

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P Nos.S-732 of 2022**

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Order with signature of Judge(s)

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1. For orders on office objection
2. For hearing of MA No.4771/2022
3. For hearing of main case

**03.06.2023**

Mr. Muhammad Shoaib, Advocate for the petitioner  
Mr. Altaf Hussain Chang, Advocate for Respondent No.1  
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This petition challenges a string of three orders passed against the petitioner. 1<sup>st</sup> passed under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (SRPO) dated 22.04.2022; 2<sup>nd</sup> under Section 16(2) of SRPO dated 23.05.2022 and 3<sup>rd</sup> passed in FRA No.38 of 2022 dated 15.08.2022, filed against the order of section 16(2).

Learned counsel for the petitioner has delinquently presented facts of the case before this Court, where primarily there is an admission that the petitioner entered into the premises as a tenant however states that an agreement dated 15.02.2018 was entered into between the petitioner and husband of the Respondent No.1 namely Muhammad Ahsan, in terms of which the subject property was sold to the Petitioner and that agreement is available at page No.97 to 103 and counsel also shows this Court by referring to page 153 that since the said agreement provided that the sale proceeds would be paid at the whims of the buyer in a period spread over 5 years. Time and again attempts have been made before me to show details of such payments spread over two dozen of payments available at page 153 Annexure-F where some of the payments are even less than 5,000 rupees over month (i.e. even lesser than the rent itself).

The facts in *minutiae* are that Respondent No.1 filed a Rent Case No.16 of 2021 before the Court of 1<sup>st</sup> Rent Controller, Malir-Karachi pending adjudication of the said Rent Case, Respondent No.1 preferred an application under Section 16(1) of Sindh Rented Premises Ordinance, 1979 beseeching therein for arrears of rent, which application was allowed vide order dated 22.04.2022 with directions to the petitioner to deposit arrears of rent at the rate of Rs.60,000/- per month from June-2021 to 30-04-2022 within 15 days with the COC of that Court. Petitioner was also directed to deposit future rent @ Rs.60,000/- per month from 1<sup>st</sup> May-2022 onwards on or before 10<sup>th</sup> of every calendar month without fail with the Rent Controller-1 Malir-Karachi. Owing to non-compliance of the order dated 22.04.2022, the learned Rent Controller vide order dated 23.05.2022 struck off defence of the petitioner under Section 16(2) of the Sindh Rented Premises Ordinance, 1979 and allowed Rent Case No.16 of 2021 to the extent of prayer clause (ii) with directions to the tenant to vacate the demised premises within 30 days and handover peaceful possession to the landlady. The petitioner assailed the said order before the learned Appellate Court by filing FRA No.38 of 2022 and the learned Appellate Court having heard the parties dismissed the said FRA vide order dated 15.08.2022, hence the petitioner is before this Court against such concurrent findings.

Learned counsel for the petitioner vehemently argued the matter however his legal arguments were restricted to the provisions of Section 16(1) of SRPO, where it is mandated that a summary inquiry is to be made under the said section before an order is passed and counsel by placing reliance on the judgment of the Supreme Court reported as 1992 SCMR 1149 tried to persuade the Court that inquiry meant that the tenant would be given an opportunity to cross the landlady, therefore the order passed under Section 16(1) is illegal.

Learned counsel for Respondent No.1 on the other hand stated that ample opportunities were given to the petitioner before the order under Section 16(1) dated 22.04.2022 was passed, as the Rent Case No.16 of 2021 was filed on 07.10.2021 and notices were issued and the said order was passed on 22.04.2022, where the counsel for the tenant did not raise any such legal point and his assertion as contained in paragraph-4 of the said order are reproduced as under:-

“On their other hand, learned advocate for Opponent argued that though opponent was inducted in the demised premises as a tenant however, Husband of the applicant had sold out demised premises to him through sale agreement dated 15.02.2018, and had paid an amount of Rs.5,500,000/- in different installment from Opponent. Learned Advocate argued that there is no relationship between landlord and Tenant between applicant and opponent therefore, Opponent is not bound to pay rent in respect of premises purchased by him by paying an amount of Rs.5,500,000/-. Learned Advocate argued that Opponent has already filed Suit No.705/2021, which is subjudice before third Senior Civil Judge, Malir Karachi, and instant Rent case after thought therefore prayed for dismissal application.”

