

Order Sheet  
IN THE HIGH COURT OF SINDH, KARACHI

**C.P. No.S-1335 of 2019**

[Muhammad Usman vs. Muhammad Yousuf & Others]

Petitioner	Through Muhammad Arif Shaikh, Advocate.
Respondent-1	Through Mr. Muhammad Riaz, Advocate
Date of Hearing:	13.08.2025.
Date of Order:	12.09.2025.

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**ARSHAD HUSSAIN KHAN, J.-** Through instant constitutional petition, the petitioners have assailed the order dated **24.10.2019** passed by learned VII-Additional District Judge, Karachi [South] in First Rent Appeal No.538 of 2017, whereby the appeal was dismissed and the ejectment order dated **12.09.2017**, passed by the learned Ist Rent Controller, Karachi (South) in Rent Case No.860 of 2015, filed by respondent No.1, was maintained. Both the said orders collectively shall hereinafter be referred to as the “**impugned orders**”.

2. Briefly stated, before the learned Rent Controller, Muhammad Yousuf [respondent No.1] instituted an ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979 (the **Ordinance 1979** ), seeking eviction of the petitioners/opponents on the grounds of default in payment of rent since October 2006 and his personal bona fide need in respect of the premises, namely the 1st Floor, Abdullah Manzil, Abdullah Compound, Plot No. AK-17-42-S-34, Major A. Rehman Road, near Post Office, Usmanabad, Karachi (the **demised premises**), with the following prayers :

- i) To direct the Opponent to hand over peaceful, vacant and physical possession in respect of Immovable property i.e. Ist Floor, Abdullah Manzil, Abdullah Compound, Plot No.AK-17-42-S-34, Major A. Rehmani Road, Near Post office, Usmanabad, Karachi to the applicant.
- ii) To direct the opponent to pay the arrears of Rent @ Rs.250/= to the applicant w.e.f. October, 2006, to up till yet, till finalization of the rent amount.
- iii) Any other relief or relives which may deems fit and proper under the circumstances of the case.

3. On the other hand, before the learned trial court, the petitioner/opponent-Muhammad Usman [deceased] filed a written statement wherein he denied the existence of a landlord-tenant relationship, asserting that the rent application was not maintainable in law due to the absence of any jural relationship. It was also stated that the respondent/applicant had no cause of action. The petitioner/opponent also denied having committed any default in the payment of rent and maintained that he had been regularly depositing the rent in MRC No.420 of 2007. On these premises, he prayed for the dismissal of the ejectment application. Thereafter, issues were framed, evidence of the parties was recorded, and ultimately the ejectment application was allowed. The petitioner/opponent was directed to vacate the demised premises within one month from the date of the impugned order dated 12.09.2017.

4. Against the aforesaid order of the learned Ist Rent Controller, Karachi, [South] the petitioner/opponent has filed First Rent Appeal No.538/2017, which was allowed by VII-Additional District Judge, Karachi [South] through the impugned order with the following observations :

“In the light of above discussion, I am of the humble opinion that the impugned order does not suffer from any illegality or irregularity, therefore, the same requires no interference. The instant First Rent Appeal merits no consideration and the same is hereby dismissed.”

The petitioner herein filed instant petition against the concurrent findings of the two courts below.

5. Learned counsel for the petitioner contended that the impugned orders passed by both the courts below are bad in law as well as on facts, and are, therefore, unsustainable and liable to be set aside. It was argued that the courts below failed to appreciate the false and misleading statements advanced by respondent No.1, which, per him, sufficiently demonstrate mala fides. Learned counsel argued that both the forums below committed a serious error of law by not discussing/considering the case law cited by the petitioner in its true perspective. He further argued that respondent No.1 had claimed ownership of the demised premises on the basis of a

fabricated sale agreement, allegedly executed by the son of the actual owner. Per learned counsel the said son, who purportedly executed the *Iqrarnama*, was never produced as a witness to prove its contents. It was urged that the learned Rent Controller failed to appreciate that neither the alleged sale agreement nor the *Iqrarnama* was verified or attested by any independent witness. In view of these material deficiencies, it cannot be believed that the [late] Abdul Ghani was ever legally empowered his son to transfer the property, thereby rendering the alleged sale agreement unlawful and void. Learned counsel emphasized that from September 2006, when the purported sale agreement was executed, until July/August 2015, when a notice under Section 18 of the Ordinance, 1979, was allegedly served, respondent No.1 never asserted ownership of the premises nor demanded rent from the petitioner. It was also urged that respondent No.1, without acquiring lawful ownership or possession, instituted ejectment proceedings solely on the basis of a dubious and unproven agreement, actuated by ill will and malice. It was further urged that until the ownership of respondent No.1 is legally established, the question of personal bona fide need or default in payment of rent cannot arise as such, the findings recorded by the courts below on these aspects were described as premature, arbitrary, and contrary to law. It was also argued that both the forums below have failed to consider the material fact that the premises was purchased by the petitioner in the year 1989 on goodwill/pugree basis from the earlier pugree holder Muhammad Ramzan. Learned counsel concluded that the impugned orders, having been passed without proper appreciation of evidence, law, and facts, are illegal/unlawful, and liable to be set aside. He has relied upon the case of *Altaf Ahmed Khan vs. Muhammad Hayat* [2003 SCMR 1662].

