IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-801 of 2023

Present:
Mr. Justice Muhammad Osman Ali Hadi

[Muhammad Gulraze Mir and others v. Mst. Sakina Khatoon and others]

Date of hearing	:	03.09.2025
Date of decision	:	03.09.2025
Petitioners	:	Through Mr. Mohsin Shahwani, Advocate
Respondent Nos.1-3, 5-7	:	Through Mr. Shahzad Afzal, Advocate
State	:	Through Ms. Deeba Ali Jaffri, AAG

O R D E R

Muhammad Osman Ali Hadi, J: The Petitioners are aggrieved by the Judgment dated 08.08.2023 (**"the Impugned Judgment"**) passed in FRA No. 277/2022, which upheld prior Order dated 11.10.2022 passed by the learned 1st Rent Controller, Karachi-South in Rent Application No.194 of 2014 (**"the Impugned Order"**).[1]

2. Learned counsel (for the Petitioners) submits that the Petitioners have been in tenancy and possession of property being El Beena Commercial Centre constructed on Plot No.BC-II, admeasuring 525 square yards or thereabouts, situated on KDA Scheme No.5, Kehkashan Block-5, Clifton, Karachi (**"the Property"**) for over 30 years. Counsel states that the Petitioners are in occupation of approximately 36% of the Property, of which 20% is owned by them and the remaining 16% is on rental lease from the Respondents. The Petitioners have remained in tenancy of the Property since the year 1993.[2] As per counsel, he contends that the Respondents filed an Ejectment Application under Section 15 of the Sindh Rented Premises Ordinance 1979 (**"1979 Ordinance"**), being Rent Application No.194 of 2014, which he submits

[1] For purposes of clarity and convenience, I shall refer to the judgment of the Appellate Court as the "Impugned Judgment" and the judgment passed by the 1st Rent Controller as the "Impugned Order"

[2] Through various renewed tenancy agreements

was based on one single month's alleged default, i.e. being October, 2013. In this regard he has referred to Para-12 of the Impugned Judgment, which he submits shows the same. The Petitioner has disputed even this default, and made reference to a pay-order dated October 2013 (available at Page 197 of the File), which, as per counsel, evidences payment of rent made for the month of October 2013. He then refers to Pages 199 and 201 of the File, which he states, are acknowledged by the Respondents as receipts of payment. Counsel then referred to Page 259 of the File, which is the Impugned Order passed by the Rent Controller, and states that it is an accepted position that the Petitioner is covered under the 1979 Ordinance, citing in particular sections 2-F & 15. He submits that as per the 1979 Ordinance, a default needs to be within 15 days of a stipulated time period (when such time period exists), and submits that the Petitioner had made the payments within the said time frame and therefore is not in default. Counsel averred that complete evidence of payment of the rental amount for the month of October 2013 was on record, but the learned Rent Controller did not let the same be properly considered. At this stage, he urges that let this matter be referred back to the learned Rent Controller, after which this entire controversy can be resolved as per law.

3. He further submitted that the attorney of the Respondent has been trying to get the Petitioner to commit wilful default by attempting to not accept the rent paid by the Petitioner, in a bid to unlawfully oust the Petitioner from the Property. Counsel submits that despite the same, the Petitioner has been paying the rent, which has been repeatedly withdrawn by the Respondent, and even now is continuously being withdrawn.

4. In essence, the Petitioners have stated that as per law and process, there was no default in rent committed in October 2013, and

evidence in this regard was not properly read / considered. The Petitioners submits on this ground the matter should be referred back for a proper decision, as per law. Counsel for the Petitioners prayed this Petition may be allowed, as the Impugned Judgment and Order are both erroneous in law. Learned counsel has relied upon case laws being **2023 CLC 344** *[Abdul Hameed Asghar (through L.Rs) and others v. Vth Additional District Judge-East and others,* **1987 CLC 76** *[Muhammad Yousuf v. Muhammad Saghiruddin Qureshi)* and **2012 CLC 143** *[Syed Abid Ali v. Ghulam Moiuddin Khan and 2 others]* in support of his contentions.

