IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-915 of 2018

Present
Justice Mrs. Kausar Sultana Hussain

Muhammad Aquil son of Muhammad Yahya.....Petitioner

V e r s u s

Abdul Rehman Gillani and two others.....Respondents

Date of Hearing 7.2.2019.
Date of Judgment 7.2.2019.

Mr. S.M. Ishrat Ghazali, advocate for Petitioner(s)
Mr. Naveed Ali, advocate for respondent No. 1(s).

J U D G M E N T

Kausar Sultana Hussain, J. :- By invoking the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973, the petitioner/appellant/tenant (hereinafter called as tenant) has approached this Court with the prayer to set aside the concurrent findings of both learned lower courts, whereby the orders passed in Rent Case No. 465 of 2016 by the learned Rent Controller on applications under Section 16(1) and 16(2) of the Sindh Rented Premises Ordinance, 1979 on 24.4.2017 and 11.09.2017 respectively were upheld by the learned Appellate Court in F.R.A. No. 230 of 2017 through order pronounced on 15.2.2018.

2. Succinct facts leading to this petition are that the respondent No.1 has filed an application under Section 15 of Sindh rented Premises Ordinance, 1979 for eviction of the petitioner/tenant from demised premises/entire first floor of House No. 2/J, 9/3, Nazimabad, Karachi, on the ground of willful default in payment of rent from April, 2016. The petitioner/tenant contested the aforesaid rent application by filing written statement, wherein he has denied the contention of the said rent application and further claimed that there is no relationship between the

parties as landlord and tenant. During proceedings, respondent No.1/landlord has filed an application dated 16.9.2016 under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, praying therein to direct the petitioner/tenant to deposit the arrears of monthly rent of the demised premises from April, 2016 at the rate of Rs.30,000/- per month as well as its future rent in the office of Nazir of learned trial Court. On hearing both the learned counsel for the parties, the learned trial Court in penultimate paragraph has passed the following tentative rent order under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 dated 24.4.2017.

> "In view of above, the instant application is allowed and thereby the opponent is hereby directed to deposit the monthly rent as admitted by him at the rate of Rs.4120/- per month, from this month, up to 10th of every month in this case with the Nazir of this Court, till final disposal of the case."

3. Since the petitioner/tenant had failed to deposit the monthly rent from the date of above mentioned tentative rent order passed by the learned trial Court on 24.4.2017 on application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, therefore, the respondent/landlord had filed an application under section 16(2) of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller, who vide order dated 11.09.2017, struck of the defence of the petitioner/tenant and was directed him to handover vacant peaceful possession of the demised premises to the respondent/landlord within thirty days from the date of order dated 11.9.2017. Being dis-satisfied by the said order, the petitioner/tenant has preferred an Appeal No.230/2017 under section 21 of Sindh Rented Premises Ordinance, 1979, which was also dismissed, vide order 15.02.2018 and against the aforesaid orders the captioned petition has been filed before this Court.

4. Arguments of the learned Counsel for the parties have been heard and perused the record.

5. The section 16(1) & (2) of the Sindh Rented Premises Ordinance, 1979 is, reproduced herein below:-

> "16. **Arrears of rent**.----(1) Where a case of 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 further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case.
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> 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 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.

6. Learned counsel for the petitioner/tenant has argued that the impugned judgment dated 15.2.2018 passed by the learned Appellate Court and earlier orders dated 24.4.2017 and 11.9.2017 passed by the learned Rent Controller are not warranted by law and facts of the case. The learned counsel for the petitioner/tenant has further argued that the orders in question are defective orders as mandatory requirement of law has been ignored by the learned two Courts below. The learned counsel for the petitioner/tenant has taken plea that the rent up to August, 2017 he had already paid in advance to the previous landlord, therefore, no default has been committed by him in payment of monthly rent, hence, the impugned orders are not sustainable in law. The learned counsel for the petitioner/tenant has submitted that in compliance of the order of the learned Rent Controller passed on application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, the petitioner/tenant has deposited the rent on 9.5.2017 for two months at the rate of Rs. 4120/- [total amount Rs. 8240/-] and thereafter, on 19.7.2017 at the same rate,

but thereafter he has not deposited further monthly rent in the office of the Nazir of learned trial Court. To support his contention learned counsel for the petitioner placed his reliance upon the reported judgment announced in a First Rent Appeal in the case of *Kamran Butt v. Lt. Col.Syed Iftikhar Ahmad* (PLD 1991 417)

7. Conversely, learned counsel for the respondent No.1/landlord submits that it is well settled principle of law, that a person who does not obey order of the Court, has no right to remain present before the Court and to contest the matter. He has further argued that the petitioner/tenant inspite of availing several chances did not make compliance of the order of learned Rent Controller passed under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, therefore, the learned trial Court has passed an order under Section 16(2) of Sindh Rented Premises Ordinance, 1979. He further argued that the appellant/tenant has deposited three months rent in compliance of order for May-July, 2016, thereafter he stopped to deposit further future rent in the office of Nazir of the learned trial Court, therefore, according to Section 16(2) of the Sindh Rented Premises Ordinance, 1979, he had no right to contest the matter further more, hence the learned Rent Controller had rightly struck off his defence. To support his contentions learned Counsel for respondent/landlord placed his reliance upon the judgment of Malik Mohammad Riaz and another v. Mrs. Farhat Imrana and another reported in 2018 MLD 32 (Sindh), Dr. Muhammad Saeed v. Sardar Muhammad Akram and others [2017 MLD 1643 (Islamabad) and Ahsan Asad v. Mrs. Rubina Naeem and two others 2016 MLD 86 (Sindh)

8. After hearing arguments and perusal of the record, I am of the view that as per requirement of Section 16(1) of the Sindh Rented Premises, Ordinance, 1979 the Rent Controller has to make summary enquiry, as he deemed fit before passing an order in order to determine the arrears of the rent as well as future rent. Admittedly, both orders, passed by the learned

Rent Controller under section 16(1) & 16(2) of the Ordinance 1979 were passed after affording proper opportunities of hearing to both the sides. In instant case the learned Rent Controller has not passed an order for depositing the arrears of the rent, however, tenant was directed to deposit future rent from April, 2016 in the office of Nazir of learned trial Court up to 10th of every month, the tenant admittedly had deposited rent for three months only on 9.5.2017 and 19.7.2017 for May, June and July, 2016 and thereafter, he had stopped to deposit further payment of monthly rent in the office of Nazir of learned Rent Controller, therefore, the learned Rent Controller after hearing arguments of both the sides passed an order on application of the respondent/landlord under Section 16(2) of the Sindh Rented Premises Ordinance, 1979. The learned Appellate Court in its judgment dated 15.2.2018 has correctly observed that the order passed by the learned Rent Controller has specific stipulation as to deposit of future monthly rent on or before 10th of each calendar month but the petitioner/tenant admittedly remained failed to comply the same as the tenant was duty bound to pay rent to the landlord for the subject premises, he has been enjoying the possession whereof.

9. Suffice is to say that there is no illegality or irregularity and infirmity in the concurrent findings of both learned lower courts; more particular, the impugned orders are not passed without jurisdiction. It is well settled principle of law that an admitted fact that no evidence was required to be recorded at the time of passing the tentative rent order under section 16(1) of the Sindh rented Premises Ordinance, 19790, which was binding force on the petitioner/tenant. I, therefore found no occasion and justification to interfere in the concurrent findings of both Courts below in exercise of writ jurisdiction. Resultantly, the captioned petition is dismissed with no order as to costs, having no merits for consideration.

10. Above are the reasons of short order dated: 07.02.2019.

Faheem/PA

JUDGE