ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-1283 of 2019

Date	Order with signature of Judge

1. For orders on office objections as at "A".
2. For hearing of main case.
3. For hearing of CMA No. 6046 of 2019 (Stay).

17th January 2020

M/s. Asif Ali Pirzada, Tariq Mehmood and Muhammad Asghar Qureshi, advocates for petitioner.

Mr. Muhammad Irfan Haroon, advocate for Respondent No.3.

Salahuddin Panhwar,J:- Through instant constitutional petition petitioner Rana Gulzar Taj has assailed the judgment dated 04.11.2019 passed by learned VI-Additional District Judge/Model Civil Appellate Court-EXT, Karachi Central in FRA No. 60/2019 whereby order dated 25.09.2018, passed on application under Section 16 (1) of Sindh Rented Premises Ordinance, 1979 (SRPO) and order dated 05.03.2019 passed on application under Section 16(2) of SRPO and on application under Section 21 of the General Clauses Act by learned XI-Rent Controller/Senior Civil Judge Karachi Central were upheld and resultantly FRA filed by the petitioner was dismissed.

2. Precisely relevant facts are that respondent No.3 filed rent case under Section 15 of SRPO against the petitioner, who was inducted as tenant by the daughter of respondent No. 3 with regard to house No. R-525, Sector 15-A/1, Buffer Zone, North Karachi from January 2017 at monthly rent of Rs.40,000/. By virtue of oral gift it is alleged that respondent No.3 became owner of the demised premises and thereafter, she requested the petitioner either to pay rent or vacate the premises but the petitioner refused, therefore, respondent No.3 filed an ejectment application under Section 15 of SRPO along with application under Section 16(1) of the Ordinance against the petitioner for deposit of

monthly rent at the rate of Rs.40,000/- from the month of July 2017. Petitioner filed written statement along with objection and disputed the relation of landlord and tenant between the parties. However, learned Rent Controller after hearing the learned counsel for the parties, directed the petitioner to deposit arrears at the rate of Rs.40,000/- per month from December 2017 till December 2018 within ten days with further directions to deposit future rent at the same rate on or before 10th of every calendar month. Upon non-compliance of the said order the respondent No.3 filed an application under Section 16 (2) of SRPO praying therein that petitioner has failed to comply with order dated 25.09.2018 therefore, his defense may be struck off. On the other hand petitioner has also filed an application under Section 21 of General Clauses Act with the request to recall the order dated 25.09.2018 and denied relationship of landlord and tenant between the parties. Learned Rent Controller after hearing learned counsel for the parties allowed the application U/S 16 (2) of SRPO filed by respondent No.3 and struck of the defense of the petitioner whereas dismissed the application filed by the petitioner through single order dated 05.03.2019. Both the said orders were assailed by the petitioner through FRA before learned appellate court but the same were upheld and rent appeal filed by the petitioner was dismissed through impugned judgment dated 04.11.2019, hence, this petition is filed by the petitioner.

3. Heard learned counsel for the respective parties.

4. At the outset, learned counsel for the petitioner while relying upon case laws reported as 2001 SCMR 1434, 1992 SCMR 1149 and 1999 MLD 3031 contended that trial court before deciding application under section 16(1) of SRPO was required to decide the relationship between landlord and tenant and such opportunity was not provided to the petitioner, hence, order under section 16(2) of SRPO pursuant to order on application under section 16(1) of

SRPO is against the settled principles of law, whereas, counsel for the respondent No.3 has relied upon 1993 SCMR 2101, 2011 SCMR 320, SBLR 2016 667 and YLR 2017 1221.

5. Before going any further, it would be appropriate to make it clear that SRPO, 1979 is a special enactment which *solely* revolves around the affairs between landlord and tenant, therefore, the existence of relationship of landlord and tenant is *sine qua non* for invoking the jurisdiction, provided by the Ordinance. In short, it can *safely* be said that such *question,* if involved, shall always require an *answer* first before availing other fruits / benefits, provided by the Ordinance *itself.* Reference, if any, may be made to the case of *Afzal Ahmed Qureshi v. Mursaleen* 2001 SCMR 1434 wherein it is held as:-

> *"4. … In absence of 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 relationship of landlord and tenant exits between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith"****. PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact that 'ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties".*
> *(underlining is mine for emphasis)*

From, above it is, *prima facie,* evident that since a *negative* answer to such question shall always result in losing jurisdiction, *at all* therefore, it would always be requirement of ***safe administration of justice*** to first decide such a question. This principle, however, has only one exception that this would not be available to one (*tenant)* who, having admitted his status as *tenant,* subsequently takes a plea of *purchaser* etc rather would always be required to put the landlord into possession and then to *proceed* for enforcement of his

rights which he claims to have arisen from subsequent document of sell etc. Reference may be made to *Abdul Rasheed v. Maqbool Ahmed & others* 2011 SCMR 320 (which has also been relied by learned counsel for respondents) wherein it is held as:-

> *5. … It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails……. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.*

6. While examining the case laws relied upon by learned counsel for respondent No.3, I am of the view that both judgments of the apex court are not identical to the proposition, as in the case reported as 1993 SCMR 2101, matter was decided on merits and apex court observed that there is no misreading or non-reading of the evidence, hence, issue of relationship cannot be decided to open new round of litigation, whereas in 2011 S.C.M.R 320 facts were that there was admitted tenancy between the parties, subsequently, tenant pleaded that he purchased the property through sale agreement which is not the case in hand. But here in this case, tenancy agreement is not existing between the parties, therefore, occupation of the demised premises is whether pursuant to tenancy or pursuant to sale agreement, can only be decided by rent controller, who will first decide the issue of relationship while framing the issue, thereafter trial Court would be competent to proceed under section 16(1) as well as under section 16(2) of SRPO in accordance with law, if warranted under the law because there can be no denial to the legal position that right to file an application under section 16 of the Ordinance would *only* be available subject to an *affirmative* answer or position to such question. Reliance can be

made on the judgment of the Honourable Supreme Court passed in the case of *Miskina Jan v. Rehmat Din* reported in **1992 SCMR 1149** (quoted supra), relevant portion is reproduced as under: -

> *"4. No doubt the suit filed by the appellant had been dismissed but admittedly her appeal is pending in the District Court and in view of the facts mentioned above, we are of the view that this was a fit case where before deciding the application under section 16(1) of the Ordinance and issue relating to the relationship of landlord and tenant was framed and the passing of the rent order in the circumstances was not warranted by law. Order of ejectment is also invalid.*
>
> *5. As a result, this appeal is allowed, the impugned orders of the Rent Controller and High Court are set aside and the case is remanded to the Rent Controller who shall first frame and decide the issue whether relationship of landlord and tenant exist between the parties and thereafter take further action as may be required under the law."*

7. Accordingly, in view of the dicta laid down in the aforesaid judgment, this petition is allowed; impugned judgment/orders are set aside and the case is remanded back to the trial Court to decide the matter afresh in terms of above.

JUDGE

SAJID