

IN THE HIGH COURT OF SINDH AT KARACHI

CONSTITUTION PETITION NO. S-845/2014

Petitioner : Faruukh Naseem & Others, through Mr. Abdul Haleem Siddiqui, Advocate.

Respondents. : Hummayoon Khaleeq & Others, through Mr. Arif Khan

Date of hearing: : 12-04-2017.

Date of Order :

JUDGMENT

YOUSUF ALI SAYEED, J. In terms of this Petition under Article 199 of the Constitution, the Petitioner has assailed the Order made on 13.05.2014 by the learned IIIrd Rent Controller, (Central) Karachi in Rent Case No.01/2014 (the “**Impugned Order**”) in proceedings under S. 15 of the Sindh Rented Premises Ordinance, 1979 (the “**SRPO**”) seeking the eviction of the Respondent No.1 from certain residential premises.

2. Briefly stated, the crux of the present dispute is that the learned Rent Controller had earlier made an Order on 17.02.2014, whereby the Respondent No.1 had been debarred from filing his objections/written statement and it had been directed that the Rent Case proceed ex parte. This Order of 17.02.2014 was then recalled vide the Impugned Order. The grievance of the Petitioner is that the learned Rent Controller had no power make the Impugned Order in view of the specific wording of S.19(2) of the SRPO, which reads as follows:

19. PROCEDURE

(1) ...

(2) Where on the day fixed in the notice for the respondent to file written reply, it is found that the notice has been served but the respondent has failed to file his reply without any reasonable excuse, the Controller may, proceed to make an ex parte order and after such order has been made the Controller shall have no power to rescind such order.”

3. The salient facts, as discernible from the certified copy of the Diary Sheet of the Rent Case placed on record in the instant proceedings, are as follows:
 - (a) The Rent Case was instituted on 04.01.2014, and following issuance of summons through all modes, the Respondent entered appearance through counsel on 14.02.2014.
 - (b) On that date, the learned Rent Controller fixed the matter for 17.02.2014. This was said to be a last and final chance for the Respondent No.1 to file his written statement.
 - (c) On 17.02.2014, counsel for the Respondent No.1 filed an Application in under S.148 CPC seeking enlargement of time for filing of the written statement. This Application was dismissed the same day, and the Respondent No.1's right of defense came to be curtailed as mentioned herein above.
 - (d) On 27.02.2014, an Application was presented under S.151 CPC wherein it was prayed that the Order dated 17.02.2014 be recalled and the Respondent No.1 be given an opportunity to file his written statement, as annexed thereto. This was allowed in terms of the Impugned Order.

4. Learned counsel for the Petitioner maintains that the Order of 17.02.2014 was an 'ex parte order' within the contemplation of S.19(2) of the SRPO, and that the learned Rent Controller had no power to rescind the same. He submits that as a consequence of the Order of 17.02.2014 the Rent Case had to proceed ex parte to its final conclusion, at which time the Respondent No.1 could then have availed the remedy of appeal provided under S.21 of the SRPO. He thus contends that the learned Rent Controller erred in making the Impugned Order and submits that the same is liable to be set aside accordingly. He places reliance on judgments of this Court reported as Muhammad Jehangir v. Ch. Muhammad

Niazuddin and another, 1984 CLC 2114, K.S. Jalil Ahmad Khan v. Istiaque Ali and another, 1986 MLD 1524, Mohammad Shafi v. Messrs Bambino Ltd. and another, 1983 CLC 985, Bashiruddin Qureshi v. Major (Rtd.) Aminullah Khawaja, 1985 CLC 316, Messrs Siddique Tailors v. State Life Insurance Corporation, 1988 CLC 2332, and Muhammad Bahadur Khan Versus Mst. Zubeda, 1986 CLC 2552.

5. Learned Counsel for the Respondent No.1 refutes this contention and submits that the learned Rent Controller was competent to recall the Order of 17.02.2014. He places reliance on a judgment of the Honourable Supreme Court reported as Mashlakhuddin v. Syed Ali Haider, 1982 SCMR 570, as well as judgments of this Court reported as Mst. Rukhsana Shaheen v. Mehmood Zafar Malik, 1994 CLC 1872, Mohammad Ibrahim v. Zeenat Bibi & Others, 1991 CLC 1967, Mst. Raheela Yasmeen through Attorney v. Muhammad Iqbal and 2 Others, 2010 CLC 935, and Wasi Haider v. Qamar Muhammad Khan, 1984 CLC 1755.
6. He submits, quite correctly, that whilst procedural rules may regulate the administration of justice, their ultimate object is essentially to foster proper dispensation rather than serve to create technicalities that stifle adjudication on merit, which is an ideal that the Courts seek to attain to whatever extent is best possible. He contends that the interpretation sought to be placed by learned counsel for the Petitioner on S.19(2) is thus untenable, and submits that the dispute *inter se* the parties ought to be adjudicated on merit in the Rent Case, which remains pending.
7. Having perused the Impugned Order and examined the material placed on record, I am of the view that the instant Petition is misconceived, as no definitive ex parte Order was passed by the learned Rent Controller disposing off the Rent Case, whether in terms of eviction, enhancement of rent or otherwise, and the Order of 17.02.2014 recalled vide the Impugned Order was merely one

whereby the Respondent No.1 was debarred from filing his objections/written statement and it had been directed that, going forward, the Rent Case would proceed ex parte. I am of the opinion that a mere procedural order of such a nature is not an 'ex parte order' as envisaged in S.19(2) of the SRPO. The Judgments cited by learned counsel for the Petitioner relate to cases where ex parte proceedings culminated in a final order determining the matter under dispute at first instance, and are thus clearly distinguishable.

8. In view of foregoing discussion, this Petition is found to be misconceived and hence is dismissed. There will be no order as to costs.

JUDGE

Karachi

Dated _____