

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-283 of 2025

Petitioner : Through M/s. Badar Alam,
M/s. Al-Kiswa (Pvt.) Ltd Muhammad Kashif Badar, Sarfraz
Qadir & Ammar Nazeer, Advocates

Respondent No.1 : Through M/s. Ahmed Khan Lund,
Karachi Properties Investment Yasir Hussain Malik & Muhammad
Company (Pvt.) Ltd Ayaz Mari, Advocates

Dates of Hearing : 27.04.2026 & 11.05.2026

Date of Judgment : 16.06.2026

Date of Announcement : 19.06.2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioner has challenged Judgment dated 24.02.2025 passed by learned XII-Additional District Judge / Model Civil Appellate Court, Karachi South in First Rent Appeal No.292 of 2024 filed by the petitioner / tenant, whereby he has upheld the eviction order dated 08.10.2024 passed by 1st Senior Civil Judge / Rent Controller, Karachi South in Rent Application No.442 of 2018 filed by Respondent No.1 / landlord, with certain modifications.

2. Brief facts of the case are; that ejectment application was filed by respondent No.1 viz. Karachi Properties Investment Company (Ltd.) stating therein that the applicant is a limited liability Company, incorporated under the Provisions of Companies Act, 1984, and is owner/landlord of the building, commonly known as “The Hotel Metropole Building”, situated at plot No. 23/1, CL-5, Civil Lines, Club road, Karachi. The opponent is tenant in respect of Shop No. 22, situated in the said building (hereinafter referred to as demised premises). The monthly rent of the demised premises is Rs. 11438/-. It was further stated by the applicant that, in order to provide various services and facilities in the said building/tenement, the applicant is incurring an expense of about 1.1 Million per month.

3. The grievance of the applicant was that the opponent has been in the habit of not paying / tendering monthly rent within the stipulated time as per rent agreement, rather opponent usually delayed the payment of rent deliberately. It was further asserted that the opponent was under a legal obligation to pay the maintenance charges but he willfully neglected and failed to pay the same despite repeated oral and written demands made by the applicant. According to the applicant, in these circumstances, the opponent was also defaulter in payment of maintenance charges. It was further stated that the opponent avoided to receive the bills, therefore the applicant / landlord was compelled to send the same through courier service.

4. It was further averred in the rent application that the opponent has also indulged in certain unlawful and uncalled for activities which have the tendency of seriously impairing the material value and utility of the building. Such activities included; Installing / erecting a stair case at the back side of the Hotel Building; Displaying boards and hoardings and boards of the prohibited size on the parapets of the Building, resultantly the parapet is weakened further; Installing Air-conditioners by placing outers thereof on the parapets of the building without any proper arrangement for drainage of water. Due to this, not only immediate walls and structure of the Building have been damaged, but even the beauty and prestige of this Building has also been ruined; Placing / installing heavy industrial generator at the open space which causes noise, nuisance and pollution and is a serious hazard for other inhabitants of the Building and disrupts the normal functions of other occupiers of the building; Changing colour of the doors of the demised premises without permission of the landlord which is contrary to Management Policy, which has disfigured the good, consistent and likable look of the Building.

5. Upon service of notice, the opponent filed written statement, raising therein preliminary objections that the rent application has not been filed through legally authorized person and / or duly constituted attorney, as no Power of Attorney or Authorization Letter, having been issued by the Board of Directors of the Company, has been filed / produced. It was further objected that the ejectment application has been filed without any cause of action having accrued and that the applicant has come before the Court with unclean hands therefore, the rent application is liable to be dismissed. The

opponent also claimed that the applicant company is landlord of the building; however, the applicant is not owner of the building as the building is still in the name of its previous management and its record of rights are not transferred in the name of present management.

6. The opponent further stated in the written statement that, the opponent itself uses to maintain the demised premises, therefore, no question arises for payment of maintenance charges. It was asserted that the demised premises is situated at the outer side of the building at ground floor, therefore, the opponent was not using lifts; however, lifts of the building are out of order since long. It was further stated that no outer lights have been installed by the applicant at the tenement and the opponent itself arranged the lights, security and other necessities. It was further asserted that Hotel Metropole Building is at its worst condition, despite that the applicant, instead of maintaining the building, is trying to tease and disturb their tenants with the *mala fide* intention aims to compel them to leave the building.

7. With regard to alleged default and / or delay in making payment of monthly rent, it was stated in the written statement that the opponent never defaulted and / or delayed payment of monthly rent. According to the opponent, the applicant with *mala fide* intention instructed its staff not to receive cheque dated 05-01-2018 in respect of rent amount, therefore, the opponent having no other option, was compelled to send the same through courier service on 23-01-2018.

8. It was averred that the opponent never encroached upon any area of the building. According to him, all the construction, renovation and / or any alteration, have been carried out after obtaining written permission from the applicant / landlord. It was further stated that the outers of the air conditioners are installed on an iron stand on the roof with the written permission of the applicant. According to the opponent, generators were installed / placed by the opponent with permission of the applicant / landlord. It was also stated in the written statement that the applicant used to stop, block and / or disconnect the water of the demised premises very frequently and also used to cut the electric wires and throw garbage and debris in front of generator, with the *mala fide* intention to compel the opponent to leave the tenement. According to the opponent, as soon as

present management took charge of the Hotel Building, they started to tease, harass, create hurdles and develop an environment of discomfort amongst its tenants and lessees. Lastly, it was prayed that the rent application, being not maintainable, may be dismissed.

9. On the pleadings of the parties, 1st Rent Controller, Karachi South framed the issues relating to willful default by making short payments and delaying the payment of monthly rent, maintenance charges and telephone charges as well as impairing the material value and utility of the premises in question.

10. After recording evidence of the parties, hearing arguments of their respective advocates, Rent Controller allowed the Rent Case vide Judgment dated 08-10-2024. The opponent / tenant assailed the said judgment by means of filing First Rent Appeal. The Appellate Court dismissed the appeal vide judgment dated 24.02.2025, hence the tenant / petitioner has filed instant constitutional petition.

11. I have heard the arguments advanced by learned counsel for the parties and have gone through the material made available before me on the record.

