

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. Nos.S-807 of 2022

Dated: Order with signature of Judge(s)

- 1.For hearing of CMA No.108/2023.
- 2.For hearing of CMA No.5409/2022.
- 3.For hearing of Main Case.

Date of Hearing : 5 September 2023.

Petitioner : Younis through Mr. Iftikhar Javed Kazi,
Advocate.

Respondent Nos.1&2 : Imran & Raj Kumar through Mr. Ayaz Ali
Chandio, Advocate.

Respondents No.3&4 : The Learned IX Addl. & District Judge
Karachi (South) and VII Rent Controller
Karachi (South).

JUDGEMENT

MOHAMMAD ABDUR RAHMAN, J. This is a Petition that has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning a judgment dated 13 August 2022 passed by the IXth Additional District & Sessions Judge Karachi (South) in FRA No. 106 of 2022 who by that order set aside an order dated 16 April 2022 that had been passed by the VIIth Rent Controller Karachi (South) on an application that had been filed by the Petitioner in Rent Case No. 676 of 2021 under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 and whereby the IXth Additional District & Session Judge Karachi (South) in FRA No. 106 of 2022 dismissed that application and remanded Rent Case No. 676 of 2021 to the VIIth Rent Controller Karachi (South) for adjudication.

2. It is contended that the Petitioner is the owner of Shop No.4, Ground Floor, Hussain Haroon Building, Plot No.NP-6/26, Ghareebabad Street, Lea Market, Karachi (hereinafter referred to as the "Said Tenement") which he

has given to the tenant at a rent of Rs.1975/- per month with an additional amount of Rs.75/- to be paid by the Respondent No. 1 towards water and conservancy charges all adding upto Rs.2050/- per month. An Application was moved by the Petitioner under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 in Rent Case No. 676 of 2021 and which was granted on 27 October 2021 by the VIIth Rent Controller Karachi (South) in Rent Case No.676 of 2021 in the following terms:

“..... *Therefore, I do hereby allow application in hand, however, as the period of default (if any) is disputed, therefore on tentative inquiry, the opponent is directed to deposit the arrears of rent from July 2020 to October 2021 within 20 days of this order in this case in this Court and to deposit the future monthly rent w.e.f. November 2021 in this court in this case at the same rate i.e. 2050/- on or before 10th day of every English calendar month, for the month it is due till final disposal of this Rent Case. Furthermore, the amount deposited by opponent is vague with regard to the period and rate, therefore, the opponent is at liberty to withdraw rent deposited in MRC supra after filing proper application along with certified copy of this order. The COC of this court is directed to open the ledger in this regard on appearance of opponent. Furthermore, it is pertinent to note that observation in this tentative order shall not affect the merits of the case.”*

3. Being aggrieved and dissatisfied with the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021, the Respondent No. 1 preferred an appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 bearing FRA No.232 of 2021 before the XIIth Additional District Judge (MCAC) Karachi (South) and which was dismissed on 20 January 2022 on the ground that an appeal against an order under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 not being a final order, was not appealable. It is important to note that the XIIth Additional District Judge (MCAC) Karachi (South) did not suspend the operation of the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021.

4. The Petitioner thereafter maintained an application under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 contending that the Respondent No. 1 had failed to comply with the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 and seeking directions that the defence of the Respondent No.1 should be struck off. The Respondent No. 1 had in reply before the VIIth Rent Controller Karachi (South), contended that after the dismissal of FRA No. 232 of 2021 by the XIIth Additional District Judge (MCAC) Karachi (South) on 20 January 2022 he had started depositing rent in Ledger No. 79 of 2021 in Rent Case No. 676 of 2021 and had therefore deposited the rent in compliance with the tentative rent order passed under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 on 27 October 2021. The VIIth Rent Controller Karachi (South) examined the record and noted that the order dated 27 October 2021 was first complied with by the Respondent No. 1 on 27 January 2022 when the Respondent No. 1 first deposited a sum of Rs.24,600/- and thereafter on 4 March 2022 when he had deposited an amount of Rs.18,000/- and noting that the order dated 27 October 2021 having not been complied with directed that the defence of the Respondent No. 1 should be struck off and that the Respondent No. 1 was liable to be evicted from the Said Tenement after 15 May 2022.

5. Being aggrieved and dissatisfied with the order dated 16 April 2022 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 granting the Petitioners application under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 the Respondent No. 1 preferred an Appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 bearing FRA No. 106 of 2022 and which was heard and decided by the XIIth Additional District Judge (MCAC) Karachi (South) holding that as the Respondent No. 1 had complied with the order dated 27 October 2021 after the decision of FRA No. 232 of 2021 as such the

Respondent No. 1 could not be treated as having defaulted on its obligation to pay rent in terms of the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 and set aside the order dated 16 April 2022 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 on the application under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

6. Being aggrieved and dissatisfied with the order passed by the IXth Additional District & Sessions Judge Karachi (South) dated 13 August 2022 passed in FRA No. 106 of 2022 the Petitioner has maintained this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and has impugned the same on the ground that the provisions of Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 are mandatory and any breach of that order would render the defence of the Respondent No. 1 liable to being struck off under the provisions of Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979. He contended that the payment that was made by the Respondent No. 1 on 27 January 2022 was delayed by 92 days and the second payment that was made on 4 March 2022 was delayed by 124 days and that such a delay could not have been condoned by the IXth Additional District & Sessions Judge Karachi (South) in FRA No. 106 of 2022. He relied upon the decision reported as **Government of Punjab through Secretary Education, Lahore and others vs. Mst. Azra Mohy-ud-Din,¹ M.H.Mussadaq vs. Muhammad Zafar Iqbal,² Ghulam Hussain vs Mst. Roshan,³ Tabassum Iqbal Sheikh vs. District And Sessions Judge,⁴ Safeer Travels (Pvt.) Ltd. vs. Muhammad Khalid Shafi⁵** to advance the position that any default in the compliance of an order under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 would warrant

