

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-38 of 2023

[Janis Khanv..... Muhammad Younus Gondal & another]

C.P. No.S-39 of 2023

[Shahid Hussainv..... Muhammad Younus Gondal & another]

C.P. No.S-40 of 2023

[Shahid Hussainv..... Muhammad Younus Gondal & another]

Date of Hearing : 19.01.2023
Petitioners through : Mr. Muhammad Farooq Khan,
Advocate.
Respondents through : Nemo.

ORDER

Zulfiqar Ahmad Khan, J:- The petitioners are aggrieved of the concurrent findings of the learned Appellate Court dated 20.12.2022 and learned Rent Controller dated 02.11.2022 and these petitions have impugned the same before this Court. Since these petitions are interlinked, therefore, they were heard conjunctively and would be determined vide this common order.

2. The precise facts of the case are that the petitioners are tenants of the respondent No.1 who filed eviction proceedings against the petitioners before the learned Rent Controller which are pending adjudication. In *minutiae*, the respondent No.1 preferred an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 (“SRPO”) beseeching therein for arrears of rent, which application was allowed vide order dated 23.05.2022 with directions to the petitioners to deposit arrears of rent from January, 2017 till to date side by side, the petitioners were also directed to deposit the future rent too on or before 10th of every calendar month. Owing to

the non-compliance of the order dated 23.05.2022, the respondent No.1 preferred an application under Section 16(2) SRPO in the said Rent Case praying for striking off the defence of the petitioners and eviction on the ground of non-compliance of the order, which plea of the respondent No.1 was allowed vide order dated 02.11.2022 and petitioners were directed to vacate the tenements within one month. The petitioners assailed the said order before the learned Appellate Court by filing their separate FRAs and the learned Appellate Court having heard the parties dismissed the said FRAs vide order dated 20.12.2022 on the ground that the petitioners could not file the FRAs within stipulated time, hence the petitioners are before this Court.

3. The petitioners' entire case was premised on the argument that due to illness, he could not file the FRA before the learned Appellate Court and that the learned Appellate Court could not consider his arguments and passed the impugned order in haphazard manner rather on merits.

4. Since these are the fresh petitions and fixed before the Court in a category of "Fresh Case". I have heard learned counsel for the petitioners at length and have also scanned the available record. The matter at hand is on two precincts. The first aspect deals with the issue of limitation and another aspect is striking off defense of the petitioners and directions were given for evacuating the tenements.

5. As regards the aspect of limitation. The fact that the First Rent Appeal was time-barred is demonstrated by the order of learned First Appeal Court. It is thus the duty of this Court to determine whether sufficient ground exist to condone the delay occasioned in institution of the First Rent appeal. It emerges from the record that against the

order of learned Rent Controller passed under Section 16(2) SRPO an Appeal was preferred by the petitioners after lapse of **one month and 13 days** and alongwith the appeal an application under Section 5 of the Limitation Act, 1908 was preferred too. The prescriptions of Section 21 SRPO provides a period of 30 days to prefer an appeal against the order of learned Rent Controller. It may be observed that an application under Section 5 of the Limitation Act for condoning the delay in filing the appeal was misconceived and not maintainable as the provisions of Section 5 of the Limitation Act, 1908, are not applicable to the appeals filed under the Sindh Rented Premises Ordinance, 1979, as held by the Hon'ble Supreme Court in *Haji Hussain Haji Dawood through Legal Heirs and others V/S M. Y. Kherati*, **2002 SCMR 343**. It is well-settled that if a special law specifically provides for the limitation for filing an appeal under that law, the provisions of Section 5 of the Limitation Act, 1908, cannot be invoked for condoning the delay in filing an appeal under that special law nor can the delay be condoned under the said Section 5. Sindh Rented Premises Ordinance, 1979, is a special law wherein the limitation for filing an appeal has been specifically provided in Section 21. In view of this legal position, the learned appellate Court was not required either to consider the petitioners' application for condonation or to give any findings thereon, and the said application ought to have been dismissed straightaway in view of the above principle. Be that as it may, the appeal was rightly dismissed by the learned appellate Court as being hopelessly barred by time. In the similar circumstances, my reverend brother Mr. Justice Nadeem

Akhtar held the similar principle in the case of **Custom Public School v. Aftab Ahmed & others (2019 CLC 1774)**.

6. The second precinct of the case at hand pertains to the striking of defense of petitioners. Perusal of the order of learned Rent Controller passed under Section 16(2) SRPO it unfurls that the petitioners neither deposited the arrears of rent in compliance of the order passed under Section 16(1) SRPO nor deposited any future rent. It is considered expedient to reproduce the relevant excerpt of the order of learned Rent Controller hereunder:-

“Report in respect of compliance of order dated 23.05.2022 was called from COC of this Court, which shows that opponent did not deposit any amount in compliance of the orders of this Court. Hence opponent failed to make compliance of the Court orders in letter and spirit.

7. It is gleaned from appraisal of the foregoing that the petitioners failed to respect the order of the learned Rent Controller passed on application under Section 16(1) SRPO whereby they were directed to pay arrears of rent as well as deposit the future rent too but the petitioners failed to comply the said order and failed to pay the arrears of rent as directed earlier. The prescriptions of Section 16(2) SRPO are very clear that when the tenant fails to comply the order of the learned Rent Controller passed under Section 16(1) SRPO his defence be struck off and the landlord be put into possession of the tenement. It is considered pertinent to reproduce Section 16(2) SRPO which is delineated hereunder:-

*“16. Arrears of rent.-(1).....
(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf.*

(3).....”

8. The statutory prescriptions are very clear that where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1), his defence shall be struck off and the landlord shall be put into possession of the premises. The striking of defense in rent case is not mere technically. Refusal to strike of defense amounts to denying statutory right accrued to the respondent No.1/ landlord. The use of the word “shall” in Section 16(2) SRPO, 1979 leaves no room to deny a statutory right accrued to respondent No.1/ landlady after acknowledging that the “purpose” of Section 16(2) SRPO, 1979 is to struck off the defence and the learned Rent Controller as well as the Appellate Court rightly held and passed the concurrent orders against the petitioners. My lord Mr. Justice Mushir Alam, (as his lordship then was as Judge of the Hon’ble Supreme Court) in the case of Syed Asghar Hussain v. Muhammad Owais & others (2018 SCMR 1720) held that when a tenant fails to deposit arrears of rent his defence must be struckoff. Hon’ble Supreme Court held that best course for the tenant could have been to comply with the tentative rent order under S. 16(1) and to have contested the matter to its logical conclusion thereafter.

9. In view of the rationale and deliberation delineated above, the petitions at hand are dismissed in *limine* alongwith pending applications. Since these are fresh petitions and notices were not issued to the respondent/landlord, therefore, office to transmit this order to the learned Rent Controller concerned for information.

10. Office is directed to place copy of this order in petitions listed above.

Karachi
Dated: 19.01.2023.

JUDGE