

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP.Nos.S-1427 to 1433 all of 2019.

Date	Order with signature of Judge
------	-------------------------------

Date of hearing 04th February 2020.
Date of order:

M/s. Muhammad Ali Lakhani and Mujtaba Raja, advocates for petitioners/Opponents.

Syed Mureed Ali Shah, advocate for respondents No. 2(i) to 2 (iv).

This common order would dispose of the captioned petitions filed against the orders dated 26.11.2019 passed by learned VII-Rent Controller Karachi South whereby applications under Section 19 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) filed by the petitioners (opponents) in Rent case Nos. 1163, 1155, 1157, 1161, 1156, 1164 and 1153 all of 2017 were dismissed.

2. Precisely, relevant facts are that respondent No.2 (landlord) filed eviction applications, notices whereof were issued, however, petitioners failed to file written statement within time; petitioners filed transfer application on administrative grounds; petitioners also filed application under Order VII rule 11 CPC, which was dismissed and against such dismissal each petitioner filed a separate petition before this Court, which were disposed of vide order dated 24.04.2019 with the observations that petitioners would be competent to file written statement before the Rent Controller, though they were debarred to file written statement by the Rent Controller. The said order being relevant is reproduced herein below:

“As per the bailiff’s report dated 23.04.2019, notice was received on 22.04.2019 by the servant of respondent No.2. Despite the above, no one is present on behalf of the said respondent.

It is the case of the petitioner that the eviction application filed against him by respondent No.2 is not maintainable as relationship of landlord and tenant between the parties does not exist. The application filed by the

petitioner for rejection of the eviction application on the above ground was dismissed by the learned Rent Controller through the impugned order. Learned counsel for the petitioner concedes that the rent case filed by the respondent No.2 is still pending before the learned Rent Controller wherein the petitioner has not filed his written statement as yet. In view of the above, petitioner may file his written statement in the rent case within fifteen (15) days from today wherein he may raise objection, if he is so advised, with regard to the relationship of landlord and tenant between the parties. Needless to say if any such objection is raised by the petitioner, the same shall be decided by the learned Rent Controller strictly in accordance with law. The petition and listed application are disposed of in the above terms with no order as to costs.

3. Thereafter application for extension of time was filed in the above petitions, which were also decided by order dated 30.05.2019 wherein this Court observed that petitioners were supposed to inform this Court that they were already debarred from filing written statement, hence, application for extension of time was dismissed. The said order is also reproduced as under:

“Mr. Mushtaque Chandio Advocate files his Vakalatnama on behalf of respondents in all the petitions, which are taken on record.

On 24.04.2019 when the order was passed enabling the petitioners to file written statement, their side to file written statement was already closed. This Court was not informed of such fact. Learned counsel for respondents who has filed Vakalatnama today has also presented certified copies of diary sheets of Rent Case No.1153 of 2017. It is claimed that in all such rent cases similar order was passed. The order sheet of the aforesaid rent case shows that on 14.04.2018 the petitioner was debarred from filing written statement and the respondent was directed to file ex parte proof. Despite order of 24.04.2019 no written statement was filed. The petitioners have now moved an application for extension of time. The application is misconceived. In all fairness the petitioners should have informed the Court that they were already from filing written statement as only then appropriate orders could have been passed. Extension in filing written statement means that they were not debarred from filing written statement for which explanation was required. Contention earlier was misconceived and even today the application for extension also tends to mislead the Court. Listed application as such is dismissed.

4. Against above order review applications were moved, which too were dismissed. Thereafter, petitioners filed applications under Section 19 of the

Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) for opening of side before the learned Rent Controller, who dismissed the same, vide order dated 26.11.2019, being not maintainable by contending that none filing of written statement by the petitioners on the ground of pendency of transfer application was not justified, hence, order dated 14.04.2018 whereby petitioners were debarred was maintained. Petitioners have challenged that order directly in writ jurisdiction on the ground that no other efficacious remedy is available.

5. Counsel for the petitioners, while reiterating the grounds raised in the petitions, contends that non-filing of written statement was *bonafide* mistake and since valuable rights of the petitioners are involved, hence, it would be in the interest of justice to set aside the impugned order by allowing the petitioners to file written statement. It is further contended that matter is fixed for arguments before the Rent Controller and in cross-examination they were not allowed to participate. In support of his contentions, he has relied upon decisions reported as 1982 SCMR 570, 1984 CLC 881 (Lahore), 2011 CLC 1779 (Lahore), 2000 CLC 541 (Karachi) and 2001 MLD (Karachi).

6. In contra, learned counsel for the respondent No.2 contends that against interim order in rent jurisdiction petition is not maintainable; petitioners failed to file their written statement in due time though sufficient opportunities were given; they with malafide intention filed application under Order VII Rule 11 CPC meaning thereby that they had active knowledge of eviction application, they sought time repeatedly to file written statement, however, instead of contesting the cases on merits, they opened an un-ended litigation in shape of filing VII Rule 11 application, petitions and extension applications, though all were dismissed. According to the learned counsel, the petitioners have not come with clean hands, besides petitions are time barred and the same fall within the laches. In support of his contentions, he has relied upon decisions reported as PLD 1978 SC 185, 2000 SCMR 556, PLD 2009 S.C 45, 2001 MLD 27 (Karachi), PLD 2011 (Karachi) 435, PLD 2019 (Lahore) 160, 2011 CLC 648 and 2001 YLR 3014 (Karachi).

7. There is no cavil to the proposition of law that interim order cannot be challenged, however, such interim order has debarred the petitioners from contesting their cases. Further, the conduct of the petitioners is that they filed earlier petitions, wherein, by concealing the facts that they were already debarred, they succeeded to get a favorable order with regard to filing of written statement, thereafter instead of complying with such order they preferred applications for extension of time and at this juncture when it surfaced that the petitioners were already debarred and they tried to mislead the court, the said applications were dismissed. Under the circumstances the observations of the Court with regard to filing of written statement has attained finality, hence, trial Court rightly dismissed the applications and this court is not competent to open the case, which is already closed. Accordingly, the petitions stand dismissed along with pending applications, if any.

JUDGE

Sajid