

## IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S 1049 of 2022 : Mst. Badur-un-Nisa vs. Vedho & Another.  
CP S 1050 of 2022 : Haji Allah Bachayo vs. Govind & Another.  
CP S 1051 of 2022 : Mst. Badur-un-Nisa vs. Servan and Another.  
  
For the Petitioner/s : Mr. Agha Waqar Ahmed Advocate  
  
For the Respondent/s : Nemo.  
  
Date/s of hearing : 25.10.2023  
  
Date of announcement : 25.10.2023

### ORDER

**Agha Faisal, J.** Per learned counsel, all these petitions assail respective orders under Section 16(1) of Sindh Rented Premises Ordinance, 1979. These petitions are being listed conjunctively and shall be determined vide this common order.

At the very outset, learned counsel for the petitioners is confronted as to how a writ petition can be entertained in respect of such an order and in response it is submitted that since no appeal is provided by law, hence, a writ petition must be entertained. This submission does not find merit in law; in view of the observations of the Supreme Court, in the case of *Gul Taiz Khan Marwat*<sup>1</sup>, reiterating settled law that an appeal is a creation of statute and in the absence thereof none can be presumed.

This Court has recently disapproved the invocation of writ jurisdiction to unjustifiably assail interlocutory / tentative orders per Section 16(1) of Sindh Rented Premises Ordinance, 1979, in the *Imran Khalid case*<sup>2</sup>, and observed as follows:

“Through this Petition, the Petitioner has impugned order dated 09.03.2023 passed by the Rent Controller, Malir Karachi, whereby, the application filed by Respondent No. 1 under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (“Ordinance”) has been allowed. On 18.5.2023, an order to maintain status quo was obtained by the Petitioner.

Today, at the very outset, the Petitioner’s Counsel has been confronted as to maintainability of this Petition against an interlocutory / tentative rent order under Section 16(1) Ordinance and in response, he, by placing reliance on certain reported cases<sup>3</sup> has contended that the relationship of landlord and tenant was denied; hence, no such order could have been passed.

I have heard the Petitioner’s Counsel on merits as well the very maintainability of this Petition and have perused the record. Insofar as the order in question is concerned, it cannot be disputed that such order under Section 16(1) of the Ordinance can be passed by the Rent Controller by

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<sup>1</sup> Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

<sup>2</sup> Per *Muhammad Junaid Ghaffar J* in *Imran Khalid vs. Munazza Rizvi* – Judgment dated 16.10.2023 in *CP S 341 of 2023*.

<sup>3</sup> *Qudratullah Raisani and another Vs. Abdullah (2023 M L D 121)* and *Ghulam Rasool Vs. Mian Khurshid Ahmed (2000 S C M R 632)*.

making a tentative assessment of the proceedings before him. Per settled law, while passing a tentative rent order, the Rent Controller was not required to hold a full-fledged enquiry and can always pass such an order after taking into consideration the versions of the parties<sup>4</sup>. In the instant matter, the learned Rent Controller has come to the conclusion that there is an agreement between the parties, whereas, periodical payment of rent and utility bills has been made duly supported from perusal of the Bank Statement which prima facie establishes a relationship of landlord and tenant. In view of such position, a mere assertion of the Petitioner to the contrary, by denying relationship on one pretext or the other; including that the property in question was purchased by the uncle of the Petitioner from Petitioner No. 1 who has then put him into possession is immaterial as time and again, it has been held by this Court as well as the Hon'ble Supreme Court that the order passed under Section 16(1) has to be complied with, whereas, in case of failure, the right of defence can be struck off under Section 16(2) *ibid*. Mere institution of civil suits, per se, would not be sufficient to refuse compliance of an order of the Rent Controller under section 16(1) of the Ordinance pending final determination<sup>5</sup>. No exception to such settled principle of law has been made out.

It may also be noted that the impugned order only requires deposit of the rent in question with the Court and cannot be paid to the Respondent until the case is decided. In such a situation the Petitioner was thus, required to have complied with the tentative rent order which could be adjusted and substituted by a final order on the determination of issues, whereas, any avoidance and breach of the order in question, entails penalty of striking off his defence and that being the statutory penalty, could not be avoided unless good reasons were given and sustained<sup>6</sup>.

Lastly, even otherwise, practice of challenging interlocutory orders of the Rent Controller has been deprecated time and again and it has been held that Constitutional petitions are not maintainable notwithstanding that no remedy of appeal has been provided against such orders as this would not *ipso facto* make such petitions competent<sup>7</sup>. It is also settled that Constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision<sup>8</sup>.

In view of the above, no case for indulgence is made out, whereas, even otherwise, this Petition which impugns an interlocutory order, does not appear to be maintainable and therefore, the same is hereby dismissed with pending applications. The learned Rent controller shall proceed further in accordance with law."

The judgment in the *Imran Khalid case* is squarely applicable in the present matter, therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, these petitions are found to be misconceived, hence, dismissed with pending applications.

Office to place a copy of this order in each connected petition.

Judge

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<sup>4</sup> Chaudhry Rahimuddin v Chaudhry Jalaluddin (PLD 1991 SC 484)

<sup>5</sup> Muhammad Iqbal Haider Vs. Vth Rent Controller Central (2009 S C M R 1396) reiterated in Muhammad Iqbal Haider v 1<sup>st</sup> ADJ, Karachi Central (PLD 2018 SC 35); Nazir Ahmed v. Mst. Sardar Bibi (1989 SCMR 913); Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 87), Waheedullah v. Mst. Rehana Nasim (2004 SCMR 1568), Haji Jumma Khan v. Haji Zarin Khan (PLD 1999 SC 1101), Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan (PLD 1986 Karachi 74), Habib Khan v. Haji Haroon-ur- Rasheed (1989 CLC 783); Gohar Ali Shah v. Shahzada Alam (2000 MLD 82), Iqbal and others v. Mst. Rabia Bibi and another (PLD 1991 SC 242) and Syed Imran Ahmed v. Bilal and another (PLD 2009 SC 546)

<sup>6</sup> Dr Arshad Kamal Khan v Mrs. Saeeda Khalid Kamal Khan (1993 SCMR 1360)

<sup>7</sup> Seema Begum v Muhammad Ishaque (PLD 2009 SC 45)

<sup>8</sup> President All Pakistan Women Association v Muhammad Akbar Awan (2020 SCMR 260)