

# IN THE HIGH COURT OF SINDH AT KARACHI

## C.P No. S-1486 of 2015

### Present

**Mrs. Justice Kausar Sultana  
Hussain**

Zahid Hussain son of Maqbool Hussain.....Petitioner

Versus

Saleem Yousuf & another.....Respondents

## C.P No. S-1487 of 2015

Zahid Hussain son of Maqbool  
Hussain.....Petitioner

Versus

Muhammad Iqbal Yousuf &  
another.....Respondents

## C.P No. S-1488 of 2015

Zahid Hussain son of Maqbool  
Hussain.....Petitioner

Versus

Muhammad Irfan & another.....Respondents

Date of Hearing 20.03.2018

Date of Order .06.2018

Mr. Muhammad Riaz, advocate for petitioner  
Mr. Iftikhar Javed Qazi, advocate for respondent No. 1.

### J U D G M E N T

**Kausar Sultana Hussain, J.** :- In the above Constitution Petitions, identical short controversy as regards to purported non-compliance of three same dated orders dated 27.01.2014, passed by the Rent Controller under Section 16 (1) of the Sindh Rented Premises

Ordinance, 1979 is involved, hence I intend to dispose of all these three petitions by this common judgment.

2. Briefly stated, common relevant facts of the case are that the appellant had filed ejectment applications against the respondent No. 1 on the plea of commission of default in the payment of rent etc. During the pendency of such proceedings of three separate but identical applications under Section 16 (1) of the Ordinance, 1979, filed by the appellant, rent orders were passed by the Rent Controller on 27.01.2014, precisely directing the respondent No. 1 to deposit the arrears of rent from July, 2012 up to date within 15 days as well as future monthly rent on or before the 10<sup>th</sup> of each calendar month in this case. In the above background, later on separate applications under Section 16(2) of the Ordinance, 1979 were moved by the appellant before the Rent Controller in all the three rent cases, on the ground that the rent for the future was not deposited by respondent No. 1 within the stipulated period in terms of the rent orders dated 27.01.2014, therefore their defence was liable to be struck off. After hearing these applications, Rent Controller, in its three orders dated 27.10.2014, came to the conclusion that the plea of appellant about non-deposit of rent by respondent No. 1 for the disputed three months (March, May and June, 2014) in time, as noted above, was correct and accordingly their defence was struck off. Such orders, when challenged by respondent No. 1 through F.R.A No. 180 to 182 of 2014 were set aside and accordingly their appeals were allowed by the learned appellate court, vide judgments dated 28.07.2015.

3. The appellant aggrieved by the said three judgments referred to above, has invoked the jurisdiction of this Court under Article, 199 of the Constitution, through petitions in hand with the sole contention that the view taken by the learned appellate court

regarding deposit of future rent by the respondent No. 1 in time was erroneous and illegal.

4. The learned counsel for the appellant made his submissions to show that for all three relevant months of default, the deposit was to be made in advance by 10<sup>th</sup> of every month as per tentative rent order but the said deposit was made with a delay, which could not be condoned. He has further submitted that the view taken by the lower appellate court regarding deposit of future rent by respondent No. 1 in time was erroneous. He has argued that as per tentative rent orders dated 27.01.2014, the respondent No. 1 was required to deposit future monthly rent on or before 10<sup>th</sup> of each calendar month. He has further argued that tentative rent order clearly required the respondent No. 1 to deposit the future monthly rent in advance, but the learned appellate court misinterpreted the same. He has pointed out that the monthly rent deposited by the respondent No. 1 for the months of March, May and June, 2014 after expiry of time limit as directed in the tentative rent order, as such, defence of respondent No. 1 rightly struck off by the learned Rent Controller, while invoking section 16 (2) of the Sindh Rented Premises Ordinance, 1979.

