

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**  
**C.P.No.S-1416 of 2015**  
**&**  
**C.P.No.S-1417 of 2015**

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

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**HEARING/PRIORITY CASE**

1. For hearing of CMA No.5713/2015
2. For hearing of main case.

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**27.10.2016**

Mr. Muhammad Imtiaz Khan, Advocate for the  
Petitioners.

Mr. Mohsin Saleem, Advocate for the Respondent.

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**Zulfiqar Ahmad Khan, J.:-** These petitions arise out of very peculiar circumstance, where rather than filing the FRA under section 21(1) of Sindh Rented Premises Ordinance, 1979 (SRPO), the Petitioner has preferred filing the instant constitution petitions directly.

Brief facts of the case are that the Petitioner, who is tenant, entered into a settlement agreement dated 03.01.1990 under Rent Case No.617/1988, wherein it was agreed as under:

- “5. The opponent shall pay the rent of shop in question at the rate of Rs.460/- per month to the Applicant from the month of December, 1989 payable in the first week of January, 1990 or in the absence of the Applicant he would deposit the same in the account of the Applicant being account No. PLS A/C 20089395 United Bank Ltd. Hamid Square Branch, Gulshan-e-Iqbal, Karachi on or before 10<sup>th</sup> of each exceeding month.”

As it could be seen through the instant settlement, Petitioner being tenant was required to deposit payment of rent at Rs.460/- in an account opened at UBL, such designated by the landlord. It appears that the tenant defaulted on making payment in the aforesaid UBL

account, which prompted filing of Rent Case No.109/2015 on 06.02.2012, wherein on 15.01.2014 an application was filed under section 16(1), SRPO, requesting that the tenant be directed to deposit the defaulted amount and the rent before the Rent Controller, rather than depositing it in the designated UBL bank account. The tenant raised objection against the said application, notwithstanding therewith the Rent Controller passed his order dated 24.11.2014, calling upon the tenant to deposit the arrears of rent for the last three years prior to filing of this case and also from the date of filing of the case, and future rent also to be deposited within one month of the order of the Court. The Court also directed the tenant to produce copy of paid utility bills of the premises in question for the satisfaction of the Court.

Rather than appealing the said order passed by the learned Rent Controller under section 21(1) SRPO, the tenant preferred to file review before the Rent Controller under section 151 CPC for setting aside of the Order dated 24.11.2014. Vide its order dated 07.08.2015, the said review application was also rejected leaving with the earlier order for the tenant to pay rent with the Rent Controller before 10<sup>th</sup> of each month, as well as, to pay the accumulated defaulted rent.

Instead of filing an appeal against such review under the provisions of SRPO, the tenant preferred filing these Constitution Petitions. When posed with a question as to why he preferred to file Constitution Petitions (rather than appeals under section 21(1) of the SRPO), the learned counsel answered that the trial Court made a gross error in appreciating the fact that the tenant was only required to make the payment of rent in the bank account and not in the

Court. The counsel also submitted that the tenant has been continuously paying rent at the rate of Rs.460/- on yearly basis in lump sum, therefore, the order passed on the review application is devoid of any merit and non-conclusive in nature, hence, instead of filing FRA, he preferred to file the instant Constitution Petitions. In support of his contentions, he relied upon the case reported as 2014 YLR 1255 (Zia ul Haq Makhdoom v/s. Abdul Rehman and another).

On the other hand, learned counsel for the Respondent submitted that the tenant has always defaulted in making payment and never gave any information as to the remittances made in the designated bank account, which prompted the request for payment of rent in the Court, as well as, the learned counsel submitted that making payment of rent on annual basis is violative of the terms of the settlement reached in Rent Case No.617/1988. In support of his contentions that the Petitioner has no *locus-standi* to file constitution petition, the learned counsel placed reliance on cases reported as 2011 CLC 648 (Habib Bank AG Zurich and another v/s. Nazir Ahmed VAID and another) and 2016 MLD 624 (Iqbal Ahmed v/s. Muhammad Nasir and another). With regards his contention as to non-payment of electricity bills, he placed reliance on the case reported as 1999 SCMR 2234 (Muhammad Usman and another v/s. Dr. Muhammad Hanif). The counsel also relied on case reported as 2014 YLR 2331 (Mrs. Samina Zaheer Abbas v/s. Hassan S. Akhtar and 3 others), which limits the scope of constitution petitions filed against the order passed in rent matters.

Heard the counsel and perused the record. To me, there are following three issues that need to be addressed:

- (i) **Maintainability:** It is clear that the Courts have very limited scope envisaged by 2001 SCMR 338 and 2014 YLR 2331 and particularly in the instant matter when the alternate remedy of appeal was available I do not find any merit in the assertions that the Constitution Petition rightly lies. The case relied upon by the counsel for the Petitioner being 2014 YLR 1255 is of different nature, where the Nazir was delegated powers of the Rent Controller to inspect the neighboring premises and High Court held that the Rent Controller had no jurisdiction to direct Nazir to inspect the adjoining premises and shops and the High Court came to the rescue of the tenant thus stopping the Rent Controller to take cognizance of the Nazir's report holding that since the Nazir had no authority to do the inspection, therefore, the powers delegated by the Rent Controller could not have been enjoyed by the Nazir. However, in this case no such delegation of power is involved. Therefore, the said case law is not applicable. To the contrary, the case law referred to by the counsel for the Respondent to the extent that order passed under section 16(1) SRPO, notwithstanding that it was interlocutory in nature, Constitutional Petition could not be filed against such orders is more appropriately placed.
- (ii) **The payment of rent in the Court:** It is an established principle of law that the Order of the Rent Controller has to be complied with notwithstanding any inconvenience to the parties involved. In the instant case, when the landlord contended that tenant is not providing any detail of rental being deposited in the designated bank account, it was legit right of the landlord to make a request that the rent be paid in the Court. The Rent Controller having passed appropriate order on the said application has not committed any illegality and

it was the duty of the tenant to pay the rent in strict compliance of the order of the Rent Controller.

- (iii) **The payment of rent on yearly basis in the lump sum:** It is also an established principle of rental jurisprudence that rent cannot be paid as charity. In this case it appears that while time and again the tenant has defaulted, however, at the same time has paid rent in lump sum, this act is totally uncalled for and Courts time and again have held that such conduct of the tenant is unbecoming and illegal. It is also a fundamental principle that where the law provides a mechanism of doing an act, the act has to be done in strict compliance of the procedure provided or not done at all. Therefore, the act of making the lump sum payments, while being paid as charity, is also against the principle laid down by jurisprudence in the foregoing as well as it is not permitted under 1993 MLD 2208.

For the aforesaid reasons, I do not find any merit in both of these petitions, which are accordingly dismissed with cost of Rs.3,000/- each.

Judge