

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-954 of 2022

[Tahir Naeem and others vs. Arif Ali Kha and another]

Petitioner Through Mr. Naeem Akhtar Memon, Advocate
Respondent Through Mr. Aaley, Maqbool Rizvi, AAG
Date of Hg.& Order **29.10.2025**

ARSHAD HUSSAIN KHAN, J.- Through the present Constitutional Petition, the petitioners have challenged the order dated **30.09.2022**, passed by the learned XIIth Additional District Judge, Karachi-[South] in First Rent Appeal No.67/2022, filed by respondent No.1, herein, which was allowed by setting aside the orders dated **06.08.2021** and **17.02.2022**, passed by the learned Rent Controller in Rent Case No.1327 of 2019, on the applications of 16(1) and 16(2) of the Sindh Rented Premises Ordinance, 1979, respectively, with the following prayers:

- i. That in view of the afore-stated facts and grounds, humbly prays that this Honourable Court may be pleased to declare that the impugned Order passed by the learned XIIth-Addl, District Judge, Karachi South/ Respondent No.2 in F.R.A No.67/2022, dated 30-09-2022 is illegal and be pleased to set aside the same and dismiss the said F.R.A No.67/2022 with further prayer that Execution Application No.06/2022 may be restored to its original position as the same Execution was dismissed by Learned Rent controller being infructuous vide order dated: 10-10-2022 and allow the cost of the petition to the petitioners as well.
- ii. Any other relief(s), which this Honourable may deem fit and proper in the circumstances of the case.

2. **Concisely, the petitioners**, being legal heirs of late Naeem-ur-Rehman, claim ownership of property constructed on Plot No.64-A, Block-6, P.E.C.H.S., Karachi, transferred to them vide order dated 03.03.2007. The respondent was inducted as tenant in Shop No.5 at the said property through a tenancy agreement dated 10.01.2005 executed by the rent collector, Kaleem-ur-Rehman, at a monthly rent of Rs.2,000/-, later enhanced to Rs.2,600/-. After the death of the original owner, the respondent allegedly stopped paying rent to the petitioners despite repeated demands, resulting in default from January 2019. The premises was also claimed for the personal bona fide need of Petitioner No.3. Consequently, Rent Case No.1327/2019

was filed under the Sindh Rented Premises Ordinance, 1979. The learned Rent Controller allowed the petitioners' applications under Sections 16(1) and 16(2) SRPO, directing eviction of the respondent, but on appeal the learned XII-Additional District Judge, Karachi South, set aside both orders and remanded the matter for decision afresh. Aggrieved thereby, the petitioners have invoked the constitutional jurisdiction of this Court.

3. **Learned counsel for the petitioners contends** that the impugned order dated 30.09.2022 suffers from misreading and non-reading of material evidence. It is argued that the appellate court failed to properly appreciate the record and the findings of the learned Rent Controller, who had rightly passed orders under Sections 16(1) and 16(2) of the Sindh Rented Premises Ordinance, 1979. Despite clear directions of the Rent Controller vide order dated 06.08.2021 to deposit arrears of rent from January 2019 within fifteen days, the respondent/tenant willfully violated the same and deposited the rent after an unexplained delay of more than nine months, constituting deliberate breach warranting eviction an aspect ignored by the appellate court.

It is further submitted that the respondent's plea regarding landlordship of one Kaleem-ur-Rehman stood contradicted by his own admission in Rent Case No.46/2007, wherein he acknowledged that the said person was merely an attorney. Although certified copies of those pleadings were placed on record during F.R.A. proceedings, the appellate court failed to consider this material evidence. Learned counsel adds that in identical matters arising from the same building, five connected FRAs were dismissed on merits by the learned District Judge, Karachi South, yet the present appeal was allowed without justification. It is finally urged that the petitioners' ownership of the demised premises remains undisputed, and the respondent continues to deposit rent in their name, confirming the privity of tenancy. Hence, the impugned order is perverse and unsustainable in law.

4. **On the other hand,** none has appeared on behalf of Respondent No.1, despite notice.

Whereas, learned Additional Advocate General Sindh disagreed with the findings of the appellate court and submitted that it

had misconstrued the scope of Section 16 of the Sindh Rented Premises Ordinance, 1979. He contended that the tentative rent order is provisional in nature and does not require recording of evidence, and once the tenant admits possession as such, compliance is mandatory. It was urged that the appellate court overlooked the admitted fact that the appellant had failed to comply with the tentative order despite due opportunity, thereby attracting the penal consequences under Section 16(2); hence, the remand of the matter on the pretext of requiring evidence regarding the validity of tender of rent was wholly unwarranted and contrary to the settled principles laid down by the superior Courts.

5. **Heard learned counsel for the parties**, perused the record and the relevant law.