5. Conversely, the learned counsel for respondent No. 1 has strongly refuted the above contention and argued that the tentative rent orders were passed on 27.01.2014, which itself full of vagueness and nonspeaking, while elaborating his said contention he has highlighted the wordings of tentative rent orders and pointed out that learned Rent Controller did not specify the arrears of rent up to which month, and further pointed out that so is the position of future rent as it was not specified whether future rent was required to be deposited in advance or after becoming due on expiry of the month. He has also

referred the reports of Nazir / C.O.C regarding deposit of rents on account of future rent by the respondent No. 1 and stated that the rent for the disputed months viz; March, May and June, 2014 were deposited on 01.04.2014 for the month of March and April and on 06.06.2014 for the month of May and June, 2014 respectively. He has made reference to section 10 and 16 of the Sindh Rented Premises Ordinance, 1979 and stressed on the point that, rent due, means the rent of a month becomes due on the last date of the month and payable by tenth of next month, as such the respondent No. 1, did not commit any default, rightly opined by the learned appellate court.

6. I have considered the submissions of the learned counsel for the parties and also perused the material placed on record in the perspective of relevant provisions of law. There is no cavil to the proposition of law that unless strict compliance of order of the Rent Controller passed under section 16 (1) of the Sindh Rented Premises Ordinance, 1979 is made by the tenant, he makes his defence liable to be struck off. It may be observed that there is no dispute concerning the timely compliance of arrears of rent made by the respondent No. 1, which infact conceded by the learned counsel for the appellant. Thus, now the two points for consideration, which remains to be resolved in these petitions, are whether the rent orders dated 27.01.2014 were properly interpreted/understood by the Rent Controller and the appellate court, keeping in view the language of section 10, 15(2) (ii) and 16 (1) (2) of the Ordinance, 1979 and whether the date on which the future monthly rent deposited are in time or not.

7. For examining the above noted legal aspect of the case, I deem it appropriate to reproduce relevant provisions from the

Ordinance, 1979, relating to payment of rent qua default, which reads as under :-

**--S. 10-- Payment of rent--**" (1) The rent shall, in the absence of any date fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than the tenth of the month next following the month for which it is due.

(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.

(3) Where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or, be deposited with the Controller within whose jurisdiction the premises in situate.

(4) The written acknowledgment, postal money order receipt or receipt of the Controller, as the case may be, shall be produced and accepted in proof of the payment of the rent :

Provided that nothing contained in this section shall apply in the cases pending before the Controllers on the commencement of this Ordinance.

**--S. 15--Application to Controller--**(1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that—

(i) xxxxxxxxxxxx

(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of which agreement, within sixty days after the rent has become due for payment;

{Provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first

day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;}

**S.16. Arrears of rent.**—(1) Where a case 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 this 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.

{Provided that the Controller may direct that the arrears of rent and approximate rent may be paid to the landlord through pay order, or by any other mode agreed to by the parties, or as directed by the Controller}

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.

(3) Where the rent has been deposited under this section, it shall, subject to such order as the Controller may make in this behalf, be paid to the landlord at the conclusion of the case or on such earlier date as may be specified by the Controller.

8. A plain reading of the above reproduced sections from the Ordinance of 1979, depicts that section 10 (supra) deals with the payment of rent by the tenant to the landlord and provides that in the absence of any date fixed between the landlord and tenant by mutual agreement, rent shall be paid not later than 10<sup>th</sup> of month next following the month for which it is due. The language of this section

makes it abundantly clear that a tenant is not expected to make any advance payment of rent to the landlord, except when mutually agreed between them under same agreement. Section 15(2) (ii) of the Ordinance, 1979 deals with the question of default in the payment of rent by the tenant, as one of the ground for his eviction. It provides two eventualities for this purpose i.e. where the time for payment of rent is fixed by mutual agreement between the tenant and landlord, the rent is payable within 15 days after the expiry of said period, otherwise within 60 days when the rent has become due for payment. The next provision of law referred to above i.e. section 16, deals with the powers of the Rent Controller to pass an order after holding summary enquiry for determining the arrears of "rent due" directing the tenant to deposit the same within such period as the Controller deems fit in this behalf. It also empowers the Rent Controller to direct the tenant to deposit future monthly rent regularly on or before the 10<sup>th</sup> of every month till final disposal of the case. Proviso to subsection (1), added by Ordinance, XIV of the 2001, further empowers Rent Controller to pass an order regarding payment of arrears of rent and approximate rent to the landlord; subsection (2) to section 16 deals with the penal consequence of non-compliance of rent order passed in terms of subsection (1) passed by Rent Controller and empowers the Rent Controller to Strike off the defence of the tenant and pass an order in favour of landlord to put him in possession of rented premises within specified period on that account. Further subsection (3) empowers the Rent Controller to deal with the disbursement of the rent deposited by the tenant in the office of the Rent Controller in the manner he deems fit in this behalf. An important feature of similarity in the above provisions of Ordinance of 1979, is that the question of default in payment of rent is to be gauged on the payment or otherwise of "rent due" and not the advance rent, which is alien to

