

**IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P No.S-158 of 2022**

*[Mst. Rubina Khanum V. Babar Ali and others]*

Petitioner : Through M/s. Bhajandas Tejawani, Manoj Kumar Tejawani, Nadir Khan Burdi and Imran Ali Burdi, Advocates.

Respondents 1 & 2 : Through M/s. Muhammad Nadeem Qureshi, Sadia Ashraf, Shahroz Nadeem, M. Salman Khan and Malik Tariq Awan, Advocates.

Respondents 3 & 4 : Through Mr. Salahuddin Chandio, A.A.G.

Date of Hearing : **07.09.2026**

Date of Decision : **21.09.2026**

**J U D G M E N T**

**Abdul Hamid Bhurgri, J.-** The petitioner, being landlady, filed Rent Application No.188/2017, which was allowed by the learned IXth Rent Controller, Karachi East, vide judgment dated 08.02.2021 on the ground of default in payment of rent. Respondents No.1 and 2, being aggrieved thereof, preferred First Rent Appeal No.29/2021, which was allowed by the learned District Judge, Karachi East, vide judgment dated 20.11.2021, whereby the judgment of the learned Rent Controller was set aside and the rent application was dismissed. The petitioner has, therefore, invoked the constitutional jurisdiction of this Court against the said appellate judgment.

2. Briefly stated, the case of the petitioner is that she is the exclusive owner of Flat No.5, situated on the 4th Floor of Makkah View Apartments, constructed on Plot No.114, Block-3, Street No.9, C.P. Berar Society, Sharfabad, Main Bahadurabad, Karachi (hereinafter referred to as "the demised premises"), by virtue of a registered sale deed dated 17.05.2006. According to her, the demised premises were let out to respondents No.1 and 2 through a tenancy agreement dated 01.04.2013 for a period of eleven months at a monthly rent of Rs.20,000/-, besides a security deposit of Rs.100,000/-. The tenancy was subsequently continued/renewed and the monthly rent was enhanced to Rs.25,000/- in the year 2016.

The petitioner alleged that the respondents remained irregular in payment of rent. According to her, a cheque issued towards rent for the month of March, 2014 was dishonoured for insufficient funds, whereafter a legal notice dated 30.10.2014 was served upon them. It was further pleaded that despite subsequent notices, the respondents ultimately failed to pay rent from August, 2016 onwards and also failed to vacate the demised premises. Consequently, the petitioner instituted ejectment proceedings on the ground of default.

Respondents No.1 and 2 contested the proceedings through a joint written statement and denied the relationship of landlord and tenant. Their case was that in October, 2012 the petitioner had entrusted respondent No.1 with construction over the rooftop/grey structure and that he incurred approximately Rs.18,00,000/- thereon. They further pleaded that on 19.11.2014 the parties entered into two agreements, one relating to construction and the other being an agreement to sell the demised premises for a total sale consideration of Rs.40,00,000/-. According to them, Rs.4,00,000/- were paid as earnest money, the expenditure allegedly incurred on construction was to be adjusted towards the sale consideration, and various amounts were subsequently deposited in the petitioner's bank account. On that basis, they asserted that their possession was referable to the construction/sale arrangement and not to any tenancy.

The parties led evidence and produced documents in support of their respective cases. Upon appraisal thereof, the learned Rent Controller concluded that the relationship of landlord and tenant stood established and that respondents No.1 and 2 had committed default in payment of rent from August, 2016. The ejectment application was accordingly allowed vide judgment dated 08.02.2021. In appeal, however, the learned District Judge reversed those findings and dismissed the ejectment application through judgment dated 20.11.2021.

It is also a matter of record that during pendency of the rent proceedings, respondents No.1 and 2 instituted Civil Suit No.824/2017 for specific performance of contract and permanent injunction, which was subsequently dismissed by the learned XIIIth Senior Civil Judge, Karachi South, vide judgment dated 20.05.2024.

