued that the instant petitions are not maintainable as no final order/judgment has been passed by the learned Rent Controller. He has stated that the application preferred by the Petitioners under Section 16(1) of the Ordinance was allowed and the Petitioners ought not to be aggrieved with the Impugned Order. He has relied on the judgements in the cases of Sultan Ahmad versus Rustam F. Cowasjee &

Another<sup>1</sup>, Muhammad Muneer versus The Viith Additional District & Sessions Judge South Karachi & Others<sup>2</sup>, Mrs. Zarina Khawaja versus Agha Mahboob Shah<sup>3</sup>, Mrs. Samina Zaheer Abbas versus Hassan S. Akhtar<sup>4</sup>, Zubair Ahmad versus Syed Hassan Mehdi<sup>5</sup> and Agha Wasif Abbas versus Muzaffar Ali Isani<sup>6</sup>. He has therefore prayed for the dismissal of the instant petitions.

5. I have heard both the learned counsels and perused the record. For the present adjudication the following question is framed:-

- i. **Whether a writ petition is maintainable against orders passed by the Rent Controller under Section 16(1) of the SRPO? If so, does the Impugned Order require interference of this court?**

6. The first part of the question is in respect of the maintainability of the instant petition. To adjudicate the said question the scheme of the Ordinance, particularly in reference to the provision of appeal therein needs examination. In this regard Section 21 of the Ordinance is reproduced below:-

*“21. (1) Any party aggrieved by an order, not being an interim order, made by the Controller may, within thirty days of such order, prefer an appeal to the 1 [“District Judge having Jurisdiction in the area where the premises in relation to which the order is passed”].” (Emphasis added)*

7. It is apparent from bare reading of the above-noted provision that the legislature has not provided a remedy of appeal against “interim orders” passed by the rent controller. The question now is whether in the absence of any remedy, the writ jurisdiction of this court can be invoked impugning orders passed by the rent controller under Section 16(1) of the Ordinance. This very question, in almost

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<sup>1</sup> NLR 1984 Civil 27

<sup>2</sup> CPS 317 of 2022

<sup>3</sup> PLD 1988 Supreme Court 190

<sup>4</sup> 2014 YLR 2331

<sup>5</sup> 1989 CLC 1006

<sup>6</sup> 2008 MLD 1229

identical circumstances, came up for adjudication in the case of **Mst. Zahida Perveen and another v. Iftikhar Hussain**<sup>7</sup> wherein a single judge of this court held as under:-

*“16. After carefully examining the above-cited cases decided by the learned Division Bench of this Court and the settled law on the point of invoking Constitutional jurisdiction of High Court against interlocutory orders I am of the considered view that any order passed by a Court or tribunal in excess of its jurisdiction or by not exercising the jurisdiction vested in it by law, can be challenged in the Constitutional jurisdiction of High Court; and, in such an event the mere fact that the impugned order is interlocutory shall not prevent the High Court from exercising Constitutional jurisdiction. It has been held time and again by the Hon'ble Supreme Court and High Courts that the Superior Courts have inherent and Constitutional powers to remedy and correct the wrongs committed by subordinate courts. Having come to the conclusion that by not passing a tentative rent order the learned Rent Controller had failed in exercising the jurisdiction vested in him by law, I am convinced that these petitions are maintainable.” (Emphasis added)*

8. A similar issue arose again in the case of **Zahid Khan v. Mst. Razia Khatoon and another**<sup>8</sup> wherein the petition was held to be maintainable due to its peculiar facts, in the following words:-

*“7. Section 21 of the Ordinance specifically bars appeals against interim orders and this restriction has been imposed by the law makers clearly with a view to avoid piecemeal decision in cases and to ensure expeditious disposal of rent proceedings under the Ordinance. If parties to a rent case are allowed to invoke constitutional jurisdiction of this Court where appeal is specifically barred, such practice would negate the very purpose of the statute and render the provisions thereof meaningless. It is well-settled that an interim order passed in rent proceedings under the Ordinance cannot be called in question under the constitutional jurisdiction of this Court unless such order is without jurisdiction or in excess of jurisdiction. As the impugned interim order is without jurisdiction to the extent of the direction given to the petitioner to deposit arrears of rent beyond the period of three years, the same is liable to be declared as such and this petition is maintainable only to such extent. The petition is not maintainable against remaining part of the impugned interim order for the reasons stated above.” (Emphasis added)*

9. A divisional bench of this court in the case of **Noor Hussain Versus Pakistan Steel**<sup>9</sup> definitively laid down the parameters of interference under

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<sup>7</sup> 2019 YLR 474

<sup>8</sup> 2020 YLR 192

<sup>9</sup> 1990 CLC 804. The said judgement was relied upon in the following cases:-

constitutional jurisdiction in orders passed by the rent controller and held as under:-