5. Learned counsel for Respondent Nos.1 to 3 and 5 to 7 has controverted the submissions of the Petitioners, and states that the Petitioners are in repeated default of their dues. Learned counsel has referred to Para-31 of the Impugned Order of the Rent Controller, and states that as per the Petitioners' own evidence, which is reproduced therein, default is an admitted position. Learned counsel next referred to Para-34 of the Impugned Order, in which he states that there are several defaults apparent on record, and that there is even an admission that the rent for the month of May 2020 was not deposited. He further submits that there has been violation committed by the Petitioner under Section 10 of the 1979 Ordinance, and accordingly these Petitions are meritless and liable to be dismissed. Learned counsel has relied upon **PLD 2015 SC 33** *[Muhammad Amin Lasania v. Messrs Ilyas Marine and Associates and others]* and **2006 SCMR 1501** *[Mst. Yasmeen Khan v. Abdul Qadir and another]* in support of his contentions.

6. Learned counsel for the Petitioner exercised his right of rebuttal and reiterated that the pay-order earlier referred by him shows an acknowledgment of receipt of payment. Furthermore, he strongly objects to the allegations that he has committed any default, and

repeated his previous stance that if the matter is decided on this single issue, it could be resolved in its entirety in a fair and just manner. He submits that all he prays for is a chance to have proper evidence led on the issue of default for the month of October 2013. He lastly contended that all the legal heirs of the initial landlord, being the current Respondents, reside in India and throughout the entire tenancy rent has been collected through their attorney, therefore it remains the norm to issue rent to the attorney or as per the attorney's instructions. He referred to Page-85 of the Impugned Judgment and states that as can be seen in Para 14, as well as Para 12 (Page-79), that the Impugned Judgment relates only to default of the month of October 2013, and as such this is the only point for consideration. Accordingly, counsel submits that the Impugned Judgement and Order below did not appreciate the law and evidence, and as such are liable to be *set aside*.

7. I have heard all the learned counsel and have gone through the relevant portions of the File. The basic crux of this disparity before me, as can be observed from the pleadings and the Impugned Judgement, stems from whether or not the learned Rent Controller had properly followed process when concluding recording of evidence with regard to default in rent for payment of the month of October 2013? The rest of the house of cards would fall into place by default, upon resolution of the stated issue.

8. In the first instance, reference for consideration is made in Para 8 of the Respondents' Application for Ejectment.[3] The Respondents have clearly submitted that the Petitioners had failed to pay rent since October 2013,[4] which forms the base for their cause of action.

[3] Available at page 89 of the file.
[4] It is relevant to mention that the said Rent Application under Section 15 of the 1979 Ordinance had been filed four months later, i.e. on 22.10.2014.

9. Contrarily, the Petitioners have stated that they had tried to deposit the rent for October 2013, but the same was wilfully refused by the Attorney of the Respondents. In the evidence of the Petitioners before the Rent Controller, the Petitioners had repeatedly stated that they had tried to issue the pay order for October 2013's rent and that the Attorney had refused to take the same. The same stance was taken in the Objections filed by the Petitioners against the Ejectment Application.

10. A perusal of the File shows that the Respondents had also filed an application under Section 16 of 1979 Ordinance,[5] in which the Respondents sought payment of arrears of rent from November 2013 to February 2014, as well as alleged outstanding of certain utility charges. However, the said application was dismissed by the learned Rent Controller vide Order dated 04.07.2016[6]. In the said dismissal Order, the learned Rent Controller held that no proof of payment of any outstanding utility or conservancy charges were shown by the Respondents (Applicants therein), nor was any default in payment of rent for the said period substantiated. Furthermore, the Rent Controller held that any further claims could not be decided without recording of evidence. Inference in this regard could be taken to mean that the Respondents at such stage, without first recording evidence, were unable to show any *prima facie* default in rent committed by the Petitioners for the said period.

