

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE EJAZ AFZAL KHAN.**

**MR. JUSTICE QAZI FAEZ ISA.**

**MR. JUSTICE IJAZ UL AHSAN.**

**Civil Petition No.3068 of 2017**

Against judgment dated 04.08.2017 of High Court of Sindh at Karachi, passed in Constitution Petition No.S-303 of 2010.

Muhammad Iqbal Haider

**Petitioner(s)**

**VERSUS**

1<sup>st</sup> ADJ, Karachi Central & others

**Respondent(s)**

For the Petitioner(s):

Raja M. Ibrahim Satti, Sr.ASC  
Syed Razaqat H. Shah, AOR

For Respondent No.3:

In person.

Date of Hearing :

27.09.2017.

**O R D E R**

**IJAZ UL AHSAN, J-** The petitioner seeks leave to appeal against judgment dated 04.08.2007 rendered by High Court of Sindh at Karachi. Through the impugned judgment, a Constitution Petition bearing No.S-303 of 2010 filed by the petitioner was dismissed.

2. Briefly stated the facts necessary for decision of this *lis* are that Respondent No.3 filed an application under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 (SRPO) against the petitioner claiming to be owner of the rented premises (*subject matter of the dispute*). She sought his eviction on the grounds of default in payment of rent and unauthorized commercial use of the rented premises. The Rent Controller seized of the matter passed an order dated

17.07.2008 under Section 16(1) of the SRPO (*“tentative rent order”*) directing the petitioner to deposit arrears of rent for the past three years amounting to Rs.450,000/- within a period of 25 days of the date of the order and also to deposit future rent. This order was assailed by the petitioner before the High Court of Sindh at Karachi through a Constitution Petition bearing No.S-346 of 2008. Initially, operation of the order of the Rent Controller dated 17.07.2008 was suspended vide order dated 11.08.2008. (*This was the last day for deposit of rent as ordered by the Rent Controller*). However, subsequently the Constitution Petition was dismissed on 29.08.2008. Aggrieved of such dismissal, the petitioner approached this Court through Civil Petition No.1193 of 2008 in which vide order dated 22.09.2008, the order of the High Court as well as that of the Rent Controller were suspended. Subsequently, the Civil Petition was also dismissed in terms of judgment dated 09.06.2009. A Review Petition (CRP No.33-K of 2009) was filed but the same was withdrawn on 02.02.2010.

3. It appears that while the aforementioned matters were pending, Respondent No.3 filed an application under Section 16(2) of the SRPO before the Rent Controller praying that the defence of the petitioner may be struck off as he had failed to comply with the order for deposit of tentative rent. Vide order dated 03.12.2009, the Rent Controller accepted the application, struck off the defence of the petitioner and directed him to handover vacant physical possession of the

rented premises to Respondent No.3 within a period of 45 days from the date of the order.

4. The petitioner being aggrieved of this order filed an appeal which was dismissed. The Constitution Petition filed before the High Court to assail the appellate judgment also met the same fate. Hence, this Civil Petition for Leave to Appeal.

5. The learned counsel for the petitioner contends that the Rent Controller as well as the High Court erred in law in passing and upholding the order relating to payment of tentative rent without first deciding the question of ownership of Respondent No.3 and her title in the property in question. He maintains that admittedly suits for specific performance as well as cancellation of sale deed had been filed by the mother of the petitioner against Mst. Nasreen Jehan Ghori (Respondent No.4). She had agreed to sell the property and had entered into an agreement to sell as well as an additional agreement to sell on the basis of which the former had paid certain amounts. She had also, with the consent of Respondent No.4, retained possession of the premises. He submits that relationship of landlord and tenant had been denied by the petitioner and without resolving the said question, the order for payment of tentative rent could not have been passed.

6. The learned ASC further submits that although default had been committed in compliance of the order for deposit of tentative rent, the said amount was ultimately

deposited on 15.06.2009 in consequence of which in his opinion the default stood cured. In this context, he has drawn our attention to an order passed by this Court in Review Petition No.33-K of 2009 to argue that this Court had permitted him to agitate all such points relating to timely deposit of tentative rent before the Executing Court. He has finally argued that notwithstanding the adverse findings recorded by this Court in its order dated 09.06.2009 in Civil Petition No.1193 of 2008, his right to agitate the same questions again in the second round of litigation when he was challenging his eviction order was still alive. In support of his contentions, the learned counsel has placed reliance on Rehmatullah v. Ali Muhammad (PLD 1983 Supreme Court 1064); Miskina Jan v. Rehmat Din (1992 SCMR 1149); Umar Hayat Khan v. Inayatullah Butt (1994 SCMR 572); and Muhammad Afzal v. Virbai (1993 CLC 1702).