12. Learned counsel for the petitioner submitted that courts below have not properly appraised the evidence brought on record and while passing the order / judgment have not properly taken into consideration the factual and legal aspects of the case. It was further submitted that the courts below fell in error by misreading and non-reading the evidence adduced by the parties, thus such order / judgment are liable to be set aside. It was further submitted that the rent application was not maintainable, as no power of attorney and / or authorization letter was filed in favour of the person through whom the rent application was filed. It was further submitted that the issues / point involved in instant case, have already been dealt with and decided in favour of M/s. Habib Carpets, which was also one of the tenants of respondent No.1 herein in the same building viz. Metropole Hotel, by this Court as well as by Honourable Supreme Court in the cases reported as **Habib Carpets (PVT.) Limited Vs. Karachi Properties Investment Company (PVT.) Limited (KPICPL), (2022 MLD 1754 [Sindh])** and **Karachi Properties Investment Company (PVT.) LTD Vs. Habib Carpets (PVT.) Limited, (2024 SCMR 1354)** respectively. In this view of the matter, the submission of petitioner's

counsel was; that the dictum laid down by this Court and the Apex Court may be followed and the order / judgment of the courts below may be set aside by allowing instant petition.

13. It was further submitted that the petitioner / tenant had been paying monthly rent regularly, without any default / delay on his part; however, the courts below have given their findings on this point on technical ground. It was further submitted that no date was fixed for tendering the rent and the landlord used to accept the rent whenever tendered by the petitioner, even with delay, as such, by his conduct, he waived his right of filing ejectment application on the ground of default / delay in payment of rent. It was further submitted that the courts below did not take into consideration the provision as provided under Section 15(2)(ii) of SRPO, 1979, rent could be tendered within sixty days after the same has become payable, therefore, according to him, the petitioner / tenant could have tendered rent for the months of February and March, 2018 in May and June, 2018 respectively, as such the finding of the courts below relating to said default was contrary to this legal position. It was further submitted that the Rent Controller has exceeded his jurisdiction while allowing rent application by considering the default / delay in payment of rent allegedly committed by the petitioner in respect of the months of May, June and July, 2020 i.e. during proceedings of the rent application although there was no such pleading or prayer in the rent application.

14. With regard to alleged default in payment of maintenance, it was submitted that from the very beginning of tenancy, all the tenants used to maintain their tenements themselves, therefore, the demand of the respondent / landlord for payment of maintenance charges has no bearing, at all. It was vehemently denied that the petitioner / tenant ever encroached upon any area of the building, rather, all the construction, renovation or alteration had been carried out after obtaining prior written permission from the respondent / landlord. It was further submitted that no display board has been affixed on parapets, instead the same has been affixed on the shed. It was denied that the outers of the air conditioners have been installed / affixed on parapets, rather the same have been installed on an iron stand on the roof. It was further submitted that all such works were carried out with written permission of the respondent / landlord and even the generator has been installed / placed

after obtaining permission from the landlord. According to learned counsel, while passing the order / judgment, the courts below did not properly deal with the aforesaid aspects of the case and their findings are based on misreading / non-reading of the evidence brought on record. Learned counsel prayed for allowing instant petition and setting aside of the order / judgment passed by the courts below.

15. On the other hand, learned counsel for respondent No. 1 / landlord supported the order / judgment passed by the Courts below and submitted that the same have been passed in accordance with the law after properly evaluating / appraising the evidence adduced by the parties, therefore the same do not warrant any interference by this court in exercise of its constitutional jurisdiction. It was further submitted that the petitioner / tenant not only committed default in the payment of monthly rent but also made short payment in respect of the rent for the months of February, 2018 and March, 2018. It was further submitted that the courts below have also properly appraised the evidence in respect of the issue of impairment of material value and utility of the demised premises and their findings on the issue / point are in accordance with the law and according to the evidence of the parties, therefore, the same are not required to be interfered with by this court. It was further submitted that it is the settled principal of law that concurrent findings of facts of the courts below cannot be interfered by this court in exercise of its extra-ordinary constitutional jurisdiction. Learned counsel prayed that the petition, being devoid of merit is not maintainable, hence it may be dismissed.

16. In the first instance, I intend to deal with the issue / point of default / delay in payment of monthly rent. From perusal of the agreement dated 01.05.2006, it seems that initially the monthly rent of the demised premises was fixed at Rs. **11438/-** which was to be paid by the petitioner / tenant in advance. However, the opponent / tenant started to pay the monthly rent of **Rs. 10398/-** in respect of demised premises i.e. shop No. 22. Besides, the petitioner / tenant also committed delay in payment of rent for certain months. According to the respondent / landlord, the rent for the month of August, 2017 was paid with delay of 10 days, while delay of one day occurred in respect of rent for the month of September, 2017, rent for the month of October-2017 was paid after a delay of five days, while the rent for November, 2017 was paid after five days. Likewise, seven days delay was committed

while paying rent for the month of December, 2017 and twenty six (26) days in the month of January, 2018. It was further asserted that normally, the opponent / tenant never paid / tendered the rent within specified time and used to pay the same with delay.

17. The stand taken by the opponent / tenant is; that as the applicant / landlord used to receive the rent from the opponent / tenant with delay, therefore, by his conduct he has waived his right to seek ejectment of the opponent. I cannot subscribe to such submission made on behalf of the petitioner / tenant as, under the law, a tenant is bound to pay / tender the rent within the stipulated time. In this connection, reference may be made to the case of **Wasif Ahmed Jalali Vs. Ghazala Iqbal**, reported in **1996 MLD 1733 Karachi**, wherein this Court held as under:

"In the instant case there is no evidence from the side of appellant that the respondent waived abandoned his right to file ejectment application against him either expressly or by his conduct. It would appear that soon after the acceptance of cheques in respect of the rent, the respondent filed eviction application against the appellant, and therefore, there could not be waiver on the part of the respondent in favour of the appellant so far his right to file eviction application under the law. Accordingly, the said contention of learned counsel has no merit and substance."

18. Besides above, it is now well settled that if a landlord appears in the witness box and states on oath that the tenant has not made payment of the monthly rent within the stipulated time and that he has committed default in payment of rent, then he would be deemed to have discharged successfully the burden which lies upon his shoulder under the law, and then onus shifts to the tenant to prove affirmatively that he has been paying monthly rent regularly and that he has not committed any default and / or delay in payment of rent.

