

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**CP No.S-718 of 2017**

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Date	Order with signature of Judge
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1. For hearing of main case.
2. For hearing of CMA No. 3887 of 2017.

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**28<sup>th</sup> September 2020**

Mr. Muhammad Ghaffar Khan, advocate for petitioner.  
Mr. Ghulam Abbas Peshori, advocate for respondent No.1.

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Through this Petition, the petitioner has challenged the impugned order dated 27.03.2017, passed learned VIII-Additional District Judge, Karachi South in FRA No.56/2016, whereby, the learned Appellate Court while dismissing the First Rent Appeal upheld the order passed by learned Rent Controller, whereby, the application under section 12(2) CPC for recalling and setting aside the order dated 26.01.2016 filed by the petitioner was dismissed.

2. Precisely relevant facts are that initially a rent application No. 813 of 2002 was preferred by one Syed Aminullah, co-sharer of the demised premises, which was purchased by him, father of the respondent No.1 and others jointly, wherein the petitioner was tenant, on the plea of personal bonafide need and default, that was dismissed on merits on 31.01.2007, subsequently, respondent's father gifted the shop No.1/ demised premises to his son (respondent) and thereafter, the respondent No.1 filed eviction application in 2010 on the ground of default in payment of rent. However, the petitioner filed an application under Section 19 of the SRPO read with section 151 CPC and after sometime he filed a transfer application before the learned District Judge, Karachi South which was allowed and ultimately came to know that vide order dated 07.05.2011, the matter has been transferred to the Rent Controller No. VIII, Karachi South, where, on account of non-prosecution the same dismissed vide order dated 26.07.2011 and the petitioner was debarred from filing the written statement and declare ex-pate

vide order dated 19.09.2011 and matter proceeded further and finally vide order dated 14.10.2011 the same was allowed. Thereafter, brother of the petitioner namely Hafeezullah filed an application under section 12(2) CPC read with Order XIII and Section 151 CPC against the said eviction order, but the learned Rent Controller after hearing both the parties, dismissed the same vide order dated 26.02.2016, which have been challenged before the learned Appellate Court after the delay of 64 months, but the fate remained the same. Hence, the petitioner has challenged both the orders through the instant petition.

3. Heard and perused the record.

4. Admittedly, in earlier round, the petitioner filed application under section 19 of the SRPO and after its dismissal, in second round an application under section 12(2) CPC was preferred by brother of present petitioner, however, his brother failed to file appeal within time and now agitating that trial Court was not competent to pass *ex parte* order at this stage. Under these circumstances, when petitioner was well aware about the proceedings and he put appearance before the Court but later on remained absence, hence, his defence was struck off and the matter was decided *ex parte* and thereafter, writ of possession was issued, whereafter, appeal was filed by him with the delay of 64 months, hence, I am of the view that there is no illegality or infirmity is pointed out by the learned counsel for the petitioner in the orders passed by the Courts below, hence the same do not warrant any interference by this court. Consequently, the instant Petition is dismissed.

5. At this juncture, learned counsel for the petitioner contends that he will not pursue the matter further, if sufficient is allowed. Accordingly, six months' time is allowed to vacate the demised premises subject to the payment of rent. Needless to mention that in case of default in payment of rent or after the stipulated period, the petitioner shall be evicted from the demised premises with police aid without notice.

**J U D G E**