The learned Rent Controller by the detailed reasoning, as contained in paragraph-5 of the said order, upon an admission of the tenant's counsel that the tenant entered into the premises in terms of the Rent Agreement dated 09.02.2018, which relationship was not denied, however, the Court was informed that a suit for specific performance bearing No.705 of 2021 has already been filed by the tenant against the landlady therefore the learned Rent Controller passed the concerned order directing the tenant to deposit the arrears of rent from June 2021 to 30.04.2022 within 15 days as well as future rent. Seemingly a constitutional petition was also filed against the said order before this Court bearing C.P No.S-440 of 2022, where through order dated 01.06.2022, before a learned Single Judge of this court an admission was made that since the order under Section 16(2) also has already been challenged therefore that petition was chosen to be not pressed.

Learned counsel's contention that the petitioner was not given an opportunity to cross the witness of landlady namely Darban is though interesting, but the same point was never raised in FRA as well as per the contention of the counsel for the Respondent No.1 numerous opportunities were given to the tenant's counsel before the said order was passed.

It is gleaned from the record that the petitioner has failed to comply with the order of the learned Rent Controller passed on application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, whereby she was directed to pay rent, which act is in complete defiance of the order of the learned Rent Controller. The prescriptions of Section 16(2) SRPO are very clear that when the tenant fails to comply with the order of the learned Rent Controller passed under Section 16(1) SRPO, his defence must be struck off and the landlord/landlady is to 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).....”

Above 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 a technically as there is use of the word “shall” in Section 16(2) SRPO, 1979 that leaves no room to deny, defer or camouflage a statutory right accrued to Respondent No.1 after

acknowledging that the purpose of Section 16(2) SRPO, 1979 is to struck off the defence. The Appellate Court in my view rightly passed the impugned order against the petitioner. 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*<sup>1</sup> held that “*when a tenant fails to deposit arrears of rent his defence must be struck off. 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.*”

It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower *fora* is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made

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<sup>1</sup> 2018 SCMR 1720

out or gross illegality is shown to have been committed<sup>2</sup> which is not the case at hand.

With regards the case law cited by the learned counsel of the Petitioner that arises from the year 1992, not only that since SRPO does not provide detailed procedure to control proceedings under CPC except in the cases of (a) summoning and enforcing the attendance of any person and examining him on Oath; (b) compelling production or discovery of documents; (c) inspecting the site; and (d) issuing commission for examination of witnesses or documents<sup>3</sup> other provisions of the said Code do not apply to SRPO, as well as the view at the Apex Court has gradually changed. In more recent case e.g. Syed Asghar Hussain v. Muhammad Owais (2018 SCMR 1720) the Hon'ble Supreme Court in respect of sections 16(1) and (2) held that where a tenant fails to deposit arrears of rent by not complying with the tentative rent order by the Rent Controller, the best course for the tenant was to comply with the tentative rent order under S. 16(1) and to have contested the matter to its logical conclusion and tenant's right of defense was rightly struck off in such circumstances. In the case of Muhammad Iqbal v. 1st ADJ, Karachi Central (2018 PLD 35 SC), the Hon'ble Supreme Court held that in cases where a tenant has filed a civil suit and where the tenants had denied the relationship of landlord and tenant, such suits *per se*, would not be sufficient for tenant to refuse compliance of a tentative rent order of the Rent Controller under S. 16(1) of the Sindh Rented Premises Ordinance, 1979. In the case of Bashir Ahmed v. Roots School Network<sup>4</sup> in the circumstances where in a tentative rent order, tenant's plea justifying himself in acceding to landlord's request instead of complying with terms of rent order was not acceptable. In the case reported as 2011 PLD 331 SC (Ibrahim Trust v. Shaheen Freight Services) the Apex

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<sup>2</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).

<sup>3</sup> Section 20

<sup>4</sup> 2011 SCMR 290

court held that unless strict compliance of order of Rent Controller passed under S.16(1) of the Sindh Rented Premises Ordinance, 1979 is made by the tenant, tenant's defense is liable to be struck off. In the case of Abdul Rasheed v. Maqbool Ahmed (2011 SCMR 320), tenant's plea to have purchased demised premises subsequently through sale agreement viz striking off his defense by Rent Controller for not complying with tentative rent order, the Apex court held that as tenant had taken premises on rent and where its subsequent purchase by him was denied by landlord, tenant in such circumstances had to vacate premises and file suit for specific performance of sale agreement, whereafter he would be given easy access to premises in case he prevailed. This exactly what are the facts of the case at hand hence there is no merit that till a decision is made in the civil suit, the Petitioner be permitted to occupy the premises.

In view of the rationale and deliberation delineated above, the petition at hand being meritless is dismissed along with pending applications.

JUDGE

B-K Soomro