19. In order to fortify above view, I may refer to a decision given by a Full Bench of Honourable Supreme Court in the case of **ALLAH DIN Vs. HABIB**, reported in **PLD 1982 SC 465**, wherein it was held as under:

"It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him, as required by section 13 (2) (i) of the Sind Urban Rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact,

therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question."

20. Reliance, in this connection, can also be placed upon the cases of *Mrs. Asma Makhdoom Vs. Mrs.Yasmeen Azam (2018 MLD 976)* and *Mohammad Siddique Vs. Mohammad Riaz (2013 YLR 1200 Sindh)*.

21. Scanning the instant case in the light of above legal proposition, it seems that authorized person of the respondent / landlord namely, Junaid Ahmed, remained firm and consistent even during his cross-examination and the petitioner's counsel could not shatter his evidence and / or put any loopholes therein.

22. It is also evident from the record that the petitioner / tenant was consistently paying monthly rent in advance before 5th of each calendar month from August, 2017 to January 2018; however, he discontinued such practice from February, 2018. It seems that in his affidavit-in-evidence, so also during his cross-examination, authorized person of the respondent / landlord deposed in categorical terms that the opponent / tenant had committed default in payment of monthly rent and also made short payments and committed delay in payment of rent for few months.

23. However, perusal of the record shows that the opponent / tenant, in response to such allegation relating to default / delay in the payment of rent, made on oath by the respondent / landlord, has made only a general and vague statement that he always used to pay the rent in time without any default and delay and that he always paid the rent in time and never committed any default.

24. In this view of the matter, it is apparent that the petitioner / tenant miserably failed to fulfill his obligation to prove that he has not committed any default in payment of rent, nor made any short payment and / or committed delay towards payment of monthly rent.

25. A plea was also raised on behalf of the petitioner / tenant that the Rent Controller exceeded his jurisdiction while taking into consideration the

alleged default / delay in payment of rents for the months of May, June and July, 2020 i.e. during the proceedings of rent case, although there was no such pleading, nor was there any such prayer in the ejectment application. According to petitioner's counsel, without any amendment having been made in the pleading under Order VI Rule 17 C.P.C. and without making any prayer for future rent by the respondent / landlord, the Rent Controller was not authorized to allow the rent application on the basis of non-pleaded factum.

26. From perusal of judgment dated 08-10-2024 passed by the Rent Controller, it seems that the Rent Controller has declared the petitioner to have committed default in payment of rents for certain period during proceedings of rent case i.e. after filing of ejectment application on 06.04.2018. In this connection, suffice it to observe that filing of an ejectment application by the landlord, does not absolve the tenant of his obligation to pay monthly rent regularly. The law does not permit a tenant to withhold payment of rent on the ground that the landlord has filed an ejectment application. Even, if default in payment of rent, which occurred subsequent to filing of ejectment application, has not been pleaded or prayed for in the rent application, the same would be fatal to the case of the tenant.

27. It is now well settled that the Rent Controller can take notice of the events taking place during the course of rent proceedings, after the institution of an ejectment application by suitably molding the relief on the basis of altered circumstances / subsequent events in order to avoid multiplicity of litigation and shorten the litigation.

28. The Rent Controller by invoking aforesaid principle of molding the relief, has also found the petitioner / tenant to have committed default in payment of rent for the period after filing of ejectment application. Besides, from perusal of the record, it seems that petitioner's authorized officer admitted in his cross examination that petitioner / tenant has not produced any document showing that the petitioner has paid the rent to Respondent / landlord even for the months of January, 2020 to April, 2020.

29. In this connection, reference may be made to the case of **Muhammad Farooq Vs. Mst.Khairun Nisa (1994 CLC 322 Karachi)**, wherein this Court held:

"6. It was pointed out by the learned counsel for the respondent that apart from the default in the payment of rent for the period June 1989 to November 1989, which was made a ground for the eviction of the respondent as per para 2 of the ejectment application, the appellant had also committed default for the subsequent period commencing from December 1989 and up to May 1990. Learned counsel for the appellant had no answer to this assertion of the learned counsel for the respondent/landlady and conceded that the rent for this period had not been either paid or tendered to the respondent/landlady but he argued that rent for this period had been deposited in Court in furtherance of the order dated 14.5. 1990 passed by the learned Rent Controller under section 16(1) of the Ordinance. In my view, deposit of rent in Court in furtherance of the order passed under section 16(1) of the Ordinance is no defence. The appellant/tenant was not supposed to remain idle and await the passing of the order under section 16(1) of the Ordinance. Notwithstanding the filing of the rent case, it was the duty of the appellant/tenant to tender rent in accordance with law, i.e., in terms of Section 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979. The appellant is, therefore, liable to be evicted on the ground of default for this period as well."

30. In another case reported as **Muhammad Asif and another Vs. The Vth Additional District Judge and 2 others (2017 CLC Note 201)**, it was held as under:

"13. The learned counsel submitted that the learned Appellate Court has given a verdict regarding non-pleaded default, which is not lawful. He contended that if the respondent did not take the ground of default in pleadings and there is no prayer on this account, then no relief could be granted. In this respect, he took reliance from the case reported as Muhammad Yousuf v. Muhammad Hassan (1980 CLC 1414) and Abdul Rasheed v. Muhammad Akhter (1980 CLC 1141). On the other hand, the contention of learned counsel for the respondent is that the default has taken place after filing of rent case as after rent case, they stopped payment of rent. According to him, this fact has come on the record as such an order for ejectment can be passed on this score also. It is an admitted position that in the rent application there was no allegation of default as such, there was no prayer of eviction on account of default. It is not deniable that at least after the institution of rent case, the petitioners did not pay or deposit the rent. It is also a fact that they did not deposit rent in the court even under protest. They might do so to substantiate their claim of ownership. In such a situation, not only technically but also actually a default has taken place, and a court can take judicial notice of the same especially when the tenant willfully denied the relationship and his denial could not sustain under the law."