¹ 1990 SCMR 476

² 2004 SCMR 1453

³ 1986 SCMR 1714

⁴ 2007 CLC 546

⁵ PLD 2007 SC 504

the tenant's defence being struck off under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979. He also relied on the decision reported as **Mahmood Bashir vs. Mst. Mubina Begum**⁶ to advance the proposition that where a tenant deposited rent in the name of the wrong person in violation of an order under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979 it would amount to default and which would invoke the penal provisions of Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979. He finally relied on the decision reported as **National Bank of Pakistan vs. Shaukat Hussain**⁷ wherein when a tenant deposited rent in the account of a bank instead of in the Court, as directed by the Rent Controller, it was held to tantamount to default rendering the defence of the tenant liable to being struck off.

7. Counsel for the Respondent No. 1 contended that the rent has been deposited up to date in MRC No. 883 of 2021 and contended that he had initially deposited a money order on 20 July 2021 in MRC No. 883 of 2021 and after FRA No. 232 of 2021 had been granted he has deposited the rent in Rent Case No. 676 of 2021 and therefore there is no question of default on his side. He relied upon the decision of the Supreme Court reported as **Malik Aman vs. Khawaja Abdul Aziz**⁸ wherein where the tenant had deposited more rent than was actually due with the rent controller and which deposited had been frustrated by the landlord it was held that a default could not be presumed by the Rent Controller to have occurred on account of a non-compliance of Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

8. I have heard the counsel for the Petitioner and counsel for the Respondent No. 1 and have perused the record.

⁶ 1988 SCMR 427

⁷ 1992 MLD 2578

⁸ 1991 SCMR 68

9. The provisions of Section 16 of the Sindh Rented Premises Ordinance, 1979 reads as under:

“..... 16. *Arrears of rent. (1) Where a case for eviction of the tenant has been filed, the Controller shall, on application by the landlord and after such summary inquiry as he deems fit to make, determine the arrears of the rent due and order the tenant to deposit the same within such period as the Controller may fix in his behalf and further direct the tenant to deposit monthly rent regularly on or before the tenth of every month, until final disposal of the case.*

[Provided that the Controller may direct that the arrears of rent and approximate rent may be paid to the landlord through pay order, or by any other mode agreed to by the parties, or as directed by the Controller].

(2) Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under sub-section (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) Where the rent has been deposited under this section, it shall, subject to such order as the controller may make in this behalf, be paid to the landlord at the conclusion of the case or on such earlier date as may be specified by the Controller.”

As per Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 a Rent Controller has been conferred the jurisdiction, as an interim measure, to pass what is referred to colloquially as an “interim rent order” directing that until the adjudication of an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 a tenant may be put on terms to deposit any arrears in rent that are owing and payable by the tenant to the landlord and also to thereafter deposit any future rent in the court of Rent Controller. If the tenant defaults in complying with the order passed by the Rent Controller then, under Subsection (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979, a penal consequence of the defence of the tenant being struck off and the summary eviction of the tenant can be ordered by the Rent Controller.

10. It would seem that after the passing of the order dated 27 October 2021 by the VIIth Rent Controller Karachi (South) on the application under

Sub-section (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 in Rent Case No. 676 of 2021, the Respondent No. 1 had preferred an Appeal bearing FRA No. 232 of 2021 before the XIIth Additional District Judge (MCAC) Karachi (South). It is apparent that during the pendency of FRA No. 232 of 2021 no interim order was obtained by the Respondent No. 1 suspending the operation of the Order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) on the application under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 in Rent Case No. 676 of 2021. FRA No. 232 of 2021 having been dismissed on 20 January 2022 and given that no interim order had ever been passed suspending the operation of the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) on the application under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Petitioner in Rent Case No. 676 of 2021 that order remained operative for the entire duration of FRA No. 232 of 2021. That being the case there is clearly no basis for the IXth Additional District & Sessions Judge Karachi (South) to in effect hold that compliance of the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) on the application under Subsection (1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Petitioner in Rent Case No. 676 of 2021 was only required after the disposal of FRA No. 232 of 2021. Clearly the Respondent No. 1 had defaulted on its obligations during the period from 27 October 2021 until 27 January 2022 when admittedly for the first time compliance was made of the order dated 27 October 2021. The order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 having not been suspended and the obligation thereunder subsisting, I can see no ground for the IXth Additional District & Sessions Judge Karachi (South) to in effect hold that compliance of the order dated 27 October 2021 passed by the VIIth Rent Controller Karachi (South) on the application under Subsection

(1) of Section 16 of the Sindh Rented Premises Ordinance, 1979 maintained by the Petitioner in Rent Case No. 676 of 2021 had been suspended during the pendency of FRA No. 232 of 2021. The Judgment dated 13 August 2022 passed by the IXth Additional District & Sessions Judge Karachi (South) in FRA No. 106 of 2022 therefore clearly cannot be sustained.

11. In the facts and circumstances, this Petition is allowed and the Judgment dated 13 August 2022 passed by the IXth Additional District & Sessions Judge Karachi (South) in FRA No. 106 of 2022 is set aside and the order dated 16 April 2022 passed by the VIIth Rent Controller Karachi (South) in Rent Case No. 676 of 2021 is restored, with no order as to costs.

Karachi;
Dated:15 September 2023.

JUDGE