7. We have heard the learned ASC for the petitioner and considered his arguments. The main thrust of the arguments advanced by him is that the relationship of landlord and tenant had been denied on the basis of the agreements to sell executed between Respondent No.4 and the mother of the petitioner. That being so and the ownership of the property being in dispute, an order for payment of tentative rent under Section 16(1) of the SRPO could not have been passed. Consequently, his defence could not have been struck off for non compliance of the said order. However, we have noted that this aspect of the matter was fully addressed by this Court in the earlier round of litigation. The

controversy relating to denial of relationship of landlord & tenant and pendency of litigation between the parties and the legality of the order for deposit of rent was examined and definitive findings were recorded by this Court in its judgment dated 09.06.2009 in Civil Petition No.1193 of 2008 in the following terms:-

4. *We have heard the petitioner as well as the learned counsel for the contesting respondent No.2 at length and have also perused the available record. We find that the institution of two civil suits by the petitioner; one for specific performance of agreement and the other for cancellation of sale deed of the respondent No.2 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. Reliance can be placed on the cases of Nazir Ahmed V. Mst. Sardar Bibi & others (1989 SCMR 913), Mst. Bor Bibi V. Abdul Qadir (1996 SCMR 87), Waheedullah V. Mst. Rehana Nasim & others (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 (NLR 1999 Civil 419), Iqbal and others V. Mst. Rabia Bibi and another (PLD 1991 SC 242) and Syed Imran Ahmed V. Bilal and another (Civil Appeal No.2230 of 2008 decided by this Court on 9.6.2009). Once the petitioner was, prima facie, shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suits for specific performance and for cancellation of sale deed. Article 115 of the Qanoon-e-Shahadat Order, 1984 lays down that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that his landlord had a title to such property. The relationship of landlord and a tenant is not severed even if the execution of an agreement to sell is admitted. The petitioner was not absolved of his responsibility of compliance of order passed by the Rent Controller under the provisions of Section 16 of the Ordinance for making of payment of arrears and future rent. In our view, the impugned judgment of the High Court is plainly correct to which no exception can be taken.*

5. *For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.*

8. These questions having been finally determined between the parties by this Court, we are not persuaded to revisit the same. Further, once it was held by this Court in this very case that petitioner did not have any reason for non compliance of the order of the Rent Controller pending final

determination of the *lis*, the trial Court as well as the appellate *fora* had no choice but to pass appropriate orders on the basis of non compliance of order for deposit of rent (which has not seriously been disputed) and in light of the judgment of this Court on 09.06.2009 in Civil Petition No.1193 of 2008.

9. We have repeatedly asked the learned counsel for the petitioner to explain the delay which occurred in compliance of the order dated 17.07.2008 passed by the Rent Controller directing for payment of tentative rent. We have also asked him to show us from the record if any attempt was made by the petitioner at any stage of the proceedings to give any reason which prevented him from complying with the order in question. However, he has been unable either to explain the delay or point to any material on record that may indicate that any attempt was made to explain such delay before any forum. It is settled law that an order passed by a Court (whether or not a party considers it just, valid and fair) has to be complied with subject to his right to challenge the same before the *fora* provided in law. In case of non compliance, the consequences provided in law are bound to follow. In the instant case, the order for deposit of rent passed by the Rent Controller was challenged and upheld upto this Court and it was unequivocally held that, *“we find that the institution of two civil suits by the petitioner; one for specific performance of agreement and the other for cancellation of sale deed of the respondent No.2 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.” As such, the petitioner has no body but himself to blame if his defence was struck off on account of his admitted failure to comply with the order leading to an order for his ejection from the rented premises.

10. As far as the argument of the learned counsel that delay in compliance of the order was condoned or stood cured by reason of an order passed by this Court in CRP No.33-K of 2009 is concerned, we are unable to subscribe to the same. Perusal of the order passed by this Court on 02.02.2010 by no stretch of interpretation supports the conclusion canvassed by the learned counsel. Likewise, we are unable to agree that the effect of the interim order passed by this Court in Civil Petition No.1193 of 2008 dated 22.09.2008 furnished any justification for delay in compliance of the order of the Rent Controller relating to deposit of tentative rent. It is clear and obvious that the words, “*till then, subject to all just exceptions*” saved the rights that had already accrued in favour of Respondent No.3 by reason of default on the part of the petitioner to deposit tentative rent as ordered by the Rent Controller.

11. Further, Civil Petition No.1193 of 2008 was ultimately dismissed on 09.06.2009 with the finding that the petitioner had no justification for non compliance of the order of the Rent Controller dated 17.07.2008. As such, we are in no manner of doubt that default on the part of the petitioner

had neither been cured nor condoned by any Court in any proceedings. We have gone through the case law cited at the bar. We find that the said judgments have been rendered in a different set of facts and circumstances, are not intended to lay down the entire law on the subject and are clearly distinguishable. These are irrelevant and of no help to the case of the petitioner.

12. The impugned judgment of the High Court is, in our opinion, well reasoned and based upon the correct interpretation of the applicable principles of law on the subject and is unexceptionable. As such, no interference is required in exercise of our jurisdiction under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973.

13. For reasons recorded above, this petition is dismissed and leave refused.

**JUDGE**

**JUDGE**

**JUDGE**

Announced in Court on \_\_\_\_\_.

**Judge**

**ISLAMABAD, THE**  
27<sup>th</sup> of September, 2017  
ZR/\*