31. This question also came before learned Bench of Islamabad High Court in the case of **Shahab-ud-Din Vs. Zubair Alam and 3 others (2012 MLD 1002 Islamabad)**, wherein it was held as under:

"12. Admitted position in the present case is that the petitioner has not paid rent w.e.f. 2008. The contention of learned counsel for the petitioner is that prior to filing of the ejectment petition, rent was paid and there was no default. It was however, admitted that since 2008 the rent has not been paid, as the case had been filed in the High Court and there was no order regarding deposit of rent. This contention is not correct, because even if there was no order from the Court for deposit of rent, that did not mean that tenant was absolved of his duty of paying the rent. The tenant/petitioner could send the rent through post or could deposit the same in the Court. Furthermore, there is no evidence regarding payment of rent during the pendency of eviction petition before the learned Rent Controller and appeal before the learned Addl. District Judge. This issue has already been dealt with by the two Courts below and evidence regarding the same cannot be discussed in writ jurisdiction."

32. In the case of **Tariq Niaz Vs. Masood Begum (1991 CLC 1733)**, this Court held as under:

"In the former it was held that the forums acting under the Rent Restriction Law were not, in exercise of discretion vested in them, precluded to take note of events taking place during the course of the proceedings after the institution of an ejectment petition so as to suitably mold the relief on the basis of the altered circumstances in order to avoid multiplicity of litigation and shorten the proceedings."

33. Likewise, in the case of **Mst. Amina Begum vs. Mehar Ghulam Dastgir (PLD 1978 SC 220)**, it was held by Honourable Supreme Court that *compelling the landlord to withdraw ejectment petition, which had already been tried merely on the technical ground of the cause of action not having matured at the time it was filed, so that it may be filed again, would not advance the interests of justice as results on merits were not likely to be different."*

34. In the case of **Syed Asghar Ali Vs. Ali Mohammad Khan (1986 CLC 735)** this Court, while relying upon the case of **Raj Muhammad and others Vs. Mohamad Zareen (1980 SCMR 339)**, held that *even if it was assumed that on the date when the application for eviction was filed, 60 days period as contemplated under section 13(2)(i) of the Ordinance had not expired, if within the statutory period of sixty days no rent was tendered by the tenant, the argument about the application for eviction being premature was of academic nature only.*

35. In view of above legal position, the courts below have rightly concluded that ejectment may be granted even on the basis of events occurring after filing of ejectment application i.e. during proceedings of the rent case.

36. As regards alleged tendering of rent for the months of February and March, 2018 to the respondent / landlord through postal money order, it may be observed that preconditions for tendering the rent through postal money order are; that in first instance the tenant offers the rent to the landlord and only if he refuses to accept the rent, then the tenant shall be entitled to send the same through money order. In instant case, it seems that the petitioner / tenant has categorially admitted that he has not disclosed the name of person who refused to accept the rent when it was allegedly tendered to the Respondent / landlord, as such he failed to prove that rent for the months of February and March, 2018 was tendered to the Respondent in the first instance and that the landlord refused to receive the same. Besides, it has been admitted by the petitioner's authorized person in his cross-examination that *money order receipt produced at Ex-O/20 does not bear the amount which was sent through money order; that all the receipts bear the same date i.e. 03.06.2020; that name of person who had sent the money order has been left blank in the said receipts; that it is not mentioned in these receipts that who had refused to receive the money order on behalf of the respondent / landlord; and that the address of applicant does not find mention in these receipts.*

37. Apart from above, Senior Post Master namely, Nisar Ahmed Soomro was also examined as CW-2/A, who in his examination in chief deposed that *Exhibit No. O/19 was not issued from his office and also deposed that 12 money orders for each month were issued from his office in favor of Karachi Properties Investment which money orders were issued for 15 months i.e. from January, 2019 to May 2019 and July, 2019 to April, 2020.* From above, it is crystal clear that even Senior Post Master in his evidence has not affirmed tender of rent amount for the month of February, 2018 through Postal Money Orders, therefore, it was rightly held by the Court below that the petitioner / tenant could not prove that payment of full rent for the months of February, 2018 and March, 2018 was remitted even through Postal Money Order.

38. In this connection, reference may be made to the case of **Muhammad Younus and another Vs. Mansoor Ali (deceased) through LRs and others (2022 CLC 1787 Sindh)**, wherein, this Court held:

“8. There is another aspect of this case viz. whether or not petitioner No.2 was entitled or justified in law to tender the rent to respondent No.1 through money order and/ or to deposit the same in Court. Subsections (1) and (3) of Section 10 of the Ordinance prescribe the time and mode, respectively, of payment / tender of the monthly rent by the tenant. Under Subsection (3) ibid, the tenant would be entitled to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller only when the landlord had refused or avoided to accept such rent from him. A plain reading of Subsection (3) ibid shows that the refusal or avoidance by the landlord in accepting the monthly rent from the tenant is a condition precedent for entitling the tenant or justifying him to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller. It is well-settled that the tenant shall not be entitled in law to deposit the rent with the Rent Controller without first offering / tendering the same directly to the landlord and only when, upon such offer / tender, the landlord had refused or avoided to accept the rent from him; and the burden to prove the tender of rent to the landlord and the refusal or avoidance by the landlord in accepting the rent from him shall lie upon the tenant.”

39. Another plea raised on behalf of the petitioner / tenant is; that the respondent / landlord had waived his right of filing ejectment application, as he had received the payment of rent allegedly tendered by the petitioner / tenant with delay.

40. In this context, it may be observed that although authorized person of the respondent / landlord in his cross examination did not deny that petitioner had paid rent from February, 2018 until filing of MRC **through money orders**, yet, admission of the respondent and acceptance of rent by the landlord / respondent from the petitioner / tenant through the mode other than the one as prescribed in the law / relevant rules viz. under Section 10 of SRPO, 1979, does not validate the payment of rent **nor it amounts to waiver in respect of default** in payment of rent. It may be reiterated that payment of rent through postal money order would be of no consequence if the same has been sent after the default has already been committed, and / or without first offering the rent personally to the landlord and his refusal to receive the same, because it is now well settled that once default has been committed, the same cannot be wiped out by subsequent payment as the penalty, incurred by

reason of such default, cannot be staged off by subsequent payment as laid down by Honourable Supreme Court in the case reported as *Reckitt & Colman of Pakistan Ltd., Vs. Saifuddin G. Lotia and 3 others* (2000 SCMR 1924).