11. Subsequently the matter continued, and after conclusion of final arguments, the Rent Controller passed the Impugned Order dated 11.10.2022, allowing the Respondents' Application for default, as well as ejectment of the Petitioners from the Property.

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[5] Available at page 107 of the file.
[6] Available at page 119 of the file.

12. At this juncture, the basic point of contention that has been raised before me stands whether or not the Trial Court correctly followed process and conducted a fair and proper hearing of evidence regarding default of payment by the Petitioners for month of October 2013. For this, I refer to Para-30 onwards in the Impugned Order of the learned Rent Controller,[7] whereby the issue relating to default of payment in the month of October 2013 is discussed.

13. Having perused the said Impugned Order, I have found the learned Rent Controller, whilst reproducing various excerpts of the examination/cross examination of the parties, has not properly addressed this part of the evidence. Specifically referring to Para-31, the learned Judge has reached the conclusion that the Petitioners failed to tender rent of the Property from October 2013, based on the deposition of the Respondents' Attorney. However, a mere reading of the same would show that the said evidence appears to be inconclusive. Furthermore, the learned Rent Controller in Para-32 of the Impugned Order, has stated that the Petitioners have annexed an acknowledgment (of payment) letter dated 28.10.2013, regarding receipt of payment for the rent of October 2013, but the Rent Controller has nullified the same by stating that the said acknowledgment receipt of payment was not an original, but a copy, and therefore could not be considered. It is on this basis alone that the learned Trial Judge held that the Petitioners have failed to prove payment of rent for the month of October 2013.

14. This appears hasty and without due consideration. Articles 74 and 76 of the Qanun-E-Shahadat Order 1984 provide instances where secondary evidence can be relied upon by a party, but the said articles or any other legal rationale for not allowing secondary evidence has not been mentioned by the learned Rent Controller when reaching his

[7] Between Pages 291 to 301 of the File.

findings in the Impugned Order. Article 72 of the Qanun-E-Shahadat Order 1984 (**"QESO 1984"**) provides that evidence may be proven by either primary or secondary evidence. Articles 74 and 76 provide a definition of secondary evidence, and instances when it can be used. For purposes of convenience, the articles are reproduced herein below:

> **"Article 74: Secondary Evidence**.— "Secondary evidence" means and includes—
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> (1) Certified copies given under the provisions hereinafter contained;
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> (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
>
> (3) Copies made from or compared with the original;
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> (4) Counterparts of documents as against the parties who did not execute them;
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> (5) Oral accounts of the contents of a document given by some person who has himself seen it.
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> **Article 76: Cases in which secondary evidence relating to documents may be given.**— Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —
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> (a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Article 77 such person does not produce it;
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> (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
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> (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
>
> (d) when, due to the volume or bulk of the original, copies thereof have been made by means of microfilming or other modern devices;
>
> (e) when the original is of such a nature as not to be easily movable;
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> (f) when the original is public document within the meaning of Article 85;
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> (g) when the original is a document of which a certified copy is permitted by this Order, or by any other law in force in Pakistan, to be given in evidence;
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> (h) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection;
>
> (i) when an original document forming part of a judicial record is not available and only a certified copy thereof is

> available, certified copy of that certified copy shall also be admissible as a secondary evidence.
>
> In cases (a), (c), (d) and (e), any secondary evidence of the contents of the document is admissible.
>
> In case (b), the written admission is admissible.
>
> In case (f) or (g), certified copy of the document, but no other kind of secondary evidence, is admissible.
>
> In case (h), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document."

15. As the payments alleged to be made by the Petitioners to the Respondents were vide pay-order, it would be obvious that the original pay-order would have been sent to the payee, and only a copy could have been retained by the Petitioners. The same could also be said regarding the copy of the receipt of acknowledgment (which was on record). The Impugned Order ought to have considered and provided reasoning before summarily dismissing the Petitioners' claim to produce a copy instead of the original acknowledgement for payment of rent of October 2013. This was essential, considering the entire root of the issue stemmed from payment of rent for October 2013.

