

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-374 of 2023

Dated: Order with signature of Judge(s)

1. For Hearing of CMA No. 2991 of 2023.
2. For hearing of Main Case.

Dated of Hearing : 22 May 2023.

Petitioner : Zafar Ahmed Siddiqui through Mr. Syed Musharraf Hussain Zaidi, Advocate

Respondent No.1 : Rehana Begum through Mr. Muhmmad Imtiaz Agha, Advocate

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

ORDER

MOHAMMAD ABDUR RAHMAN, J. This is a Petition that was maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against a Judgment dated 25 March 2023 passed by the XIVth District and Sessions Judge Karachi (East) in First Rent Appeal No. 24 of 2023 emanating from an Order dated 18 January 2023 passed in Rent Case No. 190 of 2022 by the IXth Rent Controller Karachi (East) whereby the defence of the Petitioner had been struck off by the IXth Rent Controller Karachi (East) under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 for failing to comply with an order passed by that court under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

2. It is common ground as between the Petitioner and the Respondent No. 1 that the Respondent No. 1 is the owner of Flat No. 156.18, Ground Floor, Plot No. 136/18 Kokan Muslim Cooperative Housing Society Limited,

Shaheed e Millat Road, Karachi (hereinafter referred to as the “Said Tenement”) and which the Respondent No. 1 had let out to the Petitioner.

3. The Respondent No. 1 has instituted Rent Case No. 190 of 2022 before the IXth Rent Controller Karachi (East) seeking to evict the Petitioner under Section 15 of the Sindh Rented Premises Ordinance, 1979. During the pendency of Rent Case No. 190 of 2022, the Respondent No. 1 maintained an application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 wherein by an order passed on 2 November 2022 in Rent Case No. 190 of 2022 the IXth Rent Controller Karachi (East) held that:

“ ... *In view of the above, tentatively speaking that there appears no arrears on the part of the opponent to direct to deposit. However the Opponent is hereby directed to deposit monthly rent in advance from November 2022 at the rate of Rs. 20,000/- per month with Nazir of this Court in the present rent case on or before 10th Each month of English Calendar month till disposal of present rent case*”

4. It seems that the Petitioner was depositing rent in MRC No. 91 of 2009 and having deposited rent therein for the months of November 2022, December 2022 and January 2023 did not in “letter” comply with the order dated 2 November 2022 passed in Rent Case No. 190 of 2022 by the IXth Rent Controller Karachi (East) to deposit the rent with the Nazir of the Court but had in “spirit” paid his rent in MRC No. 91 of 2009.

5. The Respondent on the basis of this alleged default maintained an application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 seeking to strike off the defence of the Petitioner for failing to comply with the Order dated 2 November 2022 passed by the IXth Rent Controller Karachi (East) in Rent Case No. 190 of 2022 on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

6. The application found favour with the IXth Rent Controller Karachi (East) in Rent Case No. 190 of 2022 who on 18 January 2023 was pleased to grant the application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 holding that:

- (i) as per the direction given on 2 November 2022 on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 from the month of November 2022 onwards it was incumbent on the Petitioner to have deposited rent with the Nazir of the Court in Rent Case No. 190 of 2022;
- (ii) having failed to deposit rent with the Nazir of the Court upto 12 January 2023 in Rent Case 190 of 2022 amounted to default rendering the Petitioner liable to have his defence in Rent Case No. 190 of 2022 struck off;
- (iii) the depositing of rent for the months of November 2022, December 2022 and January 2023 in MRC No. 91 of 2009 did not comply with the order dated 2 November 2022 passed on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

7. Being aggrieved and dissatisfied by the order dated 18 January 2023 passed by the IXth Rent Controller Karachi (East) in Rent Case No. 190 of 2022 striking off the Petitioner's right to defend Rent Case No. 190 of 2022, the Petitioner preferred First Rent Appeal No. 24 of 2023 before the XIVth District and Sessions Judge Karachi (East). That court on 25 March 2023 was pleased to dismiss First Rent Appeal No. 24 of 2023 holding that:

- (i) the depositing of rent for the months of November 2022 passed on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979, December 2022 and January 2023 in MRC No. 91 of 2009 did not comply with the order dated 2 November 2022 was willful and would not amount to technical default to prevent the defence of the Petitioner in Rent Case No. 190 of 2022 from being struck off; and
- (ii) having deposited rent for the months of December 2022 and January 2023 with the Nazir of the Court on 14 January 2023 when such rent was, as per the order dated 2 November 2023, required rent to be deposited by the 10th day of each Calendar month amounted to default rendering the Petitioner liable to have his defence in Rent Case No. 190 of 2022 struck off.

8. Being aggrieved and dissatisfied by the Judgment dated 25 March 2023 passed by the XIV District and Sessions Judge Karachi (East) in First Rent Appeal No. 24 of 2023 the Petitioner has maintained this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Syed Musharraf Hussain Zaidi entered appearance on behalf of the Petitioner and has submitted that the Petitioner had committed an honest mistake and as such the default in complying with the order dated 2 November 2022 passed by the IXth Rent Controller Karachi (East) in Rent Case No. 190 of 2022 on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 should be considered as a “technical” default and not a “wilful” default. He relied on the decision reported as **Hasan Imam vs. Navab Khan**¹ where it was held that the

¹ 200 CLC 1134

consequences of Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 being penal in nature should not be applied to what can be classified as a “technical” default.

