

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr Justice Faisal Kamal Alam

Mr Justice Jawad Akbar Sarwana

C. P. No. D-2922 of 2024

Saleem Akhtar Siddiqui

v.

Sultan Ahmed Qureshi & Two (2) Others

Petitioner: Saleem Akhtar Siddiqui (Advocate) s/o
Muhammad Suleman in person

Respondent No.1: Sultan Ahmed Qureshi s/o Ghulam Muhammad
Qureshi through his attorney Umair Hassan
Qureshi s/o Ghulam Muhammad Qureshi.
Nemo

Respondent No.2: The VIIth Additional District Judge
Karachi South

Respondent No.3: The 2nd Senior Civil Judge
Karachi South

Date of Hearing: 23.04.2025

Date of Judgment: 07.05.2025

J U D G M E N T

Jawad Akbar Sarwana, J.: The petitioner Saleem Akhtar Siddiqui, from Record couldn't find out his government servant status] an Advocate, appearing in person, has filed CP No.D-2922/2024 against Sultan Ahmed Qureshi ("SAQ")-the Respondent No.1, the owner/landlord of House No.2/II, Khayaban-e-Mujahid, Street, 32, Phase 5, Karachi (the "Suit Property").

2. Petitioner alleges that there is no relationship of tenant and landlord between him and SAQ. He claims that he filed a civil suit against the alleged landlord ("SAQ") for specific performance and recovery of Rupees Five (5) Crores, which he paid to SAQ, while Rupees One (1) Crore was to be paid by him to SAQ on execution of

the sale deed.¹ Therefore, the suit for recovery of arrears of rent filed by SAQ against the Petitioner is liable to be set aside on this score as well as because the summons in the said suit were not properly served on him as articulated by the Petitioner in his Section 12(2) CPC application which was dismissed by the two forums below. In support of his contentions, he relied on:

- (i) PLD 1965 Supreme Court 671
[Abdul Rauf and others versus Abdul Hamid Khan and others];
- (ii) PLD 1971 Supreme Court 124
[Mansab Ali versus Amir and 3 Others]; and,
- (iii) PLD 1972 Supreme Court 271
[Rashid Ahmad versus The State]

3. We have perused the documents and heard Counsel. It appears that SAQ initially filed Rent Case No.58/2016 against Petitioner which was apparently withdrawn. Subsequently, SAQ filed a second Rent Case No.103/2016 against SAQ, which was allowed by the Additional Controller of Rents, Clifton Cantonment, Karachi, vide Order dated 05.06.2017. Petitioner Advocate preferred FRA No.23/2017 against the said Order, which the learned Single Member of this Court disposed of vide Order dated 23.01.2018.² Meanwhile, the Rent Execution Application No.33/2017 was allowed, and the Petitioner delivered possession of the demised premises to SAQ on 12.03.2018.³

4. Be that as it may, Petitioner still aggrieved by the above Order of his FRA by this Court, filed C.P. No.98-K/2018 before the Supreme Court of Pakistan. The Apex Court dismissed the said petition vide its Order dated 12.07.2018 as follows:

“ Learned ASC for the petitioner submits that since writ of possession has been executed in this Case and the possession has now been delivered to the respondent, therefore, the present petition has become infructuous. He

¹ Paragraph 7 of SAS-Advocate’s Application under Section 12(2) CPC available along with Statement dated 12.09.2024 filed by SAS-Advocate in Part-II of CP No.D-2922/2024.

² Available on pages 93-99 of Part-I of the petition.

³ Recorded in first five (5) lines on page 2 of the Judgment dated 17.10.2020 available on pages 59-63 of Part-I of the Petition.

further submits that the petitioner shall pursue his remedy in a suit filed by him for specific performance in respect of the demised premises, therefore, requests that the present petition be disposed of accordingly. . . The petitioner, if so advised, may pursue his remedy as submitted above.”

5. Thereafter, on 14.09.2018, SAQ filed Suit No.1260/2018 against the Petitioner to recover rent arrears from January 2016 to March 2018 at the rate of Rs.160,000 per month [p.m.] in the sum of Rs.4,320,000.⁴ According to the Judgment dated 17.10.2020 passed in Suit No.1260/2018:

“[a]fter admission of the suit, the summons were sent to the defendant through substituted service but the defendant failed to appear before the Court to file Written Statement though sufficient opportunities were given to him. Thus the defendant was debarred from filing the Written Statement and case was ordered to be proceeded ex-parte.”⁵

6. Accordingly, after recording of evidence and final arguments, on 17.10.2020, the Trial Court decreed the said Suit against Petitioner /Judgment-Debtor,⁶ and, Execution proceedings were initiated against the latter [Petitioner] /J.D. by way of Execution Application No.11/2021.

7. On 14.09.2021, Petitioner filed an Application under Section 12(2) CPC in Ex.No.11/2021 to set aside the Judgment and Decree dated 17.10.2020. The two grounds raised in the said application were that service of summons in Suit No.1260/2018 was not in accordance with law and that Petitioner had filed a suit for specific performance against SAQ.⁷ The Executing Court, by Order dated 09.12.2023, after re-examining the records of the suit file, dismissed the said application, with the following remarks concerning service of summons on Petitioner /Defendant/J.D.:

“Record transpires that after institution of instant civil suit, the summons/processes were issued to defendant through ordinary as well as substitute modes of service by publication in the relevant newspaper. The record

⁴ Copy of Plaintiff is available on pages 67-77 of in Part I of the Petition.

