

within period of one year in four equal installments. The appellant preferred constitutional petition No.1321 of 2011 and pendency of aforesaid petition before honourable high court the respondent filed ejectment application against appellant, wherein impugned ejectment order was passed. It may be noted here that during pendency of instant appeal the learned counsel for the appellant has placed certified true copy of judgment dated 24.10.2017 passed by honourable High Court of Sindh Karachi on constitution petition No.S-1321 of 2011, whereby honourable High Court upheld the quantum of rent Rs.2328/- per month but held that same is payable from the date of order of rent controller. The relevant portion of judgment is as under:-

“In view of the above although no interference is required as far as the quantum of rent is concerned i.e. Rs.2328/- per month **however it is held that the same is payable from the date of order of the rent controller.** The petition thus stands dismissed with the modification in the order of the appellate court.”

18. From above judgment passed by honourable High Court, it is crystal clear that quantum of rent Rs.2328/- per month was maintained, whereas honourable High Court ordered to pay rent from date of order of rent controller which is 02.09.2010. hence, the respondent is not entitled for ejectment of appellant at the monthly rent of Rs.2328/- per month from 14.07.2007 and the findings of learned rent controller is not sustainable. It may be noted here that the appellant has taken plea that after refusal of rent he is depositing rent in MRC No.1215/2005. During cross examination he admitted that during rent proceedings he came to know about death of husband of respondent. He admitted rent case No.1215/2007 of which copy if produced in present case shows the title of respondent as Mst. Khalida Afsar being widow of Muhammad Afsar. He admitted in MRC rent is being deposited in the name of Muhammad Afsar.

19. Such admission is sufficient to hold that no rent was tendered to the respondent even after due knowledge of the respondent to have become owner and landlord of the demises premises during pendency of rent case No.1215 of 2007 which was filed by the husband of the respondent for enhancement of rent prior to the eviction application. At this juncture learned counsel for the appellant submitted that the respondent cannot only seek ejectment of appellant on the ground pleaded in main eviction application which from the date of 14.07.2007 and the parties cannot to behind the pleadings. It may be noted that there is no cavil to the propulsion that the parties are bound by their pleadings and cannot go behind it. The respondent has pleaded in her man eviction application that the appellant has committed default in payment of rent since 14.07.2007

and cause of action is continue. It is to mention here that the respondent could not prove default in payment of rent at the rate of Rs.2328/- per month from 14.07.2007 as discussed hereinabove but cause of action for non payment of rent **to respondent was continued and the appellant was under legal obligation to pay rent to respondent if not at the rate of Rs.2328/- and admittedly no rent was tendered to the respondent as such the appellant is liable for ejection.**”

3. Relevant portion of order dated 30.08.2017 passed by the Rent Controller concerned, is as under:-

“Point No.1.

Burden to prove this point lies on the shoulder of the applicant, she alleges that the opponent has committed default in payment of rent at the rate of Rs.2328/- p.m. including all taxes from the date of filing of rent application i.e. 14.7.2007, which was fixed by the honourable 5th Addl. District Judge Karachi South, whereby the opponent/tenant was directed to deposit the arrears of enhanced rent in four equal installments. For the sake convenience and brevity the admitted order passed by 5th Additional District and Sessions Judge Karachi south dated 6.9.2011 exhibited at Ex.A/4, the operative part of such order is reproduced as under:-

“For the reasons, recorded above and the facts and circumstances available before this court, the fair rent determined and fixed by the learned rent controller through impugned order is not proper. Enhanced exaggeratedly, as such, same is enhanced to the extent of 300%. Resultantly the fair rent of the demised premises is determined and fixed at Rs.2328/- per month including all the taxes from the date of filing of rent application i.e. 14.7.2007. However, taking into consideration the length of time of period and difference of enhanced rent, the appellant/tenant is allowed to deposit the arrears of enhanced rent till to-date within a period of one year in four equal installments. **Consequently, the impugned order of the trial court is modified to the above extent. Instant appeal stands disposed of in the above terms.**”

No doubt that opponent/tenant has challenged the period of enhanced rate of rent i.e. since filing of rent case under section 8 SRPO, 1979 and pressing to be entitled from the date of order admittedly through CP before honorable High Court of Sindh Karachi. Yet there is no restraining order from the honourable High Court of Sindh nor there is any stay in operation. Ultimately the above mentioned order is in the field. Applicant is urging non noncompliance of said order particularly with regard

to arrears from the date of filing of fair rent application as per order but the opponent has taken sole plea that same order is impugned hence he has remained mum in the contents of written statement so also in the affidavit in evidence regarding payment of arrears of enhanced rate of rent in compliance of order dated 06.09.2011. however, during the course of evidence the opponent has hold that he is regularly paying rent as per decision passed in FRA through MRC bearing No.1117/2005. But on the perusal of such MRC filed in the court of IVth Rent Controller Karachi south available record reflects that the opponent/tenant is depositing the rent at enhanced rate of rent from the year 2012 onwards till date but **with regard to payment of arrears of rent there is no deposit appearing.** Besides, the learned counsel or the opponent so also the opponent himself during the course of arguments hold that they have deposited arrears of rent as per the orders of FRA being challenged before the honourable High Court as urged supra. This urged position also proved through the available record i.e. MRC bearing No.1117/2005 which quite reflects that **even a single amount towards the arrears as awarded to the applicant has ever been paid so far.** Thus in the light of such admissions and available record, in absence of any restraining order from the apex court, **the non-compliance of the order on the part of opponent/tenant has gone well established.** I, therefore, answered this point in affirmative.

4. The above referral of the order (s) of two courts below, *prima facie*, establish that the **default** on part of the petitioner was rightly observed because to clear '**arrears of rent**' is also undeniable obligation of the tenant and failure to make compliance of such like directions shall also result in establishing ground of **default**. The ground of default, once established, shall be sufficient for an order of ejectment of the tenant. The concurrent findings of the two courts below, *prima facie*, are in accordance with well-established principle of law. It is also needful to add that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence there exists possibility of a different view would never be sufficient to seek concurrent findings disturbed by

invoking constitutional jurisdiction of this Court. Reference may well be made to the case of **Shakeel Ahmed & another v. Muhammad Tariq Farogh & others 2010 SCMR 1925**. Further, while pressing Constitutional Jurisdiction in such like matter, the petitioner must establish that the findings of two Courts below, particularly of appellate Court, are *prima facie* not in accordance with law and available material.

5. Since, *prima facie*, the petitioner / tenant has failed to make out a case for interference into concurrent findings of two Courts below hence, constitutional jurisdiction of this Court cannot be exercised which, *otherwise*, is not only limited but could only be exercised in exceptional circumstances which are lacking in instant case. Accordingly instant petition is dismissed.

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