41. In this context, reference may also be made to the case of *George Chou Vs. Fehmida Zaidi*, reported in 2015 YLR 2543, where this Court held as under:

“The perusal of above referred section reveals that under the Sindh Rented Premises Ordinance, 1979, either the rent could be paid in person to the landlord on receipt, or in case of refusal it could be sent through postal money order, or could be deposited with the rent Controller of the area. It will be pertinent to mention here that the above provision of law does not provide payment of rent through cheques. Thus in the present case, no mode for payment of rent as provided under the above referred section was adopted by the petitioner. It is, therefore, an admitted position that even after filing of the rent case No.277/2012 on 10-11-2012 no serious efforts were made by the petitioner for payment of rent and as per case record when the respondents moved an application under section 16 of the Ordinance, 1979, thereafter vide order dated 5-4-2013 the learned Rent Controller ordered for deposit of rent in Court along with arrears. The contention of the petitioner regarding payment of rent through cheques is also belied from the contents of last tenancy agreement between him and the predecessor-in-interest of the respondents, which provides for payment of advance rent on or before 10th of the month and a receipt duly acknowledging such payment issued by the landlord and does not contain any stipulation for payment of rent through cheque. In the above circumstances, the default in the payment of rent is fully proved from all corners, therefore, learned Rent Controller and thereafter learned First Appellate Court have rightly decided this issue in favour of the respondents.”

42. In view above, I am of the firm opinion that the courts below rightly decided the issue of default in payment of rent in favour of the respondent / landlord and I find no justification to interfere with such concurrent findings of the Courts below in exercise of constitutional jurisdiction of this Court.

43. Now, I advert to the point of default in payment of monthly **maintenance** / utility charges, as claimed by the respondent / landlord. It appears that the Rent Controller decided the said point in favour of the respondent / landlord; however, in appeal, the Appellate Court did not concur with the finding recorded by the Rent Controller on this point and accordingly reversed such finding.

44. It seems that the Rent Controller decided this point in favour of the respondent / landlord on the basis of Clause-4 of the Agreement of Lease dated 01-05-2006, wherein it was agreed that Lessee, viz. the petitioner, shall pay charges for unit of electrical energy consumed according to the meter-reading shown by the sub-meter installed by the lessee at its own costs or pays costs to the lessor, i.e. respondent / landlord, and such shall be calculated and be payable by the lessee to the lessor on respective due dates and in addition the lessee shall pay to the lessor ten percent above the consumption charges on account of maintenance charges for the utility.

45. The Rent Controller referred to the admission allegedly made by authorized representative of the petitioner / tenant in his cross-examination to the effect, **"It is correct to suggest that as per clause-IV of the agreement Ex-A/2, the lessee shall pay to the lessor 10% above the consumption charges on account of maintenance charges for the utility."**

46. However, the said witness voluntarily added that *this clause was valid when lessor or applicant-company used to provide electricity facility to lessee or opponent-company and that thereafter opponent-company has got installed its separate connection and meter of electricity from KESC*. The assertion made voluntarily by petitioner's authorized representative, seems to have weight in view of the words **"above the consumption charges"** appearing in Clause-4, meaning thereby, 10% maintenance charges towards utility were **conditional upon** the fact that the respondent / landlord provides electricity facility to the petitioner / tenant. However, the stand taken by the petitioner is; that the respondent / landlord failed to provide such facility to the petitioner / tenant, therefore they got installed separate connection and meter of electricity by the KESC.

47. The Rent Controller also laid much emphasis on the definition of 'rent' appearing in Section 2(i) of the SRPO, 1979 to the effect, *"rent" includes water charges, electricity charges and such other charges which are payable by tenant but are unpaid*. On the basis of such definition, he observed that rent includes "other charges", meaning thereby that in the instant case, the rent included enhancement of 10% of maintenance on account of utility and such other charges which were payable by the opponent to the applicant. In the circumstances, it was concluded that the applicant / landlord has established

that the opponent / tenant failed to enhance 10% of maintenance on account of utility charges from April, 2018 to April 2020 and onwards.

48. It seems that the case of the Respondent / landlord is that they are incurring Rs. 1,106,420/- per month on maintenance of building and respondent vide their letter dated 05-10-2017 requested the petitioner / tenant to pay fraction of maintenance charges @ Rs. 17.50 per square feet, out of Rs.1,106,420/-.

49. Conversely, case of the petitioner / tenant, as set out in Para-6 of the written statement, was; that the petitioner itself used to maintain the premises hence there was no question of payment of maintenance charges. It is also the plea of the petitioner that there is no specific agreement between the parties regarding payment of maintenance by the petitioner / tenant to the respondent / landlord.

50. A minute scrutiny of the Agreement of Lease dated 01.05.2006 would reflect that it does not contain any clause for payment of fraction of charges towards salaries of Plumbers, Electrician, Sweepers, Security Guards, Telephone Technician, Water, cost of lift maintenance, water motor charges and related electricity bill, garbage lifting etc., as mentioned by respondent / landlord in the Letter dated 05-10-2017. The only reference in this context in the Lease Agreement dated 01-05-2006 is that of Clause-4, whereby parties agreed to the terms, as stated above. As per contents of Clause-4, the petitioner / tenant was liable to pay electricity charges according to meter-reading shown by the sub-meter installed either by the lessee or lessor. It may be reiterated that the words “**above the consumption charges**” appearing in Clause-4, denote that payment of 10% maintenance charges towards utility was subject to the condition that the respondent / landlord shall provide electricity facility to the petitioner / tenant. However, no tangible material has been placed on record or exhibited during the evidence to prove that electricity bills were used to be generated and delivered to the petitioner / tenant or that any amount of electricity charges remained unpaid and was outstanding in terms of clause-4 of the Agreement of Lease dated 01-05-2006. Surely, electricity charges, falls within the definition of ‘rent’ as provided in Section 2(i) of SRPO-1979; however, in order to allege default in payment of other charges, the landlord/Respondent has to establish/prove that the

petitioner / tenant has defaulted in payment of electricity charges as stipulated in clause-4 of Agreement of Lease dated 01-05-2006 and in the case in hand there is nothing on record of evidence that the petitioner has failed to pay the electricity charges. Apart from above, the question of payment of additional 10% above the consumption charges in term of clause-4 of the Agreement to lease dated 01-05-2005 would have arisen only if electricity bill was generated by the Respondent and same was not paid, hence, learned Rent Controller fell in error in holding that enhancement of 10% of maintenance on account of utility and such other charges were payable by the petitioner / tenant, therefore, the reasons assigned and conclusion drawn by the learned Rent Controller do not seem to be in consonance with the law.

