ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI.

C.P.No.S-944 of 2010
&
C.P.No.945 of 2010

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

HEARING/PRIORITY CASE

1. For hearing of CMA No.4222/2010
2. For hearing of main case.

25.10.2016

Mr. Muhammad Atiq Qureshi, Advocate for the Petitioner in both petitions.
Dr. Naheed Abid, Chief Executive of Respondent Company, present in person in both petitions.

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These identical petitions emanate from the orders passed in Rent Case No.1384/1998, wherein positive finding as to the default was given by the Rent Controller; the Petitioners challenged the same through FRA No.221/2006, where the Appellate Court dismissed the appeals while maintaining the orders of the trial court.

The very heart of the contention of the counsel for the Petitioner is that when the learned Rent Controller passed the order on the application filed by the landlord under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (SRPO), the order called for two acts to be done by the Petitioners; (i) to pay the rent for the past months of November, 1997 upto July, 2001, and (ii) to deposit the future rent on or before 10th of each succeeding calendar month. Per counsel, notwithstanding that the petitioner (tenant) complied with both parts of the order passed by the learned rent controller, the trial court as well as the appellate court failed to appreciate the applicable law and passed erroneous orders.

Relevant but brief facts are that at the time of determination of the application filed by the landlord under section 16(1), there were some additional funds available in MRC, which materially speaking could have been adjusted towards the monthly rent payable under part-ii of the order after the lump sum payment of rents accrued between Nov-1997 to Jul-2001 in compliance of part (i) of the order was satisfied. Per counsel, the tenant accordingly waited for the time for the absorption of these additional funds and thereafter commenced payment of rent, and that too in advance tranches of six months at a time. This act of the tenant has been fully pictured in the order of the trial Court, as well as, the Appellate Court, where both the Courts have come to the conclusive finding that such an act amounts to non-compliance of the orders of the learned Rent Controller and, therefore, cognizable under section 16(2) of the SRPO.

The generic question arising out of the above conduct is that if the tenant has some excessive funds available in MRC and when the Court asked the tenant for the payment of the past dues, as well as, the payment of current onward rent at the monthly rate, would the additional funds available at MRC would be adjustable for the monthly rent payable? To me, the intent of the legislature is absolutely clear that rent be paid in absolute accordance of the provisions of law, therefore, when the law required the tenant to pay specific rent of every month by the 10 day of the month, notwithstanding certain funds were available in MRC, it was the duty of the tenant to pay monthly rent (before the 10th of every month in advance) and by the end of litigation, he could have taken that additional funds available in MRC back to his kitty. It is an

established legal position that rent cannot be given as charity (1993 MLD 2208), thus must be paid in strict compliance of law.

Of interest is also the narration of the landlady (present in person) to the effect that when she acquired the property and gave notice (as required under section 18 of the SRPO), the tenant who was already in dispute with the previous landlord continued to deposit the rent in MRC created in the name of previous landlord. The law is absolutely clear on this point, when a notice of change of landlord is given and there is dispute between the old landlord and the sitting tenant, a new MRC has to be created in the name of the new landlord, as the law does not envisage any possibility that the new landlord would take benefit of the rent deposited in MRC created for the benefit of the previous landlord. This again shows the conduct of the tenant, who adamantly failed to recognize the title of the new landlord and as the matter of fact, this was the defense that he took in raising objections to the landlord's application filed under section 16(1) of the SRPO, where he refused to consider the new landlord.

Notwithstanding the narrations of the landlady, as the relief sought by the Petitioner under Article 199 of the Constitution is discretionary and unless the impugned judgment is seen to result in manifest injustice or irreparable loss or injury, Constitution does not offer any room for interference. For the circumstances described in the foregoing I do not see any call for interference in the concurrent findings of the two Courts below, particularly in the light of 2001 SCMR 338 and dismiss these petitions with no order as to costs.

Judge