

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-1269 of 2023

Petitioner Dr. Munawar Hussain	:	Through M/s. Syed M. Jahangir Akhtar & Muhammad Aslam, Advocates
Respondent No.1 Pakistan Red Crescent Society	:	Through Mr. Iftikhar Javaid Qazi, Advocate
The State	:	Through Mr. M. Kamran Baloch, A.A.G.
Dates of Hearing	:	07.092026
Date of Judgment	:	28.09.2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioner, Dr. Munawar Hussain, has challenged the judgment dated 04.11.2023 passed by learned XIIth Additional District Judge, Karachi-South vide FRA No.210 of 2023, whereby he dismissed the appeal and maintained the order dated 22.07.2023 passed by Ist Rent Controller, Karachi-South in Rent Case No. 110 of 2014, allowing the Ejectment Application and directing the opponent/tenant to deliver vacant and peaceful possession of the demised premises within a period of 45 days from the date of said order.

2. Brief facts of the case are; that the Respondent No.1 filed Rent Application No. 110 of 2014 under Section 15 of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) against the petitioner stating therein that the applicant is a Medical Aid, disaster relief, charitable and welfare organization as auxiliary to Government of Pakistan, established under the Act of Parliament, 1974, and it works for humanity, betterment and social upliftment

of the deprived social sector of the society. It was further stated that the applicant had let-out the premises situated at Secretary's Residence Hilal-e-Ahmer House, main Clifton Road, Karachi, to the opponent in the year 1992 on monthly rent of Rs.6000/- which was gradually increased and at the time of filing rent case, the monthly rent was stated to be Rs.12,863/-. The opponent was depositing the monthly rent directly in the Court of VIth Senior Civil Judge, Karachi South / Rent Controller. According to the applicant, the last rental cheques of Rs.69,588/- was received by the applicant, through court on 30.7.2012 and since then the applicant has not received any rent in respect of the demised premises and that the opponent has not paid any rent for the demised premises acquired from the applicant since July, 2012. The total amount claimed to be outstanding against the opponent was; Rs.141,493/, therefore, the opponent is a defaulter. It was further asserted that a legal notice was sent to the opponent on 13.1.2014 which remained un-responded by the opponent. It was further stated that the opponent is a very difficult tenant and he used to pay the rent after stipulated period, thus committed willful default in payment of monthly rent. It was averred that in the circumstances, the opponent is liable to pay all the arrears of monthly rent and also to be ejected from the demised premises. It was consequently prayed for passing an order of eviction against the opponent directing him to vacate the demised premises and handover its vacant and peaceful possession to the applicant forthwith.

3. Upon service of notice, the opponent filed written statement wherein, while admitting the relationship of landlord and tenant between the parties, he stated that from very inception of the tenancy, he is in practice to make payment of monthly rent in advance. He further stated that the applicant is a very difficult landlord and in order to harass the opponent, in the past too, he levelled allegation of default against the opponent. In the year 2006 a rent application was filed by the applicant which was disposed of consequent upon a compromise having arrived at between the parties in the year 2012 vide Order dated 19.5.2012. It was further stated that the opponent was regularly paying / depositing the monthly rent. However, the applicant has again filed instant rent case on the ground that the opponent lastly deposited rental amount by cheque of Rs.69,588/- on 30.7.2012 in the court and thereafter, the applicant has not received any rent in respect of the premises, although on 08.9.2012 the opponent had deposited Rs.50000/- in advance and on 16.01.2014 he deposited a further amount of Rs.100,000/, on 31.3.2014 another amount of Rs.50000/-

was deposited, while a sum of Rs.100,000/- was deposited on 08.4.2014, as such the allegation of default is false and fake. According to the opponent, he has been paying lumpsum rent in advance since very beginning and is still depositing the same in advance, and nothing remains in arrears against him, therefore, the allegation of committing default is baseless. He also asserted that no question arises of paying monthly rent within the stipulated period, because the rent was being accepted by the applicant / landlord himself as per practice since the beginning and which was not objected to by him even during proceedings of the rent case which was filed by the applicant in 2006 and which was disposed of by means of compromise. He lastly prayed to dismissal of the rent application.

4. The rent case was firstly decided vide Order dated 19.02.2016 after framing of issues and recording of evidence whereby the rent application was allowed. The Opponent challenged said order by filing F.R.A. No.69/2016 which was dismissed vide order dated 07.09.2019 by XII-Additional District Judge, Karachi South. The Opponent assailed said order by means of filing C.P. No.S-104 of 2019 which was allowed and impugned judgments / orders were set aside and the matter was remanded vide Order dated 08.09.2020. It was observed in said remand order that *moot question is; time of agreement, tenure of increase in the rent and date of increase, as well as default, if any, which were admittedly not adjudicated upon by the trial court as well as appellate court.* Accordingly, the case was remanded back to the Rent Controller with the direction to *decide the same in accordance with law after examining the evidence brought on record as well.* It was also observed that the Rent Controller *shall also allow respondent (landlord) to exhibit resolution which is already on record and that such exercise shall be completed within three months.*

5. After remand, the rent case was dismissed by Rent Controller vide Order dated 22.01.2021, which was assailed by the applicant / landlord by filing F.R.A. No.36 of 2021. Ultimately, vide Order dated 08.02.2022 passed by XII-Additional District Judge, Karachi South, the matter was again remanded to the Rent Controller with direction that after hearing the parties, the case may be decided afresh within one month in the light of aforesaid directions of this Court given in the constitutional petition in letter and spirit.

