

IN THE HIGH COURT OF SINDH KARACHI

CP No.S-500 of 2020

Petitioner : M/s Taj Hotel (Pak) Ltd through Mr. Shahrukh Khan Brohi, advocate

Respondents : Muhammad Zubair Khan and others through Mr. Mamoon N. Chaudhry, advocate and Mr. Abdul Latif Leghari advocate for the intervener.

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Respondents : Muhammad Zubair Khan and others through Mr. Mamoon N. Chaudhry, advocate and Mr. Abdul Latif Leghari advocate for the intervener.

Date of hearing and order: 24.11.2025

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ORDER

Nisar Ahmed Bhanbhro, J. Since the common question of law and facts is involved in both petitions, the same are being disposed of through this common order. Through these petitions, the petitioner has called in question the order dated 17.03.2020 passed by learned Additional District & Sessions Judge XII Karachi South (Appellate Court) in F.R.As No.280/2019 & 281/2019 and the Judgment dated 25.10.2019 passed by learned Rent Controller in Rent Case Nos. 1294/2002 and 1295/2002, whereby eviction application filed by respondents was granted.

2. Learned counsel for petitioner argued that the petitioner / opponent never remained in default in payment of rent as the respondent / landlord has failed to pay the taxes which were paid by the petitioner and the said amount if adjusted would be much more than the arrears of the rent amount.

He further argued that prior to these rent cases; the respondents filed the rent cases against the petitioners, which were dismissed for non-prosecution and these cases are not maintainable being hit by Res Judicate. He further argued that that appeal was dismissed on the ground that petitioner was not having Resolution of Board of Directors M/s Taj Hotel (Pak) Ltd, which is a private limited company to represent the company in the rent proceedings, as the demised premises were rented out to said company. He submits that on the sole ground the appeal could not be dismissed and the petitioner should have been granted an opportunity to file the Board Resolution. He prayed to set-aside the impugned orders and remand the matter back to appellate court for decision afresh. He placed reliance in the cases of Rahat and Company through Syed Naveed Hussain Shah v. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Centre through Secretary / Chief Executive Officer (2020 CLD 872) and Rana Basit rice Mills Private Limited v. Shaheen Insurance Company and another (2021 SCMR 1413).

3. Learned counsel for respondent, argued that the respondent sought ejection on the ground of default and infringement of rent agreement, as during the tenancy Petitioner had also sublet the demised premises to the others on rental basis without seeking authorization from the landlord. He argued that the tenancy agreement was executed between the respondent and the petitioner, therefore, he was required to pay the rent regularly and the default so made is for about more than two decades. He prayed to dismiss the both petitions.

4. Heard arguments and perused material available on record.

5. Litigation between the parties has checkered history as set out in Para No.10 of the order of the learned trial Court, which dated back to year 1985. It appears that the petitioner was defaulter in payment of rent and the reason for failure to pay the rent as stated by the Petitioner was that the Company paid the rent in terms of taxes to the Excise and Taxation Department and such an amount was higher than the rent payable to the respondent. Perusal of the record reveals that during evidence in reply to the question, the petitioner admitted that he has not furnished any proof that he paid any rent since 1981, he also replied in affirmative that had not produced any payment

receipt to establish any taxes were paid to the concerned department. It is a settled proposition of law that the party asserting the existence of facts is required to establish that facts before the Court through convincing evidence, thus onus rested upon the petitioner to establish that any amount in lieu of taxes was paid but he failed to discharge the same. It is further the case of the respondent that the demised premises were let out to other person without permission. The evaluation of the evidence reveals that petitioner has admitted in reply to a question that half of the portion of the first floor was given on rent to M/S Mitchel on rent and the portion of the ground floor was given on rent to Mr. Ateeq-ur-Rehman. This admission on the part of the petitioner was sufficient to initiate ejectment proceedings under Section 15 of SRPO, 1979, which envisaged that the default, infringement of conditions of rent agreement and subletting the premises to others without the consent of landlord constituted sufficient grounds to eject the tenant from tenement premises. Since there was an admission on the part of the petitioner that he had let out the demised premises, the same was sufficient ground to pass an order under Section 15 SRPO 1979.

6. Adverting to the question of the maintainability of the Rent Cases on account of dismissal of Rent Cases No.2176/85 and 1622/85, under default for non-prosecution. Dismissal of the Rent Cases in non-prosecution would not preclude the party to bring a fresh rent case on the fresh cause of action. At the most it could be gathered that silence of the respondent for not coming forward to get rent cases the default in payment of rent until 1985 stood satisfied and the Respondents could be precluded to claim the rental amount for the said period and the arrears of the rent shall start from year 1985 and onwards.

7. Adverting to the contention of the petitioner that he was knocked out by the Appellate Court on the technical ground that he was not having any authorization to contest the rent matters, as such the appeal was not adjudicated on merits, therefore impugned order of the appellate court be set aside and appeal may be decided on merits. During proceedings in the instant petition, the petitioner has placed on record Board Resolution apprising the petitioner's nomination to appear and contest the case. Since the trial Court allowed petitioner to record his evidence on behalf of Petitioner, therefore, this objection was not available to the learned appellate

Court to knock out the petitioner on the said ground. Even if it is considered that the petitioner was validly nominated to contest the case, and appellate court erred in rejecting the appeal on the ground of maintainability, no fruitful purpose would be served to remand the matter back for decision afresh, as sufficient material was available on record to constitute the grounds for eviction codified under section 15 of the SRPO.

8. Appellate Court rejected the evidence of Petitioner's nominee on the ground that he failed to produce permission of BoD to contest the case. Though Trial Court has fully discussed the evidence Petitioner's nominee, as such no ground was available to remand the matter back for considering the evidence in terms of the provisions of Article 162 of the Qanun e Shahadat Order 1984 which envisaged the grounds for remanding the matter back for decision afresh on the basis of improper admission or rejection of the evidence. Article 162 reads as under:

162. No new trial for improper admission or rejection of evidence.

The improper admission or rejection of evidence shall not be ground by itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that independent of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received it ought not have varied the decision.

9. Since Trial Court admitted the evidence of Petitioner, which per the opinion of appellate court ought to have been rejected and Defence of Petitioner should have been struck off, no fruitful purpose would be served if the matter is remanded back to the Appellate Court for decision afresh. Or if the observation rendered by the appellate court are set at nullity, still the petitioner's case will not survive on the ground of default, subletting of premises and infringement of agreement by making alteration in the demised premises. The parties have been contesting the lis for payment of arrears of rent and ejection since last more than 40 years, Respondents being owner /landlord cannot be defeated for any unreasonable ground, as to dealt in accordance with law and through due process of law was an inalienable right of the individual.

10. While placing reliance upon the cases Rahat and Company through Syed Naveed Hussain Shah v. Trading Corporation of Pakistan Statutory Corporation, Finance and Trade Centre through Secretary / Chief Executive Officer (**2020 CLD 872**) and Rana Basit rice Mills Private Limited v. Shaheen Insurance Company and another (**2021 SCMR 1413**) so relied upon by the Learned Counsel for Petitioner it is held that Petitioner's nominee was rightly allowed to contest the matter and record evidence before Trial Court and was duly authorized by the BoD of Company to contest this case.

11. For what has been discussed hereinabove, no case for indulgence of this Court is made out. Consequently, these petitions are dismissed along with listed applications with no order as to the costs.

JUDGE

Shahzad Soomro

Approved for reporting

Dated 24.11.2025