16. It is hereby clarified that in this Constitutional Petition I am not holding whether or not copies appearing to be secondary evidence in nature should have been admitted or held as conclusive evidence; but simply that the Petitioners ought to have been given a chance to properly submit their reasons for wanting to provide copies instead of originals, and the Trial Court ought to have recorded a detailed legal reasoning for reaching a conclusion in this regard, in accordance with principles of law, as opposed to simply making a threadbare statement discarding the same. If it is found there was no default committed by the Petitioners in the month of October 2013, there would be no case for ejectment by the Respondents, which shows the extreme importance of this single issue.

17. The onus continues to remain on the current Petitioners to establish firm grounds in their request for producing copies as opposed to original documents, as may be viewed per article 76 QES Order 1984 and principles settled by the Hon'ble Supreme Court (*reference is made to the elaborations by a 3 Member Bench in the case of Mst. Akhtar Sultana v Major Muzaffar Khan Malik*).[8] Equally, it is for the learned Rent Controller to adjudicate upon the same in accordance with settled precedents and law.

18. In the case of *Iqbal v Mushtaq Ahmed*[9] a learned Single Judge of this Court held:

> *"…….It is an admitted position in the case that the appellant used to issue rent receipts whenever he collected rent. In the written statement filed on behalf of the respondents in the rent case, it was asserted that after the death of the original tenant Qutubddin, the rent receipts were being issued by the appellant in the name of deceased tenant in spite of protest by the respondent. The appellant produced before the Rent Controller photostat of two receipts alleged to have been issued to respondents in the name of previous tenant Qutubddin which show that the appellant had recovered rent from the respondents at the rate of Rs.330 per month which included Rs.30 as water charges. The Rent Controller however, did not accept these receipts on the ground that they are not exhibited in record. If the Rent Controller was in any doubt about these receipts he could call upon the respondents to produce the original of these rent receipts as they admitted that rent receipts were regularly issued to them by the appellant. The attorney of respondents in his cross examination also stated that rent receipts were in possession of respondent No.1 who could produce the same".*
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> *"In the background when I heard this appeal on 2-9-1990, I directed the respondents to produce the original rent receipts in Court. The respondents, however, took the plea that the rent receipts are not traceable. This plea on its face appears to be an afterthought in view of the above discussed evidence. However, keeping in view the fact that the parties did not have full opportunity of leading evidence on the question of quantum of rent and the issue of default mainly rested on a finding on this disputed point, I set aside the impugned order and remand the case to the Rent Controller with the direction that the appellant may be allowed opportunity to produce the counterfoils of rent receipts or other evidence in support of his contention that the monthly rent of the premises is Rs.330 p.m. The respondents are also at liberty to produce the rent receipts which were issued to them by the appellant for the said premises. The Rent Controller will re-determine the issue of default in the light of the evidence so recorded. There will be no order as to the costs."*

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[8] PLD 2021 SC 715
[9] 1995 MLD 836

19. Even regarding Para-34 of the Impugned Order, which has been relied upon by the learned counsel for the Respondents, the learned Rent Controller has placed reliance relating to future rental payments, from the year 2017 onwards. This reliance appears misplaced, as the matter was initiated based on default for the month of October 2013, and not for future payments which were claimed post-filing of the Ejectment Application.[10] The alleged *post facto* defaults ought not to have been used as grounds for determination by the Impugned Order.

20. Against the Impugned Order, the Petitioners had filed First Rent Appeal No.277 of 2022[11], which was dismissed vide the Impugned Judgement dated 08.08.2023 (impugned herein). A perusal of the Impugned Judgment shows that the learned Appellate Judge had premised the Impugned Judgment on the Petitioners default in rent for the month of October 2013, and had based his findings on those of the Rent Controller in the Impugned Order.

