Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 20 of 2022

[Muhammad Fareed vs. Islamuddin & another]

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Appellant	Through Mr. Shamim Akhtar, Advocate
Respondent-1	Through Mr. Imtiaz Ali Effendi, Advocate
Respondent-2	Nemo
Date of Hg:	22.08.2025
Date of Order	22.08.2025

ARSHAD HUSSAIN KHAN, J. The appellant through instant second appeal has challenged the concurrent findings of the two courts below and has sought the relief as follows:

a) That this Court be pleased to allow this appeal and set-aside the order dated 01-11-2021, passed by the learned Ist Appellate Court in Civil Appeal No.137/2021.

b) That this Court be pleased to set-aside the impugned Judgment & Decree dated 05-10-2020, passed by the Learned IIIrd Senior Civil Judge Karachi Central in Civil Suit No.566/2018 and restore the same after hearing and evidences of the parties for just decision of the suit on merits, in the larger interest of justice.

c) That this Court be pleased to suspend the operation of Order dated 01-11-2021 passed by the learned Ist Appellate Court and also to suspend the operation of Judgment & Decree passed in Civil Suit No.566/2018 by the Learned IIIrd Sr. Civil Judge, at Karachi Central, as the both the Courts below have imposed penalty upon the appellants to the extent of Rs.10,000/-.

d) To call R & P of the Suit No.566/2018 from the Court of IIIrd Sr. Civil Judge at Karachi Central for kind perusal of this Appellate Forum. .

e) Any other relief or reliefs which this Court may deem fit & proper in the circumstances of the case.

2. Learned counsel for the appellant has contended that the impugned judgments are perverse, arbitrary, and a result of non-reading and misreading of material evidence available on record. It is urged that the learned trial court failed to record any findings with regard to the tenancy agreement as well as the advance payment of Rs. 50,000/- received by respondent No.1. It is further submitted that the learned trial court rendered its judgment in undue haste, without properly appreciating the evidence adduced by the parties, and dismissed the

appellant's suit without assigning cogent or sustainable reasons. Lastly, it is argued that both the impugned judgments, being contrary to law, facts, and evidence available on the record, are not sustainable in the eye of law; thus liable to be set aside.

3. On the other hand, learned counsel for the respondent No.1 remained called absent.

4. Heard learned counsel for the appellant and perused the material available on the record.

From perusal of the record, it reveals that the appellant/plaintiff initially filed suit No.566/2018, against the respondent for recovery of deposited amount & damages of Rs.100,000/- with the following prayers:

a. To direct defendant No.1 to return deposit amount of Rs.50,000/- with articles of the plaintiff which are still lying in the rented premises alongwith future markup at the rate of 10% per month upon existing amount as above from 22/05/2017 till realization of the amount.

b. To direct defendant No. 1 to pay, the amount of Rs.50,000/- as damages to the plaintiff for disgrace his reputation to thrown him from premises.

c. To award the cost of the suit.

d. Any other equitable relief, which this Court deems fit and proper under the circumstances of the case.

5. Before the learned trial court, respondent/defendant filed his written statement denying the claim of the appellant/plaintiff as no cause of action has been accrued to him; as per law the suit of the plaintiff is not maintainable, hence prayed for dismissal of the suit. Thereafter, issues were framed in the matter and the evidences of both the parties were recorded and after hearing the learned counsel for the parties suit of the appellant/plaintiff was dismissed, vide the impugned judgment dated **05.10.2020,** passed by the learned IIIrd Senior Civil Judge, Karachi [Central].

6. The aforesaid judgment and decree of the trial court were challenged before Additional District Judge-IV, Karachi [Central] in Civil Appeal No.137 of 2020, which was also dismissed; the judgment and the decree of the trial court were maintained, vide order of the appellate court dated **01.11.2021**, the appellate court while dismissing the appeal has observed as follows:

> "I am of the view that the learned trial court has not committed any error in holding that the plaintiff / appellant is not entitled for the relief claimed. Hence, I am of the view that judgment & decree dated 05-10-2020, do not require interference, the same are upheld, consequently, the appeal of the appellant is dismissed with cost of Rs.10,000/- to be deposited by the appellant / plaintiff with the Nazir of this Court within 15 days of this judgment. Instant civil appeal stands disposed of in the above terms."

The appellant has challenged the above concurrent findings in the present appeal.

7. Precisely, the case of the appellant is that he had taken a portion of the respondent's house on rent with effect from 01.12.2016, at a monthly rent of Rs. 9,000/-, for the purpose of his marriage. At the time of tenancy, he deposited a sum of Rs. 50,000/- as refundable security. The appellant paid rent up to 01.05.2017 and thereafter informed the respondent-landlord that he would vacate the premises on 30.05.2017. However, prior to the said date, the respondent, in collusion with the brother of the appellant's ex-wife (both being related), forcibly evicted the appellant, dispossessed him from the premises, and placed their own lock on the property. The grievance of the appellant is twofold: firstly, that the respondent unlawfully failed to refund the security deposit, and secondly, that the respondent's unlawful and high-handed act of eviction caused grave injury to the appellant's reputation and dignity. Subsequently, the appellant instituted the suit seeking recovery of the refundable security deposit along with damages.