9. Mr. Muhammad Imtiaz Agha on behalf of the Respondent No.1 submitted that the non compliance of the order dated 2 November 2023 passed by the IXth Rent Controller Karachi (East) in Rent Case No. 190 of 2022 on the application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 cannot be considered to be a technical default. He stated that the order clearly stipulated that from the month of November 2022 onwards rent was to be deposited with the Nazir of the Court and if the Petitioner chose to violate that order and deposit the rent in MRC. No. 91 of 2009 that must be treated as “wilfull”. He relied on the decision reported as *Mahmood Bashir vs. Mubina Begum*,² *Ashiq Ali vs. Mehar Elahi*,³ *Major (Retd.) A.S.K. Samad vs. Lt. Col. (Rtd.) A. Hussain and another*,⁴ *Abdullah Ghangro vs. Mst. Tahira Begum*,⁵ *Engineer Jameel Ahma Malik vs. Shaukat Aziz*,⁶ to advance the proposition of what is to be treated as “wilful” default for the purposes of determining an application under Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979. Mr. Muhammad Imtiaz Agha also relied on certain decisions of the Indian Jurisdiction which I have chosen not to reproduce as they are not relevant to the adjudication of the provisions of Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

10. I have heard both the counsel for the Petitioner and the counsel for the Respondent No. 1 and have perused the record. The Supreme Court

² 1998 SCMR 427

³ 2001 SCMR 130

⁴ 1987 SCMR 1013

⁵ 1988 SCMR 970

⁶ 2007 CLC 1192

of Pakistan in the decision reported as **Abdullah Ghangro vs. Mst. Tahira Begum**,⁷ where a tenant had in similar circumstance deposited rent in miscellaneous proceeding and not as per the order passed by the rent controller under the provisions of Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 had held that”

“ ... *After hearing the learned counsel for the parties in the light of the record before us we are impressed with the plea raised by the learned counsel for the petitioners that the noncompliance of the order of the Rent Controller, dated 20-04.1982, if any, was just a technical one rather than real for as a matter of fact petitioners were depositing rent regularly in Court; only mistake they committed was that they continued to deposit rent in the connect miscellaneous proceeding between the parties, and not under the number of the particular cases in which the order dated 2-04-1984 were passed, Since petitioners were out of pocket of the amount of rent payable by them which they actually deposited in Court with the intention that the landlord may withdraw the amount, if he so desires, and there is no complaint that the landlord could not do so, petitioner cannot be condemned as guilt of not depositing rent in court. They had actually deposited the rent in Court but made the mistake of depositing in one case and not the other and this amounts to an irregularity rather than penal non compliance of the order of the Rent Controller dated 20-04-1982.*”

11. From the decision of the Supreme Court of Pakistan it is apparent that some discretion is granted to the Rent Controller when adjudicating on an application under Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979. The striking of a defence under the provisions of Sub-Section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 being a penal consequence can not be administered mechanically and if it is found that the nature of the default is irregular but compliant then it may be deemed as what is called “technical” and not “willful” default. While noting that such language is absent in the statute itself, however as the Supreme Court of Pakistan is binding on me, it must be followed.

12. The record of MRC No. 91 of 2009 shows that the Petitioner has been making compliance of payment of rent diligently since 2009. It is not

⁷ 1988 SCMR 970

the case that the Petitioner did not deposit the rent for the months of November 2022 and December 2022. Rather from the record of MRC No. 91 of 2009 it is apparent that he deposited the rent for the month of November 2022 on 2 November 2022, for the month of December 2022 on 3 December 2022 and for the month of January 2023 on 7 January 2023 all of which were before the 10th day of each calendar month. If the same amounts had been deposited on the same dates with the Nazir of the Court in Rent Case No. 190 of 2022 there would have been absolute compliance with the order dated 2 November 2022 passed by the IXth Rent Controller Karachi (East) in that case. In addition, when the Petitioner realised his error he has thereafter forthwith deposited the rent for the month of February 2023 on 14 January 2022 in Rent Case No. 190 of 2022. It is also not that the case that MRC No. 91 of 2009 has been filed as against a person other than the Respondent No. 1 or that it was not open to the Respondent No. 1 to recover such an amount from MRC. No 91 of 2009. The Respondent No. 1 was able in accordance with the order dated 2 November 2022 passed by the IXth Rent Controller Karachi (East) able to receive the rent at the time prescribed albeit from a different forum.

13. I do believe that the Petitioner did fully intend to comply with the order and as held by the Supreme Court of Pakistan “the mistake of depositing in one case and not the other [and this] amounts to an irregularity rather than penal non compliance of the order of the Rent Controller”. I do believe that both the Judgment dated 25 March 2023 passed by the XIV District and Sessions Judge Karachi (East) in First Rent Appeal No. 24 of 2023 and the order dated 18 January 2023 passed in Rent Case No. 190 of 2022 by the IXth Rent Controller Karachi (East) striking of the Defence of the Petitioner in Rent Case No. 190 of 2022 have therefore incorrectly applied the law, as

per the decision of the Supreme Court of Pakistan reported as **Abdullah Ghangro vs. Mst. Tahira Begum**,⁸ and therefore cannot be sustained.

14. For the foregoing reasons this Petition is allowed and the Judgement dated 25 March 2023 passed by the XIV District and Sessions Judge Karachi (East) in First Rent Appeal No. 24 of 2023 and the order dated 18 January 2023 passed in Rent Case No. 190 of 2022 by the IXth Rent Controller Karachi (East) striking of the Defence of the Petitioner in Rent Case No. 190 of 2022 are set aside and the matter is remanded to the IXth Rent Controller Karachi (East) for further proceedings in Rent Case No. 190 of 2022, with no order as to costs.

JUDGE

Karachi dated 22 August 2023

⁸ 1988 SCMR 970