51. So far as clause 2(i) of the SRPO, 1979 is concerned, such legal aspect of the case has been dealt with by this Court in the case of *Habib Carpets* (supra), wherein it was held as under:

“...it was held by the Rent Controller that the petitioner had failed to pay the maintenance charges and had committed default in terms of Section 2(i) of the Ordinance according to which the definition of "rent" included water and electricity charges and such other charges that are payable by the tenant but are unpaid. It appears that the Rent Controller was of the view that the maintenance charges fall within the purview of "other charges" mentioned in Section 2(i) ibid as it was not the case of respondent No.1 that the petitioner had committed default in paying the water and electricity charges and it was already held by him that the petitioner had not committed default in paying the monthly rent. The Rent Controller failed to appreciate that under Section 2(i) ibid the tenant would be liable to pay only such other charges that are payable by him but are unpaid. In the instant case, the petitioner had specifically and consistently denied that it was liable to pay the maintenance charges in addition to the agreed monthly rent, and admittedly there was no agreement to this effect between the parties. Such stance was reiterated by the petitioner's witness in his cross-examination through a voluntary statement which was noted by the Rent Controller in the impugned judgment. Therefore, it could not be assumed or held that the maintenance charges fell within the purview of "other charges" mentioned in Section 2(i) ibid or that the petitioner was liable to pay the maintenance charges in terms thereof....

...As noted above, learned counsel for respondent No.1 was unable to show any provision in the agreement, or any other arrangement between the parties, requiring the petitioner to pay the maintenance charges in addition to the agreed monthly rent. It may be observed that the rights and obligations of the landlord and tenant are governed by the

agreement between them, whether written or oral, provided the same are not inconsistent with any of the provisions of the Ordinance or any other law for the time being in force. Moreover, the parties to any such agreement cannot be expected or subjected to perform any such act or burdened with any such condition to which they had not agreed, nor can the Court direct any of the parties to do so."

52. Consequently, this Court decided the constitutional petition in favour of the tenant. The landlord filed Leave to Appeal before Honourable Supreme Court which was refused in the case of *Karachi Properties Investment Company (PVT.) Limited* (supra). The relevant portions from the said judgment are reproduced hereunder:

"As presently relevant the ground for consideration for which the leave to appeal is being granted is whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" given in Section 2(i) of the Sindh Rented Premises Ordinance, 1979 and in particular fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid"
... ..

...No doubt, the definition of rent includes water charges, electricity charges, and such other charges which are payable by the tenant but are unpaid. Here the foundation of the appellant's ejectment case was on account of default in the payment of maintenance charges taking into consideration the residue fragment of the definition of rent i.e., "and such other charges which are payable by the tenant but are unpaid". At the outset, before invoking any default in the aforesaid residuary segment, there must be something agreed in writing between the landlord and tenant. Had the condition of making payment for any monthly maintenance charges been jotted down and agreed between the parties, then of course, that could be considered a binding agreement and the tenant/respondent could not get rid of it without payment and obviously, in the event of default, that cause of action would have been available to the appellant to seek ejectment on the ground of default including the non-payment of maintenance charges; but here the situation is altogether different where no such condition was ever pressed nor incorporated in any lease/tenancy agreement. The expression "such other charges which are payable by the tenant" will not come into field automatically or mechanically to rescue the landlord unless and until the condition of making payment for such charges is itemized in the agreement with proper details. The purpose of this rider is to provide a fair opportunity to the landlord that if, beyond the basic amenities / utilities mentioned in the definition of rent, any facility is made available in the rented premises including the liability to pay maintenance charges,

then it should be properly mentioned in the agreement to avoid any doubts or disputes in the future."

53. It may be reiterated that stand taken by the petitioner/ tenant on this point is; that they are themselves maintaining the premises and that there is no specific agreement between the parties regarding payment of maintenance by the petitioner / tenant to the respondent / landlord. It is noteworthy that from perusal of the lease agreement dated 01.05.2006, it seems that as per clause 16 (f), there is covenant on the part of the petitioner / tenant to *maintain and keep at its own cost, charge and expense* the Premises and every portion thereof in good order and tenantable condition, including but not limited to the electric installations in the Premises including the wires, cases, switches, ceiling roses, plug points, as also the sanitary fittings, apparatus and appliances and other furniture and fixtures installed by the Lessor in or for the Premises. Besides, clause 16 (g) also speaks about tenant's covenant to *execute forthwith repairs to the Premises as and when these become necessary*. In addition, clause 16 (l) is also relating to the covenant of the tenant with prior written approval of the Lessor, to take *at its own cost and responsibility* all such security measures as are necessary in respect of the Premises without in any way disturbing or effecting the rest of the building. Carrying of firearms by the security guards employed by the Lessee, with all just and reasonable exceptions, will be allowed by the Lessor inside or near the Premises.

54. The aforesaid clauses of the Lease Agreement also support the plea of the petitioner / tenant that they are themselves maintaining the Premises / Building.

55. In view of above, I am of the view that the Appellate Court rightly reversed the finding recorded by the Rent Controller in respect of the point of *default in payment of maintenance charges*. Now, I advert to the point of impairment of material value and utility of the demised premises by the petitioner / tenant.

