

# **IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

CP. No. S- 683/2021

Fawad Fatah Qureshi v. Boulevard Mall Hyderabad & Others

CP. No. S- 684/2021

Tasneem Safdar v. Boulevard Mall Hyderabad & Others

CP. No. S- 685/2021

Noman Parekh v. Boulevard Mall Hyderabad & Others

CP. No. S- 686/2021

Farrukh Pasha v. Boulevard Mall Hyderabad & Others

CP. No. S- 687/2021

Farina Shahab v. Boulevard Mall Hyderabad & Others

CP. No. S- 688/2021

Faraz Hussain v. Boulevard Mall Hyderabad & Others

CP. No. S- 689/2021

Mir Asad Abbas Ali v. Boulevard Mall Hyderabad & Others

CP. No. S- 690/2021

Ishaque Khan v. Boulevard Mall Hyderabad & Others

CP. No. S- 691/2021

Farah Safdar v. Boulevard Mall Hyderabad & Others

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Faisal Kareem v. Boulevard Mall Hyderabad & Others

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Jan-e-Alam v. Boulevard Mall & others

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Mst. Rifat Wajid v. Boulevard Mall & others

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CP. No. S- 705/2021  
Zain Ul Abdin v. Boulevard Mall & others

CP. No. S- 706/2021  
Sumaira Sohail v. Boulevard Mall & others

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Muhammad Azam v. Boulevard Mall & others

CP. No. S- 708/2021  
Mir Asad Abbas Ali v. Boulevard Mall & others

CP. No. S- 709/2021  
Farhana Jan v. Boulevard Mall & others

CP. No. S- 710/2021  
Aftab Ahmed v. Boulevard Mall & others

CP. No. S- 711/2021  
Muhammad Afzal v. Boulevard Mall & others

CP. No. S- 712/2021  
Khawaja Awais Mehmood v. Boulevard Mall & others

CP. No. S- 713/2021  
Tasneem Safdar v. Boulevard Mall & others

CP. No. S- 714/2021  
Afser Sultana Chandio v. Boulevard Mall & others

CP. No. S- 715/2021  
Waqas Memon v. Boulevard Mall & others

CP. No. S- 716/2021  
Syed Atif Hussain Zaidi v. Boulevard Mall & others

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Rasool Bux v. Boulevard Mall & others

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Tariq Shaikh v. Boulevard Mall & others

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CP. No. S- 730/2021  
Muhammad Aadil v. Boulevard Mall & others

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CP. No. S- 732/2021  
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CP. No. S- 734/2021  
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Arsh v. Boulevard Mall Hyderabad & Others

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Fahad Fatah Qureshi v. Boulevard Mall Hyderabad & Others

CP. No. S- 740/2021  
Farina Shahab v. Boulevard Mall & others

CP. No. S- 741/2021  
Altaf Hussain v. Boulevard Mall & others

CP. No. S- 742/2021  
Izaharul Haq v. Boulevard Mall Hyderabad & Others

CP. No. S- 743/2021  
Khanzada Muhammad Amir v. Boulevard Mall Hyderabad & Others

CP. No. S- 744/2021  
Muhammad Naeem v. Boulevard Mall & others

CP. No. S- 745/2021  
Muhammad Umair v. Boulevard Mall & others

CP. No. S- 746/2021  
Muhammad Dawar v. Boulevard Mall & others

CP. No. S- 747/2021  
Moti Ram v. Boulevard Mall & others

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Agha Shahi v. Boulevard Mall & others

CP. No. S- 749/2021  
Mumtaz Ali v. Boulevard Mall & others

CP. No. S- 750/2021  
Odhu Mal Urf Dileep Kumar v. Boulevard Mall Hyderabad & Others

CP. No. S- 751/2021  
Jamshed Ahmed Khanzada v. Boulevard Mall Hyderabad & Others

CP. No. S- 752/2021  
Afsar Sultana Chandio v. Boulevard Mall & others

CP. No. S- 753/2021  
Agha Shahi v. Boulevard Mall & others

CP. No. S- 754/2021  
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Mst Naseem Shaikh v. Boulevard Mall Hyderabad & Others