these provisions of law, except under a mutual agreement, keeping in view this legal position, it is noted that the learned Rent Controller had not adverted to the controversy involved in the case in its true perspective, as for this purpose he did not care to apply his judicial mind to go through the provisions of section 10 and section 16(1) and (2) of the Ordinance of, 1979, applicable to the case.

9. Perusal of tentative rent orders reflects that direction was given to the tenant/respondent No. 1 for payment of future monthly rent on or before the 10<sup>th</sup> of each calendar month i.e. on or before 10<sup>th</sup> of each calendar month next following, when in terms of section 10 or 15 (2) the rent for the previous month will become due. It is quite obvious that the provisions of section 16 (1) of the Ordinance of 1979 do not permit the Rent Controller to pass an order for advance payment of rent for current months. In case the Rent Controller had taken reasonable care at the time of passing the orders under Section 16 (1) of the Ordinance of 1979, he could have clarified this legal position in his orders regarding payment of future/current monthly rent, by incorporating the words "next month" "coming month" "subsequent month" or succeeding month", while forming such view, I have derived the strength from the valuable and guiding interpretation of the Hon'ble Supreme Court of Pakistan in the case of Ibrahim Trust Karachi Versus Shaheen Freight Services (PLD 2001 Supreme Court 331), wherein the Hon'ble apex court held that :

(d)Sindh Rent Premises Ordinance (XVII of 1979)----Ss.16, 15 & 10---Default in payment of rent---Arrears of rent---Scope and application of Ss. 16, 15 & 10 of Sindh Rented Premises Ordinance, 1979---Rent order---interpretation---Principles---- Question of default in payment of rent is to be gauged on the payment or otherwise of " rent due " and not the "advance rent", which is alien to Provisions of Ss. 10, 15 & 16 of the Ordinance, except under a mutual agreement---When two equally logical



interpretations of the rent order, entailing penal consequences were possible, then the one favorable to the subject was to be preference i.e. no contemplation for such rent order to the prejudice of tenant---Deposit of pay order in the Bank on the 10<sup>th</sup> of each month, under valid challans issued by the Nazarat office was due compliance of the rent orders by the tenants, irrespective of the fact when payment of such pay orders was collected or realized from the concerned Bank by its encashment---Principles.

10. In the instant case, obvious of such legal aspect, the Rent Controller proceeded an misinterpretation of the rent orders under misconception of law, that the rent for alleged three months of default i.e. March, May and June, 2014 was payable in advance by the 10<sup>th</sup> of each calendar month, though in accordance with law, to avoid commission of default, rent for the month of March, 2014 was payable by 10<sup>th</sup> of April, 2014 when it become due, and similarly the rent for the month of May, 2014 and June, 2014 in the succeeding months of June, 2014 and July, 2014 respectively. As per report of Nazir / C.O.C, the respondent No. 1 deposited the future rent for the disputed period viz; March and April on 01.04.2014 and for May and June, 2014 on 06.06.2014 respectively, which was well within time in view of the above scale of law. Thus, in the instant petitions, for no stretch of imagination the respondent No. 1 can be held defaulters in the compliance of rent orders dated 27.01.2014, as alleged by the appellant.

11. In view of above discussion, the impugned judgments passed by the learned appellate court did not suffer by any illegality or mis-appreciation of facts, rather clipped with sound reasoning in accordance with law, as such, warranted no interference in the writ petition. Consequently, petitions in hand are dismissed accordingly.

**J U D G E**

Faheem/PA