An appeal was preferred against the said order, which was dismissed for non-prosecution and subsequently restored, as reflected in the order dated 12.09.2026. A copy of the said order dated 12.09.2026 has been produced by the counsel for Respondent Nos.1 and 2. This fact is noticed only as part of the subsequent litigation between the parties and is not being treated as determinative of the controversy involved in the present petition.

3. Learned counsel for the petitioner contended that the learned appellate Court reversed a well-reasoned judgment of the learned Rent Controller by placing disproportionate reliance upon an isolated portion of the petitioner's cross-examination concerning the tenancy documents, while overlooking material documentary evidence and the conduct of the respondents themselves. It was argued that the relationship of landlord and tenant was not dependent solely upon the disputed tenancy agreements; rather, it stood independently established through recurring deposits of Rs.20,000/- and thereafter Rs.25,000/- in the petitioner's bank account, the respondents' own deposit slips, acknowledgment regarding monthly payment of rent and other material available on record. Learned counsel further submitted that even the agreement to sell relied upon by the respondents contains a stipulation contemplating termination of the rent agreement upon execution of the sale arrangement, thereby acknowledging the pre-existing tenancy. According to him, a subsequent agreement to sell could neither, by itself, transfer title nor retrospectively alter the character in which the respondents had entered into possession. He further contended that no satisfactory evidence of payment of rent after August, 2016 was produced and, therefore, the finding of default recorded by the learned Rent Controller was fully justified. He prayed that the impugned appellate judgment be set aside and the judgment of the learned Rent Controller restored.

In support of his contentions, learned counsel for the petitioner relied upon the case laws reported as 2011 SCMR 320; PLD 2009 SC 546; PLD 1999 SC 1101; 2023 CLC 129; 2023 MLD 103; 2015 YLR 647; 2024 CLC 2052; PLD 2006 SC 214; PLD 2009 SC 45; 2020 SCMR 1816; 1996 SCMR 877; 2009 SCMR 1396; PLD 2014 SC 347; 2019 YLR 2013; 2000 CLC 1841; and PLD 1989 SC 749.

4. Conversely, learned counsel for respondents No.1 and 2 supported the impugned judgment and maintained that no relationship of landlord and tenant ever existed between the parties. He contended that what was initially handed over to respondent No.1 was merely a rooftop/grey structure, entrusted to him for purposes of construction, and that respondent No.1 thereafter raised/completed construction thereon at his own expense, allegedly incurring an amount of approximately Rs.18,00,000/-. It was, therefore, argued that the inception and character of the respondents' possession were referable to the construction arrangement and not to any tenancy.

Learned counsel further submitted that the parties subsequently entered into an agreement to sell dated 19.11.2014, whereunder the petitioner agreed to sell the subject premises to respondent No.1 for a total consideration of Rs.40,00,000/-. According to him, the amounts deposited in the petitioner's bank account represented payments towards the sale consideration and/or amounts deposited on her instructions and could not be treated as rent. Learned counsel also referred to discrepancies concerning the tenancy agreements and placed particular reliance upon the petitioner's statement in cross-examination regarding those documents. It was contended that these circumstances rendered the alleged tenancy doubtful and that the controversy, involving construction expenditure and competing rights under the agreement to sell, was essentially civil in nature and incapable of final determination in summary rent proceedings. According to him, the learned appellate Court had, therefore, rightly interfered with the judgment of the learned Rent Controller and relegated the parties to the competent Civil Court. He accordingly prayed for dismissal of the petition.

In support of his contentions, learned counsel for respondent No.1 relied upon the case laws reported as 2026 SCMR 208; PLR 2023 Lahore 14; 1984 SCMR 925; 1989 CLC 252; 2006 CLC 629 and 1987 CLC 148.

5. I have heard learned counsel for the parties at considerable length and, with their assistance, carefully examined the judgments rendered by the two Courts below as well as the evidence and documents available on record.