*“The only point on which we are inclined to exercise Constitutional jurisdiction is that in view of the clear pronouncement by the Hon'ble Supreme Court and this Court that a Rent Controller is not competent to order the deposit p of time-barred rent, the Rent Controller could not have passed the impugned orders and, therefore, patently they are without jurisdiction or in excess of jurisdiction. If we were to decline to exercise Constitutional jurisdiction in spite of the above clear legal position it will in fact put the parties to inconvenience that they had to go through the order of trial and thereafter to file an appeal after the passing of the ejectment. We are inclined to hold that Constitutional jurisdiction generally cannot be pressed into service where the dispute relates to the question of rate of rent or the period of the arrears of rent if it is within the limitation period or even the question of relationship as these are the disputed questions of I facts but where the question is purely legal and that question is already settled by the superior Courts, in our view writ jurisdiction can be pressed into service.”*

10. The constricted scope of interference has already been delineated upon in the judgments noted above. It will now be accessed whether the Impugned Orders fall within the scope outlined above. For the said purpose, at the very inception, the scheme of Section 16(1) needs to be adjudicated upon, prior to rendering any finding thereon. The said section is reproduced below:-

*“Arrears of rent. 16. (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 his behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case.”* (Emphasis added)

11. It is apparent from the bare reading of the above-noted section that the rent controller is mandated with the obligation to make a summary inquiry and determine the arrears of rent due. Subsequent to such determination, the rent controller is mandated to order the tenant to deposit the same. The use of the word “shall” suggests that such determination is mandatory. Moreover, the title of the said section i.e. “arrears of rent” further clarifies the scope of the noted section

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- Zahid Khan v. Mst. Razia Khatoon and another. 2020 YLR 192.
  - Mrs. Durree Shamim Rafi versus Muhammad Zubair Khan and another. 2013 CLC 1021.

and the obligation of the rent controller. The noted provision has been elucidated upon in several judgements which shall be noted in the succeeding paragraphs and relevant excerpts from the same shall be reproduced.

12. The object, scope and wisdom of the noted section was comprehensively dealt with by a learned divisional bench of this court in the case of **Abdul Aziz versus Muhammad Hussain Adil Khatri**<sup>10</sup> in the following words:-

*“In so far as the question of arrears of rent is concerned, in view of the rule laid down in the said authority the learned Rent Controller is not called upon to determine the arrears finally, though he is required to determine the B arrears tentatively, for passing order under section 16(1) of the Ordinance. The object sought to be achieved by subsection (1) of section 16 of the Ordinance is to secure the rent payable to the landlord, before determination of the issue of default, if any committed by the tenant.”*

13. The obligation of the rent controller to make a summary inquiry was elaborated upon by a learned single judge of this court in the case of **Dr. Sunil Anand Hotwani versus Abdul Wakeel and 2 others**<sup>11</sup> wherein it was held as under:-

*“3. Under subsection (1) of Section 16 of The Sindh Rented Premises Ordinance, 1979, ("Ordinance of 1979") where a case for eviction of the tenant has been filed, the Rent Controller, on the application filed by the landlord and after such summary inquiry as he deems fit, is required to determine the arrears of rent payable by the tenant and to direct him to deposit the same within the period specified in this behalf; and, to further direct the tenant to deposit the monthly rent regularly on or before the tenth day of every month until final disposal of the case. The words "summary inquiry" used in this subsection are significant as they imply that to pass a tentative rent order under this subsection the Rent Controller is required to examine only the material before him, and not to make any in-depth inquiry.” (Emphasis only)*

14. The principle regarding the noted provision was further expounded by a learned single judge of this court in the case of **Ahsan Asad versus Mrs. Rubina Naeem**<sup>12</sup> in the following words:-

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<sup>10</sup> 1993 MLD 1447.

Similar views were expressed regarding the object, scope and wisdom of Section 16 by a learned single judge of this court in the case of Malik Aman versus Khawaja Abdul Aziz. 1987 CLC 425.

<sup>11</sup> 2023 CLC 1279

<sup>12</sup> 2016 MLD 86

*“8. There is no cavil with the legal proposition that under section 16(1) of the Sindh Rented Premises Ordinance, 1979 the Rent Controller has to make summary enquiry and to pass tentative rent order directing the tenant to deposit the arrears of rent as well as future rent.*

*It is also an admitted fact that no evidence was required to be recorded at the time of passing the tentative rent order under section 16(1) of the Sindh Rented Premises Ordinance, 1979, which was binding force on the petitioner.”* (Emphasis added)

15. In the case of **Syed Fahimul Hassan versus Khawaja Mohsin Ali and 2 others**<sup>13</sup> a learned single judge delineated upon the nature of the “summary inquiry” to be held by the rent controller in the following words:-

