

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-973/2021

Date Order with signature of Judge

12.10.2022

Mr. Muhammad Inziam Sharif advocate for petitioner.

Mr. Danish Nayyar advocate for respondent No.1.

Mr. Zahid Farooq Mazari, AAG.

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Case of the petitioner is that by order passed under section 16(2) SRPO 1979, the Rent Controller directed that the petitioner shall deposit Rs.2,613,174/- (arrears) and future rent of Rs.217,765/- every month. Thereafter petitioner deposited Rs.2,406,296/- as well future rent of Rs.185,103/-, however petitioner being a limited company deducted tax amount from the quantum of rent as directed by the Rent Controller.

2. According to counsel, petitioner is a company and this was the tendency to deduct payment of income tax while depositing rent as same was the part of the rent agreement as well. He has relied upon **2009 SCMR 652** wherein it is held that "**we are of the view that payment of monthly rent was the liability of the limited company, the deposit of the same after deduction of income tax of the premises occupied by company carrying on its business only constitutes a technical default not calling for ejectment as held in the case of Meharban Ali, Mehboob Jewelers, Noor Muhammad and L. Hussain (ibid).**" However learned trial court on this point passed order under section 16(2) SRPO 1979 while defence of petitioner was struck off.

3. Learned counsel for respondent while placing on record ledger of MRC demonstrates that petitioner has failed to deposit the rent amount within due time as ordered by the Rent Controller with regard to the plea of deducting income tax from the rental amount was not agitated before any of the courts below. With reference to this, learned AAG contends that legal point can be raised at any time.

4. Needless to mention that **lis** shall be decided on merits and no one shall be knocked out on technicalities. The amount as deducted by the petitioner from the rent amount was the tax amount and the same was term of the rent agreement; therefore, no illegality was committed by the petitioner in deducting the tax amount from the rent amount and was not at fault.

5. Keeping in view the circumstances of the case and the dictum laid down in the referred case law, which is quite identical to the instant case, both orders dated 02.09.2021 and 20.10.2021 are set aside. The trial Court is directed to proceed with the case on merits and decide the same preferably within two months. Needless to mention that in case there is any arrear of future rent not paid within the stipulated period, respondent shall be at liberty to file appropriate application.

J U D G E