6. Before examining the merits, it is necessary to delineate the scope of interference available in constitutional jurisdiction. This Court, exercising jurisdiction under Article 199 of the Constitution against a judgment of a statutory rent-appellate forum, does not sit as a further court of appeal, and does not undertake an independent reappraisal of evidence merely because another view of the same material may be reasonably possible. Concurrent or appellate findings of fact command deference and are not to be disturbed on the ground that this Court, weighing the same evidence afresh, might have preferred a different conclusion. Interference is confined to cases where the finding is shown to rest on misreading or non-reading of evidence, that is, where the appellate court has overlooked, or failed to advert to, material on the record capable of affecting the result, or has treated an isolated fragment of the evidence as conclusive while leaving unaddressed other evidence bearing directly on the very fact so found. The jurisdiction exercised in such a case is corrective of the process by which the finding was reached; it is not an invitation to this Court to substitute its own assessment of conflicting evidence for that of the statutory forum.

7. Consistently with this test, the exercise undertaken below is confined to identifying specific material which the impugned judgment does not appear to have addressed at all, and to asking whether that material, taken as it stands, without resolving any factual controversy about its weight, was capable of altering the finding recorded. Where such unaddressed material exists and is not of a kind reasonably open to two views, non-reading is made out and interference follows; this Court has not, and does not need to, choose between two competing but equally tenable readings of any single piece of evidence.

8. Tested against this standard, the impugned judgment does not survive scrutiny, for the following specific reasons.

9. First, the learned appellate Court founded its reversal principally on the petitioner's cross-examination admission concerning the disputed tenancy agreements, and proceeded directly from that admission to the conclusion that no landlord-tenant relationship existed. In doing so it did not advert at all to the

distinction between the evidentiary worth of the disputed agreements as documents, and the separate question of whether the relationship stood established independently of those documents through other, undisputed material. Nothing in the impugned judgment shows this distinction was considered, still less resolved. That omission is not a matter of preferring one view of the agreements over another; it is a failure to address a materially different question that arises on the same record.

10. Second, the impugned judgment does not advert anywhere to the deposit slips placed on the record by the respondents themselves, evidencing amounts of Rs.20,000/- and subsequently Rs.25,000/- corresponding to the petitioner's pleaded rent and its enhancement. These slips are the respondents' own documents, not contested as to authenticity; the only question is what they were payments for, and the appellate judgment does not engage that question at all, it neither accepts nor rejects the petitioner's case regarding them, it simply does not mention them. A document produced by the opposite party, going directly to the existence of the very relationship in dispute, cannot be left unaddressed without the resulting finding suffering from non-reading.

11. Third, the impugned judgment does not refer to the endorsement in the legal notice dated 30.10.2014, attributed to respondent No.1, undertaking to pay Rs.20,000/- on the 10th of every month. Whatever inference might ultimately be drawn from it, an endorsement of this kind, attributed to the party now denying any tenancy, could not be omitted from consideration without addressing it.

12. Fourth, and most significantly, the impugned judgment does not engage with the recital in the respondents' own agreement to sell dated 19.11.2014, the very document on which their defence is founded, which contemplates termination of "the rent agreement" upon the sale arrangement taking effect. This is not evidence introduced by the petitioner and disputed by the respondents; it is a recital in the respondents' own pleaded document, tendered by them in support of their own case. A party's own document, containing a recital which on its face acknowledges the fact that party seeks to

deny, is material no appellate court can leave unaddressed. This recital does not require any evaluation of rival credibility or any choice between competing interpretations of ambiguous testimony, it is a documentary admission on the face of the respondents' own pleaded instrument, and the impugned judgment does not mention it at all.

