

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-194 of 2025

Meezan Bank Limited Petitioner

Versus

Eduljee Dinshaw Pvt. Ltd. & others Respondent

C.P. No.S-195 of 2025

Meezan Bank Limited Petitioner

Versus

Eduljee Dinshaw Pvt. Ltd. & others Respondent

C.P. No.S-196 of 2025

Meezan Bank Limited Petitioner

Versus

Eduljee Dinshaw Pvt. Ltd. & others Respondent

Date of Hearing : 30.04.2025

Date of Order : 30.04.2025

Petitioner through Mr. Ali T. Ebrahim, Advocate.

Respondent through : Mr. Shan ur Rehman, Advocate.

J U D G E M E N T

Muhammad Jaffer Raza, J: - Through instant Judgment, the aforementioned petitions shall be heard and decided. The table below shall encapsulate the relevant petitions and the respective appeals and rent applications from which they emanate.

Sr#	C.P. No.	FRA No	Order in FRA	Rent Case	Order in Rent Case
1	194/25	215/24	15.01.2025	995/20	30.07.2024
2	195/25	216/24	15.01.2025	996/20	30.07.2024
3	196/25	217/24	15.01.2025	997/20	30.07.2024

2. Learned counsel for the Petitioner has submitted that the rent application was filed on the sole ground of default. Learned counsel in this regard has specifically denied committing any default and has invited my attention to the receipt of payment dated 30.06.2020. Learned counsel stated that the said receipt is for payment of rent from the period of January, 2019 to June, 2020. Thereafter, learned counsel has stated that subsequent to the payment which is reflected in the receipt mentioned above, the Petitioner issued cheques dated 26.11.2020. Thereafter, he tendered the rent to the Respondent within six months of the payment reflected in the aforesaid receipt. Lastly, learned counsel has argued that the default, if any, was triggered due to the acts and omission of the Respondent and the rent case was filed in a manner which can only be described as malafide.

3. Conversely, learned counsel for the Respondent has argued that the default in the payment of rent is apparent from the proceedings which have been filed by the Respondent. He further stated that even if the rent is fully paid till June, 2020 the subsequent rent was tendered, according to the learned counsel for the Petitioner, on 26.11.2020. It was argued that if the contention of learned counsel for the Petitioner is accepted even then case of default has been made out and the Petitioner is liable to be ejected from the tenement in question. Learned counsel has further stated that his application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”) was allowed vide order dated 17.12.2021 and thereafter the Petitioner, after lapse of approximately 18 months, paid arrears of rent in Court from June, 2020 to January, 2021. Further learned counsel has stated that even earlier the Petitioner had not paid the amount in full and only a part payment was made, therefore, Petitioner has committed default.

4. I have heard both the learned counsels and perused the record. Learned counsel for the Petitioner has impugned the concurrent judgments of the courts below. The limited scope of writ petition against the concurrent findings has

already been expounded in the case of **Allies Book Corporation Versus Sultan Ahmad and others**¹ wherein it was held by the Honourable Supreme Court as under: -

“The concurrent findings of the two Courts below having been arrived upon justly, fairly and legally were not liable to be interfered with as the same E were neither wrong or incorrect nor were based on arbitrary or fanciful discretion so as to be interfered with as per the pronouncements made by this Court.”

5. Further the limited scope writ petitions against concurrent findings was elaborated in the case of **Shajar Islam Versus Muhammad Siddique and 2 others**² wherein it was held as under: -

“The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court c under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.”

6. The learned counsel for the Petitioner has relied heavily on the proviso to Section 15 (2) (ii) of the SRPO. For the sake of convenience, the said provision is reproduced below: -

“15. Application to Controller: - (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that:

(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by

¹ 2006 S C M R 152

² PLD 2007 SC 45

mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application. (Emphasis added)

7. The above provision clearly reflects that the same is available only to the tenant in a case where the sole ground in the rent application is default, and the tenant on the first day of hearing admits his liability to pay. Further the Rent Controller needs to be satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months. Only if the above conditions are met, the Rent Controller is mandated to direct the tenant to pay all the rent claimed on a date to be fixed by the Rent Controller. Thereafter the Rent Controller is mandated to dismiss the rent application. Therefore, the reliance of the learned counsel for the Petitioner on the above noted provision is misplaced. For the sake of expediency, the multifold test may be broken down as follows: -

