

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
C.P. No. S-396 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objections.
2. For orders on MA 1717/2023.
3. For orders on MA 1718/2023
4. For hearing on main case.

07.11.2023.

Mr. Aqeel Ahmed Siddiqui, Advocate for petitioner.

The petitioner has challenged an *appealable* order dated 09.08.2023, passed by the Court of Rent Controller Cantt Hyderabad in Rent Application No.08/2022. The operative part of the order is reproduced herein below:

"This Court on 19th October, 2022 has passed Tentative Rent Order wherein the opponent were directed to deposit the rent at the rate of Rs.50,000/- per month from the month of May-2022 to October-2022 total amounting Rs.3,00,000/- and future monthly at the rate of Rs.50,000/- per month 10% enhanced after every eleven months till disposal of this rent application on or before 5th of every calendar month and arrears amounting Rs.3,00,000/- before 29.10.2022, within ten days onward in the Court of Rent Controller Cantonment Area Hyderabad.

The Applicant's Counsel moved an application U/S 17(9) of the Cantonment Rent Restriction Act, 1963 dated 30.11.2023 praying therein to strike off the defense of the opponent as opponent failed to comply with the Tentative Order dated 19.10.2022 notice was issued to the opponent who filed counter affidavit on the application U/S 17(9) of Cantonment Rent Restriction Act, 1963 on 04.01.2023, meanwhile the opponent filed C.P No. S-871 of 2022 before the Honourable High Court of Sindh Circuit Court Hyderabad wherein at first the Honourable High Court pleased to suspend operation of order dated 19.10.2022 passed by this Court, later on the aforementioned order was sustained and the Constitution Petition filed by the opponent was dismissed vide order dated 16.5.2023, therefore, the opponent was again directed to make compliance of the tentative rent order but despite of providing several opportunities he failed to pay the rent amount, which comes into the definition of willful default.

The Accountant of this Court has submitted his report regarding compliance of Tentative Rent Order which reflects that the opponent has not complied the orders of this Court.

Heard arguments from both side and perused the record. The opponent failed to deposit the amount and also failed to comply with the tentative rent order passed by this Court. The non-compliance of tentative rent order dated 19.10.2022, in making deposit of rent would be willful default within the meaning of Section 17(9) of the Cantonment Rent Restriction Act, 1963, leaving no option but to strike off the defense of the defaulter/tenant. With regard to eviction of the opponent I take reference of 2001 SCMR 2020, 2004 SCMR 1453, 2006 YLR 1389, PLD 2007 Supreme Court 504, 2007 MLD 542, 2009 SCMR 1008.

I, therefore, allow the application under section 17(9) of the Cantonment Rent Restriction Act, 1963 and strike off the defense of the opponent. The opponent is directed to vacate the demise premises i.e. Shop No.06 situated at "Bilal Shopping Mall" Property No.499/1 Saddar Hyderabad Cantonment, and handover its vacant, physical and peaceful possession to the applicant within (45) days, failing which the applicant can get this order executed from the Court of Competent Jurisdiction. There is no order as to cost."

Learned counsel for petitioner unequivocally *admits* that narrative / observations contained in the impugned order are accurate and that the impugned order is appealable, however, submits that since valuable rights of petitioner have not been taken into consideration and quantum of arrears awarded is excessive, hence, writ jurisdiction may be exercised to allay the grievance of the petitioner.

Article 199 of the Constitution contemplates a discretionary remedy that may be available in the absence of an adequate remedy. In the present facts there is a remedy provided by law and no case is made out to sanction abjuring of the statutory hierarchy of dispute resolution and direct recourse to writ jurisdiction. In view hereof, this petition is found to be misconceived, hence, dismissed *in limini* alongwith all listed applications.

Judge