6. Conversely, learned counsel for the respondent, while supporting the impugned orders, argued that respondent No.1 is the sole and absolute owner of the demised premises, having purchased it from the previous owner, Abdul Ghani, through a valid sale agreement, a fact well within the knowledge of the petitioners. It was further argued that Abdul Rauf, son of the said Abdul Ghani, also

executed an *Iqrarnama*, wherein he expressly informed the petitioners to pay the future monthly rent to respondent No.1. Learned counsel contended that the demised premises had originally been let out by Abdul Ghani to the petitioner on a monthly rent of Rs. 250/-. However, the petitioner, instead of discharging his legal obligations, deliberately created hindrances for respondent No.1 by withholding rent and advancing false and frivolous excuses. It was emphasized that the petitioner has persistently failed to pay the agreed rent since October 2006. Moreover, despite the statutory notice issued under Section 18 of the Ordinance, 1979, the petitioner, since October 2015, neither cleared the arrears of rent nor vacated the premises, and continues to unlawfully occupy the same. Learned counsel maintained that the concurrent findings of the courts below are well-reasoned and in accordance with law, and are, therefore, not liable to interference in the present proceedings. Lastly, he has prayed for dismissal of the instant petition.

7. Heard learned counsel for the parties, perused the record and the relevant law.

From a perusal of the record, it transpires that, in order to establish his case before the learned Rent Controller, the respondent/applicant-Muhammad Yousuf filed his affidavit-in-evidence as Exh-A, along with other documents viz: copy of the sale agreement dated 23.01.2006 executed by Abdul Ghani (Exh-A/1); copy of endorsement regarding receipt of rent for the period September 2001 to September 2006 from Muhammad Usman (Exh-A/2), together with the CNIC of Muhammad Usman (Exh-A/3); *Iqrarnama* dated 12.01.2006 executed by Abdul Rauf on 12.10.2006 (Exh-A/3); copy of legal notice dated 30.07.2015 (Exh-A/4); copy of confirmation certificate issued by the courier service (Exh-A/5); and electricity bill for the month of March 2015 (Exh-A/6). **Conversely**, in rebuttal, the attorney of the opponent, Muhammad Rehan, filed his affidavit-in-evidence as Exh-O, together with the power of attorney executed in his favour by the opponent (Exh-O/1); electricity bills dated 24.01.1982, 23.01.1992, and 22.05.2015 (Exh-O/2-I to O/2-III); compromise application along with order executed between him and one Abdul Ghani dated 06.12.1995 (Exh-O/3);

order on execution application between him and Abdul Ghani dated 02.11.2000 (Exh-O/4); counterfoils of 39 rent receipts of different months issued by Abdul Ghani (Exh-O/5-I to O/5-XXXVIII); and vouchers of rent deposited before the learned Ist Rent Controller, Karachi (South) dated 04.08.2007 and 05.08.2015 (Exh-O/6 and Exh-O/7 respectively).

8. From perusal of the record, it transpires that the learned Rent Controller, after framing the requisite issues and conducting a thorough appraisal of the evidence on record, rendered categorical findings to the effect that: (i) the relationship of landlord and tenant exists between the parties; (ii) the applicant has successfully demonstrated that he requires the subject premises for his bona fide personal need; (iii) the opponent is in default in payment of rent to the applicant from the date of notice under Section 18 of the Sindh Rented Premises Ordinance, 1979; and (iv) the respondent/applicant has successfully established his case through both oral and documentary evidence. Consequently, the eviction application filed by the applicant was allowed.