- i. **Rent application must be filed on the sole ground of default.**
- ii. **Tenant on the first day of hearing admits his liability.**
- iii. **Rent Controller needs to be satisfied that the tenant has not made default on any previous occasion.**
- iv. **Default must not exceed six months.**
- v. **Direction to the tenant to pay outstanding rent amount on a date to be specified by the Rent Controller.**
- vi. **Dismissal of rent application if all the above conditions are met.**

8. The wisdom behind the above-noted proviso was expounded in the case of **Aamir Aslam Shaikh & others Versus Court of IVth Rent Controller Karachi (South) & others**³ wherein it was held as under: -

“10. The spirit of the amendment brought about in section 15 of SRPO, 1979 by adding a proviso is to curtail the controversy between the landlord and the tenant in case the ejectment application is filed only on the ground of default and in case the rent is being offered with regard to a period of default not exceeding six months with no history of default. The wisdom behind this amendment is to resolve the controversy between the landlord and tenant only in case where the dispute pertains to a limited period of six months of default.”

9. Earlier the said proviso was adjudicated upon in the case of **Haji Abdul Ghani Versus Viith Additional District Judge, South Karachi and 2 others**⁴ wherein it was held as under: -

“11. Besides, after addition of proviso to subsection (2)(ii) of section 15 (ibid) by Ordinance XIV of 2001, the ground of default in the payment of rent has been made sufficiently lenient and a tenant, who has actually not paid or deposited the rent, not to talk of him who has been regularly depositing rent with the Controller, cannot be ejected on the ground of default, provided the period of non-payment does not exceed six months and he had not made default on any previous occasion and admits his liability on the first day of hearing and pays the rent within the period fixed by the Controller for such purpose.”

10. I have taken the liberty to examine the written statement filed by the Petitioner in the rent application and no such admission has come on record. Therefore, whilst the first condition in the test laid down above is satisfied, the Petitioner was unable to satisfy the second condition and therefore the benefit of the proviso is not available to the present Petitioner. Further the admission of the Petitioner during cross examination does not advance his cause. The same is reproduced below: -

³ C.P. No.S-518 of 2013

⁴ 2008 C L C 1598

“It is correct to suggest that I paid the rent amount i.e. from July 2020 to November 2020 to landlord through five cheques dated 26.11.2020. Vol. says that landlord refused to take the said cheques.

11. At this juncture there is another aspect which requires consideration. The same pertains to deposit and receipt of accumulated rent and whether the same can be classified as default under the SRPO. It is admitted between the parties that accumulated rent was paid and duly accepted by the Petitioner on 30.06.2020 for the period of January, 2019 to June, 2020. This proposition came up for determination in the case of **Shakila Appa (Late) Versus Nadeem Ghani and others**⁵ wherein relying on the judgments in the cases of **Mrs. Alima Ahmad v. Amir Ali**⁶, **Syed Waris Ali Tirmizi v. Liaquat Begum**⁷ and **Messrs Pragma Leather Industries v. Mrs. Sadia Sajjad**⁸, it was held as follows: -

“6. In view of the law laid down by the Hon'ble Supreme Court, particularly the authoritative pronouncement by the Hon'ble Larger Bench in Mrs. Alima Ahmad (supra), it can be safely concluded that if the landlord accepts the accumulated rent from the tenant periodically or with intervals, it does not mean that he does not desire or expect rent to be paid within time by the tenant as required by law, or that he has waived his right to claim rent within time ; such practice by the landlord, in no way, overrides or negates the express provisions of law, nor can it absolve the tenant from discharging his statutory obligation of paying the rent to the landlord within time under the provisions of rent laws ; even the Court has no power to superimpose any new procedure or method for payment of rent extraneous to the statute ; it is the duty of the tenant to pay rent to the landlord within time as required by law through any of the modes prescribed by law, and it is not the duty of the landlord to collect rent from the tenant or to remind or chase him for payment of rent ; and, payment of the accumulated rent even once by a tenant would make him liable to eviction.” (Emphasis added)

12. It is evident from the judgments reproduced above that the accumulated tender of rent by the Petitioner and its acceptance by the Respondent will not extinguish the default. I have thoroughly perused the judgments of the courts

⁵ 2022 CLC 1146

⁶ PLD 1984 SC 32

⁷ 1980 SCMR 601

⁸ PLD 1996 SC 724

below and hold that the same suffer from no infirmity. Both are legally sound and well-reasoned. For the foregoing reasons, instant petitions are dismissed with no order as to cost.

JUDGE

Aadil Arab