

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-243 of 2020.

Date	Order with signature of Judge
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1. For orders on office objections as at "A".
2. For hearing of CMA No. 1167 of 2020 (Stay).
3. For hearing of main case.

24th August 2020.

Mian Muhammad Akram, advocate for petitioners.
Mr. Abdul Hamid Yusfi, advocate for respondent No.1.
Mr. Pervez Ahmed Mastoi, Asst. A.G. Sindh.

Heard learned counsel for the petitioners and respective parties.

2. At the outset, it would be conducive to refer para-9 of the impugned order, which is that:-

"9. Perusal of tentative order dated: 18.07.2017 passed on application under Section 16(i) SRPO, 1979, reflects that learned rent controller has discussed the tenancy relationship with the contention that appellant No. 1 is depositing the rent in MRC No. 181/2016 before trial court in the name of husband of the landlord/respondent No. 2 therefore, the relationship of tenancy between the respondent No. 2 and appellant is very clear. It is well settled principle of law that when the relation has been established while passing order on application under Section 16(1) SRPO, 1979, then it is primary duty of the appellants to deposit the rent as claimed by the respondent side, through said application. Moreover, while passing tentative order learned rent controller specifically directed to the appellant to deposit rent of the premises with the court at the rate of Rs. 420/- per month with 10% enhancement annually from July, 2014 to July, 2017 within a period of 15 days and continue to deposit future monthly rent with the court by the 10th of each English calendar month w.e.f. September, 2016 and further hold that the amount deposited by the appellant No. 1 in MRC No. 181 of 2016 shall be adjusted in the instant rent case but appellant failed to do so. It is pertinent to mention here that learned counsel for the appellant also relied on the sale agreement between the parties but rent controller and being appellate forum courts have no power to discuss the title dispute between the parties. But in order to establish of relationship of tenancy it is matter of record that at one place, appellant depositing the rent in MRC No. 181/2016 in favour of respondent/landlord and at other place, the appellant stated that their father had purchased the rented property in the year, 2004. It is settled principle of law that where the relationship is established and the tenant denies the

ownership of the landlord, it is primary duty of the tenant to vacate the premises and contest civil suit, till the same is decreed in his favour but till then, he is required to deposit rent with the court as per tentative order whereas the appellant has not done so. However, if the appellant succeeded in his claim in civil suit then the same decision will take its own course but presently the tenancy relationship and non-compliance of tentative order has come on the record and been established. As appellant failed to deposit the rent in compliance of tentative rent and could not explain the non-compliance of such order. As it is held by Hon'ble superior courts that even one default is sufficient to declare tenant to be willful defaulter."

(Underlining is supplied for emphasis)

3. Further, learned counsel for the petitioners while relying upon order passed by this Court in CP.No.S-1283 of 2019 contends that on similar grounds petition was allowed with directions to the rent controller to decide the issue of relationship between tenant and landlord, thereafter, proceed further and tenant cannot be evicted by passing order under Section 16 (1) & (2) of Sindh Rented Premises Ordinance, 1979.

4. At the outset, it is worth adding here that it is always the *proposition* and *answer* thereto which can be referred to advance an argument. I have examined the said judgment passed by me wherein tenancy was denied as there was no tenancy agreement, therefore, that case, having different circumstances and pleas, was allowed. Here at page 81 of the file petitioner has attached the tenancy agreement with the respondent, hence, there is no dispute that petitioner was inducted into premises as '*tenant*' therefore, the petitioner is not legally justified in referring to decision of a case whose facts were *entirely* different. Further, as per record the petitioner has taken plea that, being tenant, he has purchased this property through sale agreement and handsome amount is paid by him, therefore, rent controller was not competent to pass order under 16 (1) of SRPO and thereafter 16 (2) of SRPO 1979. At this juncture, it would be conducive to refer paragraph-6 of judgment relied by the learned counsel for the petitioner which is that:-

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.”

The above referral is sufficient to *safely* conclude that referred judgment is not of any help for the petitioner as admittedly was inducted as *tenant* hence his subsequent plea of having purchased the *premises* under sale agreement is of no help to deny relationship, therefore, he *always* was obliged to honour the payment of rent once ordered under section 16(1) of SRPO. A success in his pending suit for *Specific Performance* would surely bring its own legal consequences which, however, till such determination can't be taken to deprive the Rent Controller to exercise legal discretion, created by the law itself. Under these circumstances, petitioner, being tenant, has no option except to vacate the premises when

such order is passed in consequence to his (*petitioner's*) own failure in complying with lawful order of Rent Controller. Accordingly, impugned judgment is in accordance with law. Petition is dismissed.

SAJID

J U D G E