09. The learned appellate court, however, while maintaining the order of the Rent Controller recorded its findings as follows :

“It is mainly the case of the appellant-tenant that there is no landlord-tenant relationship between the parties. It is the stand of the appellant-tenant that no notice under section 18 SRPO was issued to him and, the respondent-landlord failed to show his ownership of the subject property. A careful perusal of the written statement as well as the affidavit in evidence of the appellant-tenant, it appears that it is the own statement of the appellant-tenant that he obtained the rented premises on Pugri after paying Rs. 90,000/- to Abdul Ghani, the owner of rented premises, for change of receipt and monthly rent was fixed at Rs. 100/-. It is also a matter of record that two rent cases were previously filed by Abdul Ghani against the appellant for his ejection from the demised premises but the same were compromised. It is also a matter of record that the appellant-tenant has been depositing rent in MRC No.420/2007. Thus it is clear that appellant-tenant is in possession of the demised premises as a tenant.

[emphasis supplied]

As far as the service of notice under section 18 SRPO 1979 is concerned, the appellant-tenant in his cross examination stated that prior to filing the rent case, he was not served with notice under section 18 of SRPO 1979 and in the same breath, the appellant-tenant admitted that such notice was served upon him on 04.08.2015. I have carefully gone through the evidence of both parties. The respondent-landlord in his evidence produced

intimation about change of ownership at Ex-A/2 and legal notice dated 30-07-2015 at Ex-A/4 along with other documents..... The intimation, which was referred in the above said legal notice, is also produced at Exh-A/2. The learned counsel for the appellant-tenant has not challenged both these documents i.e. the intimation (Exh-A/2) and the notice under section 18 of the SRPO (Exh-A/4) during the entire cross-examination. The appellant-tenant's counsel did not put a single question or suggestion in respect of both these documents. The appellant-tenant even did not deny the receipt of intimation (A/2) as mentioned in the legal notice (Exh-A/4). Therefore, the contents of both these documents have gone unchallenged and un-rebutted and it has been proved that the appellant-tenant got knowledge about the change of ownership in the month of October, 2006.

This statement further proves that the change of ownership came into knowledge of the appellant-tenant in the year 2006. It is held in PLD 1995 Kar. 20 that notice under S.18 Sindh Rented Premises Ordinance 1979 is not necessary even in cases where eviction is sought on ground of default in payment of rent where it is established that tenant had knowledge of the transfer, in that case serving of notice would serve no purpose and would be superfluous.

Finally, a written notice under section 18 SRPO was served upon the appellant-tenant and it is admitted by the appellant that said notice was served upon him on 04.08.2015. It is held in 1998 CLC 736 that occupant receiving notice from landlord that he had become owner having purchased the tenanted premises and as such entitled to receive rent, occupant in the absence of any title bound to pay rent as such as tenant. Non-payment of rent in spite of receipt of notice, a willful defaulter.

It is the contention of the appellant-tenant that respondent-landlord failed to prove his ownership of the rented premises. This contention merits no consideration of the reasons that it is a settled law that tenant is always a tenant and cannot question title of his landlord as held in 1991 CLC Note 45. Hence, the relationship of landlord and tenant between the parties has been established.

Concerning to the default in payment of rent, it is clearly mentioned in the written statement as well as in the affidavit of evidence of the appellant-tenant that he has never paid any rent to the applicant (respondent-landlord). Moreover, it is also the own admission of the appellant-tenant in his cross-examination that despite knowledge that Mr. Abdul Ghani had been expired, he is depositing rent in his name. The above statement and admission of the appellant-tenant is sufficient to prove the default in payment of rent and thus the appellant /tenant renders himself liable to be ejected from the demised premises. The other ground on which the eviction of the appellant-tenant was sought is personal need of the respondent but the same has also gone unchallenged and unrebutted as no question or suggestion was put to the respondent-landlord during the entire cross examination in this regard.”

10. It is pertinent to observe that the plea raised by the petitioners regarding the alleged non-existence of a jural relationship is misconceived. The material available on the record including the

rent receipts duly endorsed, the *Iqrarnama* executed by Abdul Rauf, son of the [late] Abdul Ghani, and the admitted fact of tenancy with the predecessor-in-interest of the respondent, sufficiently establishes that the petitioner entered the premises as a tenant. It is further noteworthy that the original landlord, Abdul Ghani, had previously instituted two separate rent proceedings against the petitioner seeking his ejectment from the demised premises. Both the proceedings, however, culminated in compromise between the parties, which reinforces the existence of a landlord-tenant relationship and the petitioner's continued occupation under a recognized tenancy. It may also be observed that once such tenancy stands admitted, whether directly or indirectly, the petitioner cannot be permitted to approbate and reprobate by accepting the tenancy in one breath and denying the landlord-tenant relationship in another. The law does not permit a tenant to dispute the very foundation under which he entered into possession, unless and until he first surrenders possession and subsequently pursues any independent claim before the competent forum.