The contention advanced on behalf of the petitioners carries weight that the appellate court failed to appreciate the admitted default in complying with the tentative rent order and overlooked material evidence regarding ownership and landlord-tenant relationship. Learned counsel argued that remanding the matter on extraneous grounds was contrary to the settled scheme of Section 16 of the Ordinance, which mandates that non-compliance with a lawful tentative order attracts inevitable consequences.

6. **The reasoning adopted by the learned appellate court is legally unsound.** It erroneously held that the Rent Controller was obliged to record evidence before passing a tentative rent order under Section 16(1), whereas settled law establishes that such orders are to be made based on the available record without a detailed inquiry into disputed facts. Once the tenant's occupancy was admitted and notice to deposit rent served, failure to comply constituted sufficient ground for action under Section 16(2). By suggesting that denial of landlord-tenant relationship and deposit of rent in MRC required evidence before compliance, the appellate court misdirected itself and undermined the very purpose of Section 16, which is designed to prevent frivolous defaults. The impugned order, therefore, reflects a clear misreading of the record and a misapplication of law.

7. **The learned Rent Controller observed that the tenant materially defaulted** in complying with the tentative rent order dated

06.08.2021, which directed payment of arrears from January 2019 to August 2021 along with future rent at a 10% annual enhancement. Rent deposited in MRC No.1024/2019 was in the name of a previous landlord and, therefore, did not constitute valid compliance. The Rent Controller held that even a single day's default is not condonable under Section 16 of the Sindh Rented Premises Ordinance, 1979, and the failure to deposit rent properly amounted to deliberate and willful non-compliance. Relying on the precedents of the Superior Courts, the tenant's defense was struck off, and eviction was directed within sixty days.

8. This Court, upon review, finds that the tenant indeed defaulted in complying with the tentative rent order, and the deposit in the name of a previous landlord did not constitute valid compliance. The default was deliberate and willful, confirming the Rent Controller's findings and reinforcing the mandatory consequences under Section 16.

9. The respondent's claim regarding the landlordship of Kaleem-ur-Rehman was conclusively contradicted by his own admission in Rent Case No.46/2007, wherein he acknowledged that Kaleem-ur-Rehman acted solely as attorney. Certified copies of these pleadings were placed on record during the F.R.A. proceedings; yet, the appellate court disregarded this material evidence, overlooking a critical factor confirming the privity of tenancy between the petitioners and the respondent. This omission reflects a misreading of the record and weighs heavily in favor of upholding the Rent Controller's findings.

10. The learned Rent Controller, in passing the orders under Sections 16(1) and 16(2), correctly applied the settled law that non-compliance with a lawful tentative rent order attracts mandatory consequences. In *Ashiq Ali and another v. Mehar Elahi and 13 others* [2001 SCMR 130], the Supreme Court held that non-compliance with a specific and unambiguous tentative rent order, even where deposit of rent was made elsewhere, amounts to deliberate default, not a technical lapse. Reliance on this authoritative judgment underscores the correctness of the Rent Controller's orders, including striking off the defense of the respondent and directing eviction, thereby

safeguarding the petitioners' lawful rights and upholding the statutory scheme.

Moreover, in the case of *Syed Asghar Hussain v. Muhammad Owais and others* [2018 SCMR 1720], the Supreme Court of Pakistan observed that the *best course for the petitioner could have been to comply with tentative rent order under section 16(1) of SRPO, 1979 and to have contested the matter to its logical conclusion, but he chose not to comply with a tentative rent order losing his right of defence.* In the present case, respondent No.1 did not comply with the tentative rent order passed by the Rent Controller, thereby committing willful default in the payment of rent.

11. While it is a settled proposition that the findings of an appellate court ordinarily command greater weight, such deference is unwarranted where those findings are contrary to the evidence on record or based on misreading of material facts. In the present case, the appellate court overlooked key documentary evidence and admissions made by respondent No.1, and failed to appreciate the petitioner's documented efforts to comply with his statutory obligations. Its conclusions regarding willful default and breach of tenancy, therefore, lack legal foundation and cannot be sustained.

12. In view of the foregoing discussion, the impugned order dated **30.09.2022**, passed by the appellate court in the aforesaid First Rent Appeal being contrary to the evidence on record and settled principles of law, is not sustainable. Accordingly, the instant constitutional petition is allowed, and the orders dated **06.08.2021** and **17.02.2022**, passed by the learned Rent Controller in Rent Case No.1327 of 2019, on the applications of 16(1) and 16(2) of the Sindh Rented Premises Ordinance, 1979, respectively, are **maintained**. Consequently, respondent No.1 is directed to vacate Shop No.5, Plot No.64-A, Block-6, P.E.C.H.S., Karachi, and hand over peaceful vacant possession to the petitioners within sixty (60) days from the date of this order. Execution Application No.06/2022, filed by the petitioner, if dismissed, shall stand restored to its original position.

JUDGE