CP. No. S- 759/2021  
Athar Ali v. Boulevard Mall & others

CP. No. S- 760/2021  
Muhammad Anwar Pasha v. Boulevard Mall & others

CP. No. S- 761/2021  
Erum Shaheen v. Boulevard Mall Hyderabad & Others

CP. No. S- 762/2021  
Riaz Ahmed Rajput v. Boulevard Mall Hyderabad & Others

CP. No. S- 763/2021  
Mir Asad Abbas Ali v. Boulevard Mall & others

CP. No. S- 764/2021  
Mir Behram Talpur v. Boulevard Mall & others

CP. No. S- 765/2021  
Waseem Ahmed v. Boulevard Mall & others

CP. No. S- 791/2021  
Sahil Ladhani v. Boulevard Mall Hyderabad & Others

CP. No. S- 792/2021  
Sagar Ladhani v. Boulevard Mall Hyderabad & Others

CP. No. S- 793/2021  
Rafsan Jani v. Boulevard Mall Hyderabad & Others

M/s. Imdad Ali R. Unar & Parkash Kumar, Advocate(s) for petitioners

Mr. Ayatullah Khowaja, Advocate for private respondents

Date of order & decision : 17.12.2021

## **ORDER**

**ADNAN-UL-KARIM MEMON J:-** – All the above referred Constitutional Petitions are being disposed of by this common order as the issue raised therein is similar.

2. Through these Constitutional petitions, the petitioners have challenged the impugned orders passed by learned Rent Controller-VIII, Hyderabad in respective Rent Applications, whereby the Presiding Officer failed to exercise the powers conferred upon him under the Sindh Rented Premises Ordinance, 1979 (SRPO) for deciding the applications of the petitioners filed under Section 16(1)

of SRPO, for depositing the tentative rent amount by the private respondents.

3. The core point in the instant petitions is as to whether the learned Rent Controller-VIII, Hyderabad was justified in holding that since there is issue of relationship of landlord and tenant between the parties, let it be decided first, by deferring the application filed by the petitioners under Section 16(1) of Sindh Rented Premises Ordinance, 1979.

4. To this proposition learned counsel for the petitioners has submitted that impugned common order dated 22.10.2021 passed by learned Rent Controller suffers from perversity, illegally and material irregularity; that learned Rent Controller without applying its judicial mind passed the impugned order; and, failed to decide the fate of applications under Section 16(1) of SRPO, 1979 filed by the petitioners; that respondents 1 & 2 have already admitted in their written statement that since 2019, rent amount has not been paid to the petitioners, as such default on part of the private respondents was/is apparent on record which has not been considered by the learned Rent Controller, rather opined contra in the impugned Order which act on the part of learned Presiding Officer is not justified under the law. Learned counsel emphasized that in principle the learned Rent Controller is empowered under Section 16(1) of SRPO, 1979 to make a summary inquiry; and, the material which needs to be examined i.e. rent receipts, rent agreement, etc; that learned court cannot go beyond the pleadings of the rent applications, however, the learned Rent Controller went ahead by making up her mind that application under section 16(1) of SRPO, could not be decided without determination the controversy as to the existence of relationship of landlord and tenant between the parties; and erroneously framed the issue of relationship of landlord and tenant between the parties before the decision on the application under section 16(1) of SRPO, though the respondents have admitted in their written statement, about the relationship. Per learned counsel, the case of the petitioners has highly been prejudiced by the act of the learned presiding officer, as discussed supra. They prayed for allowing the instant petitions.

5. Mr. Ayatullah Khuwaja, learned counsel for the private respondent(s) initially raised the question of maintainability of these

petitions on the premise that the interlocutory orders cannot be challenged under Article 199 of the Constitution; he added that learned trial Court was not required to decide the application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 pending before him until and unless the relationship of landlord and tenant between the parties is established, however, in principle he agreed for disposal of these petitions with directions to the learned Rent Controller to take a prompt decision on the applications of the petitioners under Section 16(1) of Sindh Rented Premises Ordinance, 1979.