13. Each of the four matters identified above is capable, on its own, of affecting the finding on the existence of tenancy; together, they are dispositive. None of them requires this Court to weigh disputed oral testimony, to choose between two plausible characterisations of ambiguous conduct, or to form an independent view on a question fairly open to debate. They are, in each instance, either the opposing party's own documents or a recital in the opposing party's own pleaded instrument, wholly unaddressed in the impugned judgment. This is the paradigm case of non-reading of evidence rather than a mere difference of appraisal, and it is on this narrow basis, not on any reweighing of the controversy as a whole, that interference is founded.

14. It follows that this is not a case admitting of two reasonably possible views on the material identified above, and no purpose would be served by remanding the matter to the appellate Court for fresh consideration of that material. Remand is appropriate where the material overlooked is genuinely capable of more than one reading and the statutory forum, having addressed it, might reasonably reach either conclusion. Here, the material in question is either undisputed documentary evidence produced by the respondents themselves or an admission on the face of their own pleaded instrument; no purpose beyond delay would be achieved by requiring the appellate Court to consider, for the first time, material whose only reasonable bearing is to support the existence of the tenancy the petitioner has pleaded. In these circumstances, restoration of the Rent Controller's judgment, which did address this material, is the appropriate course, rather than a further remand.

15. It is also necessary to deal with the respondents' construction/sale defence on its own footing, since it does not stand or fall with the tenancy agreements alone. The respondents plead that their possession originated from being entrusted with a

rooftop/grey structure for construction, and was never that of tenants. This defence has been considered independently of the disputed tenancy agreements. It does not, however, explain the four matters identified in paragraphs 10 to 12 above, each of which corresponds specifically to the existence of a rent arrangement rather than a construction arrangement. A defence of this kind cannot be sustained where it is contradicted by the propounding party's own contemporaneous documents.

16. The Rent Controller was not called upon to, and did not purport to, adjudicate the validity, enforceability, or consequences of the agreement to sell; nor was he divested of jurisdiction merely because such an agreement was set up or a suit for specific performance instituted. He was required only to determine, for the purposes of the Sindh Rented Premises Ordinance, 1979, whether the relationship of landlord and tenant existed and whether default was established. Institution of Civil Suit No.824/2017, since dismissed on 20.05.2024, did not affect this jurisdiction and is noticed only as part of the parties' subsequent litigation history; nothing in this judgment expresses any view on that suit or on any appeal that may lie from its dismissal.

17. On the question of default, the finding recorded by the learned Rent Controller, that rent was not paid from August, 2016 onwards, has not been shown to suffer from any comparable infirmity. It was for the respondents to demonstrate satisfactory payment of rent after that date; their defence rested instead on denial of tenancy and re-characterisation of the payments, a defence which fails for the reasons already given.

18. The authorities relied upon by learned counsel for the respondents have been considered. They were not shown to arise on facts where a party's possession was sought to be characterised in a manner contradicted by unaddressed documentary admissions in that very party's own pleaded instrument, which is the specific and narrow basis of interference here; they are accordingly distinguishable on their facts and do not require separate discussion.

19. For the foregoing reasons, the learned appellate Court's reversal proceeded on an incomplete reading of the record,

specifically, the non-consideration of the four categories of material identified in paragraphs 10 to 12, and cannot be sustained. The impugned judgment dated 20.11.2021 passed by the learned District Judge, Karachi East, in First Rent Appeal No.29/2021, is set aside, and the judgment dated 08.02.2021 passed by the learned IXth Rent Controller, Karachi East, in Rent Application No.188/2017, is restored and shall be executable in accordance with law.

It is clarified that any independent civil rights claimed by either party arising out of the alleged agreement to sell, including in respect of Civil Suit No.824/2017 and any proceedings arising therefrom, shall be governed by the orders/judgments passed by the competent forum therein. Nothing stated herein shall be construed as an adjudication upon the validity or enforceability of the alleged agreement to sell, title to the demised premises, or any civil right beyond the scope of these rent proceedings.

The petition is accordingly allowed, with no order as to costs. All pending applications stand disposed of.

JUDGE

Ayaz Gul