⁵ Judgement dated 17.10.2020 in Civil Suit No.1260/2018 is available on pages 59-63 of the petition.

⁶ Decree dated 17.10.2018 in Civil Suit No.1260/2018 is available on page 65 of the petition.

⁷ SAS-Advocate's Application under Section 12(2) CPC available along with Statement dated 12.09.2024 filed by SAS-Advocate in Part-II of CP No.D-2922/2024.

suggests that service upon defendant was properly made in accordance with law. The TCS tracking/confirmation report, available in the case file, transpires that summons were duly delivered/served upon the defendant as the defendant Saleem himself received and signed such acknowledgment, as such, the contention of learned counsel for the defendant that judgment and decree was passed without proper service upon defendant is not considerable into the circumstances.”⁸

Aggrieved by the Order dated 09.12.2023 passed by the Trial Court, the Petitioner filed Civil Revision No.06/2024,⁹ but that too was dismissed by the Revisional Court vide impugned Order dated 25.05.2024,¹⁰ hence this petition.

8. Main grievance of the petitioner is, that after the afore-referred Order of the Honourable Supreme Court, the Respondent- SAQ, could not have filed the suit for recovery of rent [*ibid*], as the matter has been finally decided. Principle of rest judicata as envisaged in Section 11 of CPC, was/ is applicable, which should have been taken note of by the learned Trial Court and the Revisional Court. But, they have failed to consider this material aspect and thus their decisions are coram non iudice, passed on the Application under Section 12(2), filed by the Petitioner [*supra*].

9. We have perused the case law cited by Counsel (appearing in person) and find that the three citations relied upon by Counsel are of no help. Counsel relies on the three citations on the misleading ground that this bench can intervene as the Rent Court did not and allegedly never had subject-matter jurisdiction because no tenant-landlord relationship existed between Petitioner and SAQ. Therefore, even at this late stage, this Court has the inherent power to intervene. Counsel's such understanding is misconceived. The three case laws are on an entirely different factual plane. Here, Petitioner has participated in the rent proceedings, raised the same grounds before the Rent Court and the High Court, which forums have rejected his averments. Further, his

⁸ Order dated 09.12.2023 passed in Ex.No.11/2021 (Suit No.1260/2018) is available on pages 29-33 of the petition.

⁹ Copy of the Revision Application No.06/2024 is available on pages 35-57 of the petition.

¹⁰ Revisional Court's Judgment dated 25.05.2024 is available on pages 15-27 of the petition

challenge to the Supreme Court has also been disposed of [as stated above] without modifying the Decisions/ Orders passed in rent Proceeding. The suit for recovery of arrears of rent filed subsequently by SAQ has also been decreed. This Suit Proceeding [filed by Respondent SAQ] was on a different cause of action, that is, for recovery of arrears of rent, which was not barred by the above Order of the Supreme Court, because, it is observed in the same Order, that Petitioner can seek remedy in his Suit for specific performance. Petitioner can prove his claim in his suit proceeding.

10. Given the above observations, the Petitioner has failed to make out a case that the impugned Orders dated 25.05.2024 passed by the VIIth Additional District Judge (Model Civil Appellate Court) Karachi South and Order dated 09.12.20234 passed by the Executing Court in Execution No.11/2021 are “without lawful” authority and “of no legal effect”.

11. The conclusion reached by the two Courts below is the same: no case is made out for malafide in the service of summons on the Petitioner. This is after the record of Suit No.1260/2018 has been examined twice viz. service of summons, once by the trial Court in its judgment in Suit No1260/2018 and again by the Executing Court in Execution Application No.11/2021 at the time of passing Orders on the Petitioner Advocate’s Application under Section 12(2) CPC. Further, neither any irregularity nor illegality has been made out against the impugned Orders dismissing the application under Section 12(2) CPC.

12. Before parting with the lis, we note, based on a Statement dated 08.03.2025 filed by the Petitioner, that during the pendency of the petition, the pension account of Petitioner-Advocate, a former government employee, was blocked/attached. Although we do not have sight of any such Order blocking/attaching the Petitioner-Advocate, pension account, the same may be an indirect consequence of blocking the CNIC of the J.D. Any act of blocking/attaching a pensioner’s pension account violates Section 11 of the Pension Ordinance, 1871, read with clause 5 of sub-section 1 of Section 60 of CPC. Accordingly, we

observe that upon Application of the Petitioner, the Executing Court may pass appropriate Order(s) to set aside any blocking/attaching of Petitioner-Advocate pension account, if any. The Executing Court remains at liberty to pass any other Orders in connection with the execution of the decree.

13. Based on the above discussion, and the record available in the petition, we hold that the impugned Orders passed by the two forums hereinbelow are correct and maintained subject to the observation made viz the Pension Account, if any, in paragraph 12 above.

14. For removal of doubt, it is clarified that the observations made herein shall not be relied upon by either Trial Court or the Parties in any present or future litigation which may be pending between them in respect of the Suit Property, which proceedings will be decided by the concerned forum(s) on their own merits.

Judge

Judge