6. To this proposal, learned counsel, representing the petitioners did not object, if the trial Court is directed to decide the applications of the petitioners under Section 16(1) of Sindh Rented Premises Ordinance, 1979.

7. I have heard learned counsel for the parties on the subject issue and perused the material available on record.

8. To the first proposition raised by the learned counsel for the private respondents that interlocutory orders passed by the learned Rent Controller cannot be challenged in writ jurisdiction. I am not in agreement with this assertion of the learned counsel for the simple reason that any order passed by the court or tribunal over its jurisdiction or by not exercising the jurisdiction vested in it by law, can be challenged in the constitutional jurisdiction of High Court; and, in such an event the mere fact that the impugned Order is interlocutory shall not prevent the High Court from exercising constitutional jurisdiction. It has been held time and again by the Honourable Supreme Court and High Courts that the Superior Courts have inherent and constitutional powers to remedy and correct the wrongs committed by subordinate courts.

9. To the second assertion of the learned counsel for the private respondents, while answering the point of the existence of the relationship, primarily, such question is always of vitality for continuing proceedings with the matter by Rent Controller. An answer in negation would always be sufficient for cession of jurisdiction onto matter by the Rent Controller because mere ownership alone, legally, has got nothing to do with the status of "landlord". The Honourable Supreme Court has held in its various

pronouncements that in absence of a relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that the issue whether the relationship of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses jurisdiction and must stay his hands forthwith. In such a situation the Honorable Supreme Court has emphasized that ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by the landlord is sufficient to establish the relationship of landlord and tenant between the parties. On the aforesaid proposition, I am guided by the decisions of the Honorable Supreme Court rendered in the case of Afzal Ahmed Qureshi v. Mursaleen (2001 SCMR 1434).

10. Legally, the term "tenant" has itself been defined by the Ordinance itself as:-

"Section 2(j) "tenant" means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and include:

- (i) .....
- (ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant;"

11. The relevant law of depositing rent in Court provided in Section 16(1) of SRPO, 1979 clearly says that the landlord in every case of eviction filed by him/her can make an application in terms of this section irrespective of the grounds taken in the case. Likewise, there is no legal embargo on passing an order either for depositing arrears of rent or monthly future rent. If there are no arrears due against the tenant when the landlord approached the rent Controller for eviction of the tenant, the Rent Controller can pass an order for depositing future rent alone. In the instant matter, although the petitioner/landlord for eviction of respondent/tenant has taken ground of committing default by the respondent/tenant in payment of monthly rent, during pendency of the Rent Case the petitioner/landlord has filed an application under Section 16(1) of SRPO, 1979, as he was allowed to file such application for obtaining tentative rent order for depositing monthly future rent as well as arrears of rent in



Rent Case, hence in my view the learned Rent Controller was required to pass orders on the applications. Primarily, the only requirement for passing such order is that he shall hold a summary inquiry as deemed fit on receipt of an application from the landlord.

12. In view of the above facts and circumstances of the case, without prejudice the rights of the parties on the subject matter, judicial propriety demands to observe that the learned Rent Controller ought to have attended the application of the petitioners moved under Section 16(1) of Sindh Rented Premises Ordinance, by, either way instead of compelling the petitioners to approach this Court.

13. During arguments, I have been informed that the petitioners have shown certain reservations in proceeding before the learned Rent Controller-VIII Hyderabad. Be that as it may, it is for the learned District Judge, Hyderabad to look into this aspect of the case if he feels appropriate to assign the aforesaid rent matters to another Rent Controller for appropriate decision on merits.

14. In view of the above facts and circumstances of the case, these petitions are disposed of directing the learned Rent Controller concerned to decide the applications of the petitioners moved under Section 16(1) of Sindh Rented Premises Ordinance, 1979 within 15 days from today after providing meaningful hearing to the parties in accordance with law.

15. These petitions stand disposed of in the above terms.

JUDGE