21. The Impugned Judgment[12] upheld the learned Rent Controller's findings as correct, that the Petitioners committed default in rent for the month of October 2013. Relevant excerpts from the Impugned Judgment are:

> "10. ….First of all, it is observed that there is no rent receipts produced in evidence by the appellant side to show that rent has been paid. There was no question asked within cross-examination that rent was paid and receipt was not issued as there is no admission of the landlord showing that he was not issuing rent receipts. The landlord claims that he has not received rent for October, 2013 and same is denied by landlord. Admittedly as stated no receipt is available on record to show rent for month of October, 2013 having been paid. It is further observed that there is no any other element which would establish the receiving of rent or payment of rent by the appellant side……..It is apparent that no receipt of receiving been produced as well as by the appellant to show that pay order duly been received/acknowledge by Naimat Siraj on behalf of landlord. Thus own contentions of the appellant have self not been substantiated by them through means of cogent evidence. Thus there is nothing to

[10] The post-filing rental amounts referred in the Impugned Order related to the year 2017 onwards, whereas the Rent Application was filed in the year 2014.
[11] Available at Page-61 of the File.
[12] Particular reference is made to Paras 10 to 14

> observe the payment for month of October, 2013 on record. (*emphasis supplied*)
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> 11. Firstly, the payment of rent through pay order is not recognized mode of payment as provided under the SRPO, 1979 and similarly payment through cheque also is not recognized thus rent as being paid self by the appellant side was not in consonance with requirement of law and no receipt for payment of October, 2013 been produced as such not available.
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> 12. Now as stated that there is no evidence on record which would show the rent for the month of October, 2013 having been paid as neither person whom allegedly the pay order paid been examined as witness nor there is any receipt thereof." (*emphasis supplied*)

22. The said excerpts have been replicated to show that there is direct conflict between the Impugned Judgment and the Impugned Order, despite of which the learned Appellate Court has upheld the Impugned Order of the Rent Controller. In the Impugned Order, Para-32 is relevant for the instant purpose, which is reproduced as under:-

> "32. The above admissions of the attorney of the opponent clearly prove that the opponent failed to prove the tender the rent to the attorneys of the applicants for the month of October and they have also failed to examine Mr. Naimat Siraj the Manager of Car deal to whom the opponent claimed to have handed-over the pay order for the rent of October-2013. The opponent also claimed that the said pay order for the month of October-2013 was got received by the said Naimat Siraj from the applicants attorney but the said receipt was not exhibited during the evidence nor any statement of bank account regarding encashment of said pay order is produced. The record shows that the opponent has annexed the acknowledgment letter dated 28.10.2013 of the attorneys of the opponent along with his affidavit in evidence regarding receipt of rent of October-2013 through Naimat Siraj but he has failed to produce the same in original during evidence for cross-examination and therefore, the copy cannot be considered as proof as the same fact has been denied by the attorneys of the applicant. Thus, the opponent failed to prove the payment of rent for October-2013." (*emphasis supplied*)

23. The said Para 32 of the Impugned Order illustrates the learned Rent Controller had not accepted the evidence of acknowledgment / receipt of payment for rent of October 2013 furnished by the Petitioners, as the same was not an original but was a copy. Whereas in the Impugned Judgment, the learned Appellate Judge has stated that no such receipt was on record at all. To reiterate and elaborate, the Rent Controller never denied the acknowledgement receipt, but held since

the same was a copy it was hence unacceptable. Whereas the learned 1st Appellate Court held no receipt of acknowledgment was on record at all. This would *prima facie* show that the learned Appellate Court had not properly applied his mind to the findings in the Impugned Order, but had yet nevertheless proceeded to uphold the Rent Controllers Order / findings. This direct contradiction would appear to show a non-reading / negligence of the Impugned Order below by the 1st Appellate Court.

24. Furthermore, the Impugned Judgment has held that the Petitioners' alleged payment of rent (for October 2013) was stated to be made through a pay-order, but payment made through a pay-order is not a legally recognized mode of payment.[13] No rationale supporting such contention has been provided in the Impugned Judgement, and therefore even on this finding it appears the Impugned Judgement has erred.