56. In this context, in the first instance, I deem it proper to point out that although in the case of M/s. Habib Carpets (supra) relied upon by the petitioner's counsel, this point / issue was decided by the two courts in favour of the landlord, but this Court while deciding the constitutional

petition in the reported case, did not agree with the concurrent findings of the courts below on this issue / point. However, from minute scrutiny of the judgment delivered in the case of Habib Carpets (supra) on this point, it is apparent that only a few factors, which were made the basis in respect of the issue of impairing the value and utility of the premises, were common in both the cases i.e. the instant case and the case of Habib Carpets (supra), whereas, there are certain other factors in the instant case which do not find mention in the case of Habib Carpets (supra). The common factors in both the cases were; affixation of signboards, installation of air-conditioner and installing / placing a Generator by the tenant in open space. In fact, in the case of Habib Carpets (supra) mainly the first two factors were discussed and as regards the installing Generator by the tenant, the only observation made were, *"It may be noted that this point was decided by the Rent Controller against the petitioner for affixing the signboard and installing the air conditioner and not for installing a generator."*

57. Other factors which were pressed by the respondent / landlord in instant case but the same did not find mention in the reported case were; (i) the tenant had installed a staircase at the back side of the Hotel Building without written permission of the landlord, (ii) the tenant had extended his area by constructing small portion in the building without permission of the landlord which has de-shaped the structure of the building, and (iii) the tenant had disfigured the doors/outlooks and also changed their colour contrary to the management policy without seeking permission from the landlord. In view of above, in my opinion, the case of Habib Carpets (supra) is distinguishable to instant case on the issue / point of impairment of material value and utility of the premises too.

58. It seems that the Courts below, while deciding this issue / point in favour of the landlord, have laid much stress on the uncommon factors, narrated above, viz. installing / affixing staircase at the backside of Hotel Building, installation of heavy Generator causing nuisance without permission of the respondent / landlord and extending the area by constructing small portion in the building without permission of the landlord which, according to the landlord, has de-shaped the structure of the building.

59. From scrutiny of the record, it appears that in Paras 8(ii) to (viii) and 10 of ejectment application, the respondent / landlord has specifically stated about such factors. On the other hand, the petitioner / tenant in the written statement has denied such assertions made by the landlord. However, the petitioner admitted to have made certain construction, renovation and alterations. According to the petitioner / tenant, such construction and alterations etc. were made after obtaining written permission of the respondent / landlord. It was further stated that Generator was allowed to be installed by the respondent / landlord.

60. In his cross examination, authorized representative of the petitioner / tenant admitted that *according to Nazir's report Ex-O/27, the generators were placed in the open space.* He further admitted that *it is not specifically mentioned in the letter, referred by him, that opponent-company was allowed to drill hole in the Terrance of the shop and offices for passing the pipes of AC through it.*

61. The stand taken by the petitioner / tenant was; that placing of Generator, installation of AC etc. and carrying out the work of renovation, repair and maintenance, were done with permission of the respondent / landlord. In support, NOCs were annexed with the written statement; however, originals of the said NOCs were not exhibited in evidence. Needless to emphasize that production of photocopies of documents, viz. secondary evidence, is not admissible in evidence unless and until originals thereof are produced or the trial Court allows adducing secondary evidence after fulfilment of prerequisites of the provisions of Articles 76 and 77 of the Qanoon-e-Shahadat Order, 1984, otherwise, production of photo copies of the documents in evidence cannot be termed as valid and admissible piece of evidence.

62. In the case of *Sher Asfandar Khan and 3 others Vs. Neelofar Shah and others*, reported in **2025 CLD 921 [Supreme Court of Pakistan]**, Honourable Supreme Court held that *failure to ensure compliance with Article 76 of Qanoon-e-Shahadat, 1984, vitiates evidentiary basis upon which findings of Courts below were rendered.*

63. In this view of the matter, the courts below rightly observed that the NOCs annexed by the petitioner are not reliable documents.

64. Besides, agreement of lease dated 01-05-2006 does not provide for placing heavy Generator in open space of the Building. It may be reiterated that petitioner's representative had admitted in his cross examination that *as per Nazir's report Ex-O/27, the generators were placed in the open space.* Needless to observe that installation / placing of a heavy generator, that too, at an area / space which was not part of the premises rented out to the petitioner, is apparently breach of the Agreement to Lease dated 01-05-2006. Moreover, installation of Industrial Generator in the premises, may cause tremor and vibration affecting the structure of the hotel building, create noise, smoke and pollution which might be a source of nuisance to other occupants of tenements of the Building and the same may interfere with the normal enjoyment of property by them, thus, surely the same may impair the material value and utility of the building owned by the respondent / landlord. In this view of the matter, I am in agreement with the findings of the courts below that act of installation / placing heavy generator in the open space of the Building by the petitioner / tenant, has impaired the material value and utility of the hotel building.

65. It may be reiterated, that the representative of the petitioner / tenant in his cross-examination had admitted that *it is not specifically mentioned in the letter, allegedly issued by the respondent / landlord, that opponent-company was allowed to drill hole in the Terrace of the shop and offices for passing the pipes of AC through it.* It is also an admitted position that the petitioner / tenant had arranged a valet car parking in the Building as, according to the petitioner, there was no arrangement of parking in the building or adjacent area to accommodate the clients / customers of the petitioner. Besides, the petitioner also admitted to have made certain construction, renovation and alterations but his plea was that construction etc. were made with permission / NOC of the landlord; however, originals of such alleged permission / NOCs were not produced by the petitioner / tenant during the course of recording evidence, as discussed above.

66. It was submitted on behalf of the petitioner / tenant that the Rent Controller could not decide the issue / point of impairment of material value and utility of the Building in question without having carried out site inspection and without obtaining report from Civil Engineer / Architect in this respect. I am afraid, I do not find myself in agreement on such plea.

67. In this connection, reference was rightly made by the Appellate Court to the case reported as **Messrs. Organon Pakistan (Pvt.) Limited Vs. Rafat Ali Khan (1999 SCMR 54)**, wherein the Apex Court held:

“It is not a requirement of law that only structural changes shall be construed as giving rise to a case for eviction under the instant provision. No doubt structural additions or alternations may furnish a strong foundation for a case on the above score and yet there may be temporary changes, which could furnish a like cause. For the same reason, examination of an expert may lend support to a plea, if examined from either side, the burden being, in its nature, a shifting one. Still non-examination of a qualified person, such as an architect, may not be requisite in a given case. The evidence of the landlord, supported by the record, may well be sufficient, as was the position here. Likewise, covering of compulsory open space may be condonable if essential ingredients of law are not thereby attracted. But where that is not so, eviction may yet result. It is, therefore, in the given circumstances of each case that a positive or negative finding can be returned, the conclusive factor in every case being whether or not there has actually been or a likelihood of a material impairment, either of the value or utility of the premises or both.”