8. From a perusal of the impugned judgments, it is evident that both the learned courts below meticulously examined the pleadings, evaluated the evidence adduced, and applied the relevant legal principles before arriving at a concurrent conclusion. The learned trial court categorically observed that the advance deposit of Rs. 50,000/–, though admitted by the respondent/defendant, stood duly adjusted in accordance with Clause-1 of the tenancy agreement dated 01.02.2017. Upon appreciation of the evidence, the trial court rightly held that no amount was outstanding or recoverable from the respondent. Similarly, the claim for damages on account of alleged disgrace was correctly declined, there being no credible or cogent evidence on record to substantiate such assertion. The learned appellate court, through an independent and comprehensive reappraisal of the record, affirmed the findings of the trial court, holding that no error of law, misreading, or non-reading of

evidence had occurred. The appellate court accordingly maintained the judgment and decree by way of a well-reasoned judgment dated 01.11.2021.

9. It is a well-settled principle of law that concurrent findings of fact recorded by the courts below cannot be interfered with by the High Court in second appeal, unless it is demonstrated that such findings are vitiated by misreading of evidence, non-consideration of material evidence, or any other manifest illegality.[1] The concurrent findings rendered by the learned courts below are entitled to deference, and in the absence of any jurisdictional defect, legal infirmity, or misapprehension of evidence, which are obviously absent in the present case, such findings cannot be disturbed. The learned counsel for the appellant has also failed to point out any material irregularity in this regard.

10. Besides, it is pertinent to note that the instant matter has been brought before this Court in the form of a second appeal under Section 100, Code of Civil Procedure, 1908. The scope of such jurisdiction is strictly circumscribed and can only be invoked on any of the following grounds:

(a) Where the decision is contrary to law or a usage having the force of law;

(b) Where the court below has failed to determine a material issue of law or a usage having the force of law; or

(c) Where there is a substantial error or defect in the procedure prescribed by the CPC or any other law for the time being in force, which may have resulted in an erroneous or defective decision on the merits.

However, none of the above conditions are attracted in the present case.

11. The Supreme Court of Pakistan in the case of *Zafar Iqbal and others v. Naseer Ahmed and others* [2022 SCMR 2006] while interpreting the scope and ambit of section 100 of the CPC has observed as follows :

> "The scope of second appeal is thus restricted and limited to these grounds, as section 101 expressly mandates that no second appeal shall lie except on the grounds mentioned in section 100. But we have noticed that notwithstanding such clear provisions on the scope of second appeal, sometimes the

[1] *Keramat Ali and another v. Muhammad Yunus Haji and another* [PLD 1963 SC 191], *Phatana v. Mst. Wasai and another* [PLD 1965 SC 134] and *Haji Muhammad Din v. Malik Muhammad Abdullah* [PLD 1994 SC 291].

> High Courts deal with and decide second appeals as if those were first appeals; they thus assume and exercise a jurisdiction which the High Courts do not possess, and thereby also contribute for unjustified prolongation of litigation process which is already chocked with high pendency of cases".

12. In another case viz. *Muzafar Iqbal vs. Mst. Riffat Parveen and others*, [2023 SCMR 1652] the Supreme Court of Pakistan while dilating upon the scope of second appeal, inter alia, has held as under :

> "There is a marked distinction between two appellate jurisdictions; one is conferred by section 96, C.P.C. in which the Appellate Court may embark upon the questions of fact, while in the second appeal provided under section 100, C.P.C., the High Court cannot interfere with the findings of fact recorded by the first Appellate Court, rather the jurisdiction is somewhat confined to the questions of law which is sine qua non for the exercise of the jurisdiction under section 100, C.P.C. The High Court cannot surrogate or substitute its own standpoint for that of the first Appellate Court, unless the conclusion drawn by lower fora is erroneous or defective or may lead to a miscarriage of justice, but the High Court cannot set into motion a roving enquiry into the facts by examining the evidence afresh in order to upset the findings of fact recorded by the first Appellate Court".

13. It may be observed that the Legislature, by circumscribing the scope of a second appeal under Section 100, C.P.C., intended to secure the finality of litigation and to discourage repeated challenges premised merely on questions of fact. Interference with concurrent findings of fact, in the absence of jurisdictional error or a substantial question of law, would not only transgress the statutory boundaries but also frustrate the very object of expeditious and effective dispensation of justice. The High Court, while exercising its jurisdiction under Section 100, C.P.C., is therefore required to exercise caution and restraint, as it cannot assume the role of a fact-finding forum.

Accordingly, in view of the above discussion, this second appeal is **dismissed** being devoid of any merit.

JUDGE

*Jamil****