25. The Impugned Judgement has shown a callous approach to the matter, showing a misreading and negligence of the Impugned Order. This appears to be a fundamental flaw in the Impugned Judgement, as the 1st Appellate Court was duty bound to properly consider and deliberate on the same. By not doing so, he has violated the statutory and constitutional right (of a proper and fair hearing in appeal) afforded to the Petitioners. Therefore, despite the Impugned Judgement upholding the earlier Order, I find the same has been done without a proper application of mind and through a mis/non-reading of evidence; contrary to the Petitioners' legal liberties. Despite both the Impugned Judgement / Order being concurrent in nature, for reasons aforementioned, they require interference. In this view I am fortified by

[13] Para 11 at Page 77

the case of *Habib-ur-Rehman v Abdul Karim*[14] where the August Supreme Court held:

> *"16. If the concurrent findings recorded by the lower fora are found to be in violation of the law, or based on misreading or non-reading of evidence, they cannot be treated as so sacrosanct or sanctified that they cannot be reversed by the High Court in its revisional or constitutional jurisdiction or in a second appeal, as a corrective measure, come what may. Where glaring errors, non-reading or misreading of evidence, or any legal and jurisdictional issues arise, the stumbling block of the doctrine of concurrent findings cannot shield flawed or erroneous decisions. Undoubtedly, the Trial Court possesses the distinctive position to adjudge the trustworthiness of witnesses and the cumulative effect of evidence led in the lis. The Appellate Court accords deference to such findings, which are not overturned unless found erroneous or defective. It is also not within the domain or function of the Appellate Court and/or the High Court to re-weigh or re-interpret the evidence, but they can examine whether the impugned judgment or order attains the benchmark of an unflawed judgment; and whether it is in consonance with the law and evidence and free from unjust and unfair errors apparent on the face of record, and if the concurrent findings are found to be in violation of law or based on flagrant and obvious defects floating on the surface of the record, then it can be reversed as a corrective measure without undue regard to the fact that the matter culminated in concurrent findings. This reminds us of the renowned idiom "to err is human", which suggests that making mistakes is a natural part of being human. The purpose of providing the right of appeal or revision is to test and comprehend the wholeness, soundness, and integrity of the judgment or order under challenge, and not to ingenuously or straightforwardly affirm it merely because it rests on concurrent findings, unless it satisfies, the acid test of being in accordance with the applicable law and devoid of misreading or non-reading of evidence".*

26. In light of the aforementioned, and for reasons already expounded in detail *ibid.* I find the Impugned Judgement to be defective and it is hereby set aside. Since this matter has been argued before me only specifically regarding the Petitioners' alleged default of rental payment for the month of October 2013, I am of the view that the matter be remanded back to the Rent Controller to re-visit only this issue.

27. The learned Rent Controller should re-assess the single issue concerning default in rent of the Petitioners for the month of October

[14] 2025 SCMR 1262

2013 (as has been stated as Point No. 2 in the Impugned Order),[15] based on documentary evidence already available on the record. It is clarified the Petitioners are not permitted to bring on record any new evidence / documentation, that was not already filed along with their evidence in Rent Case No. 194 of 2014 before 1st Rent Controller Karachi South. The learned Rent Controller shall hear and decide the matter, including as to whether the Petitioners' secondary evidence is to be allowed or not, and should pass an appropriate order / judgement in accordance with law. Due to the matter already having been pending for over ten years, it is expected the learned Rent Controller will conclude the matter within sixty (60) days of this Judgement.

28. Accordingly, the Impugned Judgment dated 08.08.2023 and the Impugned Order (to the extent stated) dated 11.10.2022 are hereby *set aside*. The matter is remanded back to the Rent Controller on such limited scope as stated in this Judgement. This Constitutional Petition stands allowed on the conditions foregoing.

29. This Constitutional Petition stands *disposed of*.

JUDGE

B-K Soomro

[15] At Page 291 above Para 30