68. In view of above, I fully agree with the findings of the Courts below that installation of Industrial Generator by the petitioner / tenant; drilling holes in the structure and erection of staircase without permission of the respondent / landlord, has impaired the material value and utility of the premises as well as building as provided in Section 15(2)(iv) of SRPO, 1979, thus the same infringed the conditions of tenancy as stipulated in Section 15(2)(iii)(c) of the Sindh Rented Premises Ordinance, 1979.

69. Before paring with the case, it is significant to point out at this stage that learned counsel for the petitioner in support of his case has relied upon the case of **Habib Carpets (PVT.) Limited Vs. Karachi Properties Investment Company (PVT.) Limited (KPICPL)**, reported in **2022 MLD 1754 Sindh** with great vehemence and stress. According to him, the said case pertained to a tenement situated in the same building viz. Metropole Hotel. In the said case, ejectment application was filed by the same landlord, who is respondent No.1 in the instant case, namely, M/s. Karachi Investment Properties Company, almost on the similar grounds as raised in the present case. In the said case, ejectment application was allowed and the First Rent Appeal filed by the tenant against the order of Rent Controller was dismissed by the

Appellate Court. The tenant approached this Court by means of filing constitutional petition. Consequently, this Court allowed the petition and decided the case against the landlord and in favour of tenant viz. M/s. Habib Carpets (Pvt.) Limited. Learned counsel further submitted that the matter came up before Honourable Supreme Court wherein Leave was not granted to the landlord, while deciding Petition for Leave to Appeal in the case of *Karachi Properties Investment Company (PVT.) Limited Vs. M/s. Habib Carpets (Pvt.) Limited*, reported in **2024 SCMR 1354**.

70. Needless to emphasize that, I am legally bound to follow the dictum laid down by the Superior Courts; however, after scrutiny of the afore-cited judgments, I am of the firm view that the aforesaid two cases relied upon by learned counsel for the petitioner / tenant are quite distinguishable.

71. The distinguishable features between the case of **Habib Carpets (PVT.) Limited** (supra) and the instant case may be summarized in the following manner:

- i. In the instant case, the main ground for eviction of the tenant was; default and delay in making the payment of monthly rent which finding of the Rent Controller was also upheld by the Appellate Court after discussing very elaborately each and every factual and legal aspect touching the said point / issue. On the other hand, in the case of Habib Carpets (supra), decided by this Court, the Rent Controller had **not allowed eviction** of the tenant on the ground of default and delay in payment of monthly rent by the tenant, rather the said point **was decided against the landlord and in favour of the tenant**. In support of this assertion, it would be advantageous to reproduce hereunder the relevant portion from the case of Habib Carpets (supra) relied upon by learned counsel for the petitioner:

“While deciding this point, it was held by the Rent Controller that respondent No.1 had failed in proving the delay and or default in payment of rent and as such it was not proved that the petitioner had committed default in payment of rent or had delayed the payment thereof”

- ii. In the case of Habib Carpets (supra) there was also involved an issue / point that; as to whether the tenant had used the premises in question for the purpose other than the one for which the premises

in question was rented out to the tenant, whereas no such issue / point is involved in the instant case.

- iii. As regards the issue / point of impairment of material value and utility of the demised premises by the tenant, it seems that although the said issue / point was decided by the courts below in favour of the landlord, in both the cases, i.e. instant case as well as the case of Habib Carpets (supra), but from the minute scrutiny of the judgment passed by this Court in the case of Habib Carpets (supra) on this point, it is apparent that only a few factors regarding impairing the material value and utility of the premises were common in both the cases, whereas, there are some other factors in the instant case which do not find mention in the reported case. Such aspect of the case has been discussed elaborately in the preceding paragraphs of this judgment, while dealing with this issue / point.

72. In this view of the matter, afore-cited case-law is distinguishable and not attracted to the facts of the instant case, except to the extent of the point of *default in payment of maintenance*.

73. So far as the judgment delivered by Honourable Supreme Court in the case of **Karachi Properties Investment Company (PVT.) LTD** (supra), relied upon by petitioner's counsel, is concerned, in the said case the landlord filed petition for granting leave to appeal against the judgment passed by this court in the case of Habib Carpets (supra) only to the extent of issue / point of default in the payment of **maintenance**, however, ultimately Honourable Supreme Court refused to grant leave to appeal. The said case, although applies to the instant case only to the extent of the issue / point of *default in payment of maintenance*, but is not helpful to the petitioner / tenant so far as other issues / points are concerned, because in the cited case of Honourable Supreme Court there was only one point involved i.e. *default in payment of maintenance*.

74. So far as other judgments relied upon by learned counsel for the petitioner are concerned, the same are also distinguishable and not attracted to the instant case as the facts of the instant case and the facts of the cited cases are quite different.

75. Even otherwise, it is now well settled that concurrent findings of the Courts below, particularly in rent matter, could be interfered with by this Court in exercise of its extra ordinary constitutional jurisdiction **only in exceptional cases.**

76. In this context, reference may be made to the case of **MUHAMMAD SALIK ATHAR through Attorney Vs. MUHAMMAD OBAID and 3 others**, reported in **PLD 2023 Sindh 411**, wherein it was held as under:

“5. Now, before proceeding further, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather tightened. It is pertinent to mention here that captioned petition fall within the writ of certiorari against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence.”

77. The upshot of above discussion is that instant petition merits no consideration, consequently the same is hereby dismissed alongwith all pending Misc. Applications. The petitioner / tenant is directed to vacate the premises in question and hand over its vacant and peaceful physical possession to Respondent No. 1 / landlord within 45 days from the date of this judgment positively without fail, subject to deposit of monthly rent with the Nazir of this Court for the said period in lump-sum. The aforesaid deposit should be made by the petitioner / tenant within 15 days positively.

**JUDGE
HEAD OF CONST. BENCHES**

Karachi

Dated. 16.06.2026

Approved for Reporting.