11. Insofar as the contention regarding defective service of notice under Section 18 of the Ordinance, 1979 is concerned, the same is equally devoid of merit. It is a well-settled principle of law that such notice is merely a mode of intimation of change of ownership, and where the tenant already possesses knowledge of such change, service of formal notice becomes redundant. In the present case, the record unequivocally demonstrates that the petitioner had full knowledge of the change in ownership since the year 2006, yet he deliberately continued to deposit rent in the name of the deceased landlord. Such conduct, by itself, constitutes willful default and disentitles the petitioner from seeking any equitable relief<sup>1</sup>.

12. With regard to the plea of bona fide personal need of the premises, the record reveals that the petitioner neither cross-examined the respondent on this aspect nor produced any evidence in rebuttal. It is a trite principle that un rebutted testimony is deemed to have been admitted. The concurrent findings of the two courts below, therefore, are firmly rooted in both oral and documentary

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<sup>1</sup> Alay Javed Zaidi v. Habibullah and others [2024 SCMR 781]

evidence. The petitioner's attempt to dislodge these findings without producing any cogent material is nothing but an afterthought, which is not open to consideration within the limited scope of constitutional jurisdiction vested in this Court.

13. Insofar as the contention of the learned counsel that the petitioners became owners of the demised premises by virtue of having paid *pugree* in 1989 is concerned, the same is wholly misconceived. Firstly, the payment of *pugree* does not, in law, create or confer any title of ownership. It may be observed that although *pugree* is a prevailing practice, it has neither been sanctioned nor recognized as a lawful transaction by the superior Courts. On the contrary, any transaction based on *pugree* is hit by the mischief of Section 23 of the Contract Act, 1872, being opposed to public policy. Furthermore, *pugree*, at best, represents an advance payment or a personal arrangement between landlord and tenant; it does not in any manner curtail, diminish, or extinguish the landlord's proprietary rights in the property. Consequently, a tenant cannot predicate a claim of ownership, or any other substantive legal right, on the basis of *pugree*, which remains no more than a tenancy arrangement with an upfront premium<sup>2</sup>. Secondly, it is a well-settled principle that where a tenant seeks to assert ownership over the tenanted premises, the legally prescribed course is to first surrender possession, institute appropriate civil proceedings before a competent forum, and, upon obtaining a favourable decree, regain possession in accordance with law. In the instant case, however, the petitioner, while claiming ownership, neither vacated the premises nor established his alleged right through any competent adjudication<sup>3</sup>.

14. It is equally a settled proposition that a person who is in possession or occupation of the premises belonging to another, even if he does not expressly agree to pay rent, is bound in law to pay rent

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<sup>2</sup> Mst. Sughra Kauser v. Muhammad Siddique Manan [1992 MLD 903] ; Hashmi Charitable Trust through Chairman v. Javed Bloch and 3 other [2021 YLR 762]; Muhammad Salik Akhtar through Attorney v. Muhammad Obaid and 3 others [PLD 2023 Sindh 411]

<sup>3</sup> Muhammad Nisar v. Izhar Ahmed Shaikh and others [PLD 2014 SC 347] Nasir Khan v. Nadia Ali Butt and others, [2024 SCMR 452].



as consideration for such occupation. Such a person is deemed a tenant within the meaning of the Sindh Rented Premises Ordinance, 1979.<sup>4</sup> Likewise, any person who occupies premises without setting up a legally adverse title is, by fiction of law, treated as a tenant.<sup>5</sup> Furthermore, it is a cardinal rule that a tenant has no locus standi to dispute or challenge the change of ownership of the rented property. Once a notice under Section 18 of the Ordinance is duly served, the tenant is bound to honour his statutory obligations and cannot question the mode of transfer, whether by sale, gift, inheritance, or any other legally recognized means.

15. It is a well-settled principle that the constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan is supervisory and not appellate. The High Court does not re-appraise evidence or substitute its own findings for those concurrently recorded by the courts below unless there is a lack of jurisdiction, manifest illegality, or perversity resulting in miscarriage of justice. The Supreme Court in **M. Hamad Hassan v. Mst. Isma Bukhari [2023 SCMR 1434]** has emphasized that the right to appeal is a statutory creation, and in the absence of a second appeal, the appellate court's decision is final on facts. Applying these principles to the present case, no ground for interference is made out, concurrent findings recorded by the courts below suffer from no legal infirmity warranting intervention. The case law referred to by the learned counsel for the petitioners is distinguishable from the facts and circumstances of the case and is, therefore, not applicable in the present case. Consequently, this constitutional petition is dismissed.

JUDGE

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<sup>4</sup> *Muhammad Shabbir v. Hamed Begum* [1992 MLD 323]

<sup>5</sup> *Saifullah and another v. Chaudhry Ghulam Ghous* [2000 CLC 1841]