*“So far the contention of the learned counsel for the petitioner regarding non-holding of enquiry prior to passing of tentative order is concerned, in fact a summary inquiry was held by the Rent Controller whereby the petitioner/opponent was called to explain as to alleged default and heard the petitioner's counsel so also respondent No.1's counsel which would be sufficient compliance for holding summary inquiry under section 16(1) of the Ordinance and in his order on the said application it has clearly been mentioned that all the controversies between the parties require evidence because no foundation was laid for requiring the Rent Controller to record any evidence before passing of tentative rent order. Furthermore in the tentative rent order, the Rent Controller has placed a condition that disputed portion of the rent will not be withdrawn by the respondent No.1. Thus the contention of learned counsel for petitioner has no force.”* (Emphasis added)

16. The scope of Section 16(1) has already been deliberated upon in the aforementioned paragraphs, and in light of the pronouncements noted and reproduced above, it is held that the learned Rent Controller by failing to make a summary inquiry failed to exercise the jurisdiction vested in him. The use of the word “shall” in the noted section and the scope, wisdom and object of the same was not fully appreciated by the learned Rent Controller. The purpose of “summary inquiry” was defeated entirely by the learned Rent Controller when the issue regarding arrears of rent was effectively deferred till evidence of both parties is recorded. Such a direction, it is held, is alien to the scheme of the noted provision and extinguishes its wisdom and object. The learned Rent Controller without determining arrears of rent, directed the Respondent to deposit future rent. The

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<sup>13</sup> 2017 MLD 2074

rights of both parties would have been secured if a summary enquiry was made and resultantly the Petitioner would be constrained from withdrawing the rent deposit. The said constraint has only been placed on the Petitioner, without the noted inquiry, and in respect of the future rent only, as no other determination was made in the Impugned Order. In that regard it is held that the case of the Petitioner falls within the narrow scope of interference laid down in the judgments noted above, **not** because of wrongful exercise of jurisdiction, but due to the failure to exercise it. I am not inclined to render or substitute any finding of the learned Rent Controller as the jurisdiction to make a summary inquiry vests solely and exclusively with the learned Rent Controller. In view of the dicta laid down recently by the Hon'ble Supreme Court in the case of **Murad Khan versus Mst. Humaira Qayyum**<sup>14</sup> the Impugned Order ought to be set aside and the matter be remanded back to the learned Rent Controller with a direction to decide the application afresh in light of the principles laid herein.

17. The learned counsel for the Petitioner relied upon several judgements to substantiate his claim that tender to an individual, other than the landlord, is tantamount to default. I have deliberately not referred to the said judgements and refrained from rendering an opinion on the same, for the reason that the learned Rent Controller is still seized with the rent application preferred by the Petitioner, and any finding in this regard may impact the final judgment in the above-noted rent cases.

18. At this juncture I shall distinguish the judgments relied upon by the learned counsel for the Respondent:-

- In the cases of **Sultan Ahmad** (supra), **Muhammad Muneer** (supra), **Mrs. Zarina Khawaja** (supra), **Mrs. Samina Zaheer Abbas** (supra), **Zubair Ahmad** (supra) a summary inquiry was conducted by the respective rent controllers and there was default on part of the tenant

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<sup>14</sup> C.P.L.A No. 923-P of 2023 judgment dated 17.02.2025



in compliance of orders passed under Section 16(1) with consequences under Section 16(2). In no case was the order impugned under Section 16(1).

- The case of **Mst. Akhtar Jehan Begum** (supra) final ejectment orders had been passed against the tenant under the West Pakistan Urban Rent Restriction Ordinance 1959. Similar to the judgements distinguished above, there was noncompliance of tentative rent orders.
- The case of **Agha Wasif Abbas** (supra) is of no assistance to the learned counsel for the Respondent. In the said case the summary inquiry was held and the order passed under Section 16(1) was impugned by the tenant. It was, according to the Petitioner in the case, a wrongful exercise of jurisdiction and **not** a failure to exercise it. I have already clarified above that the instant interference is only due to the failure to exercise jurisdiction and the Petitioner having no alternate and/or efficacious remedy.

19. During the course of my own research I have come across a recent judgement in the case of **Imran Khalid versus Mst. Munazza Rizvi**<sup>15</sup> where a learned single judge of this court declined to interfere with findings of the rent controller passed on applications under Section 16(1) and (2). The instant judgment is also distinguishable for the reason that a summary inquiry was made by the respective rent controller and the tenant in the said case impugned the same. As noted above, the facts in the present case are distinguishable and it was the tenant who preferred noted petition in the cited judgment after his defense was struck off under Section 16(2). Moreover, there was no failure on part of the rent controller to exercise jurisdiction vested.

20. It light of what has been held above the Impugned Orders are set aside. Consequently, the instant petitions are allowed with a direction to the learned Rent

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<sup>15</sup> 2024 MLD 635

Controller to decide the application preferred by the Petitioner afresh, in light of the principles laid down hereinabove.

JUDGE

Nadeem Qureshi “PA”