6. The Opponent challenged said order by filing C.P. No.S-180 of 2022 which was dismissed by this Court vide Order dated 03.02.2023 with direction to the opponent / tenant to immediately vacate the demised premises. The Opponent then filed Civil Petition No. 574 of 2023 before Honourable Supreme Court of Pakistan which was converted into an Appeal bearing No.234 of 2023 and was allowed vide order dated 06.04.2023 with following observations / directions.

“The parties are in agreement that in the remand proceedings before the learned Rent Controller, the entire evidence recorded in first and second round of the case will be considered by the learned Rent Controller while deciding the matter. -----Learned Rent Controller will decide the matter strictly in accordance with the evidence recorded and will not be influenced by the findings made in the impugned order dated 03.02.2023. Resultantly, the impugned order is set aside to the extent of direction reproduced above. This petition is, therefore, converted into appeal and allowed in the above terms.”

7. Thereafter, 1st Rent Controller, Karachi South again heard the parties and ultimately, allowed Rent Case No. 110 of 2014 vide Order dated 22-07-2023, by complying with above said directions of Honourable Supreme Court of Pakistan.

8. The opponent / tenant being aggrieved by judgment passed by the Rent Controller, challenged the same by filing F.R.A. No. 210 of 2023. Vide impugned Judgment dated 04.11.2023, passed by the Appellate Court said appeal was dismissed and the Order passed by the Rent Controller was upheld. The petitioner / tenant has impugned aforesaid Appellate Order by means of instant constitutional petition.

9. I have heard learned counsel for the parties and also perused the material made available before me on the record.

10. Learned counsel for the petitioner submitted that this case has a chequered history as it is third round of litigations and in the first round concurrent findings were against the petitioner. Thereafter, case was remanded by this Court to the trial Court for decision on certain points, which were formulated by this Court vide order dated 08.09.2020 passed in C.P No.S-1049 of 2019¹. Learned counsel next submitted that in the second round the application filed by Respondent No.1 / landlord was dismissed by the Rent

Controller on 22.12.2021; therefore, respondent No.1 filed FRA No.36 of 2021 before the Appellate Court, which was allowed and the case again was remanded, but the petitioner maintained C.P No.S-1080 of 2022 before this Court, which was dismissed on 03.02.2023. Petitioner had assailed said order before learned Apex Court by filing CPLA No.574-K of 2023, which after hearing the parties, was partly allowed by Honourable Supreme Court vide its esteemed Order dated 06.04.2023 and the order passed by this Court was modified to the extent that the petitioner shall not be evicted, but directions were issued to the Rent Controller for deciding the case afresh after evaluation of the evidence adduced by the parties. After remand of the case by Hon'ble Supreme Court, the Rent Controller allowed the application filed by the Respondent by way of Order dated 22.09.2022. Petitioner filed third FRA No.210 of 2023, which too met with same fate on 04.11.2023.

11. Learned counsel added that the petitioner had denied the suggestion regarding default in payment of rent, hence the Courts below have not properly considered the evidence adduced by the parties. He, therefore, prayed that by allowing this petition, the impugned judgments / orders passed by the courts below may be *set aside* and the petitioner may be allowed to continue to occupy the demised tenement according to the first rent agreement. He also drew attention of the Court towards a legal notice at page-95 of the Court file, which was issued by the landlord to the petitioner and referred to Paras 4 and 5 of said legal notice.

12. On the other hand, learned counsel for Respondent No.1 / landlord opposed the petition and submitted that the courts below have committed no wrong, rather have appreciated evidence properly, as the petitioner proved himself to be a willful defaulter and could not justify the same and still such defaulted amount is due and outstanding against him. He drew my attention towards court's ledger available at page 295 and submitted that the petitioner had deposited the rent amount on 07.09.2012 and again on 16.01.2014 almost after 14 months. The deposit slips, as annexed by the petitioner, are available at pages 109 and 111 and that said defaulted amount still remains unpaid, which shows conduct of the petitioner. He, therefore, submitted that by dismissing this petition, the impugned orders passed by the courts below may be maintained and the demised premises may be got vacated.

13. Learned AAG supported the impugned orders and opposed the petition.

14. At this juncture, learned counsel for the petitioner further submitted that the amount deposited by the petitioner vide court's ledger No.295 was lump sum rent amount having been paid in advance. Learned counsel for Respondent No.1 denied such fact and submitted that this plea was never raised by the petitioner before the Rent Controller in his pleadings.

15. The moot point to be decided is; as to whether the petitioner committed willful default in payment of monthly rent or not?

16. In order to prove such allegation, the respondent / landlord categorically mentioned in the rent application that the opponent committed default in payment of monthly rent from July 2012. It is a settled principle of law that once the landlord comes in the witness box and states on oath that he has not received the rent from the tenant, then the burden shifts upon the tenant to prove that he has not committed any default in payment of monthly rent.

17. In this context, reference may be made to a judgment delivered 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."

18. Reference can also be made to the cases of *Mrs. Asma Makhdoom Vs. Mrs. Yasmeen Azam* (2018 MLD 976) and *Mohammad Siddique Vs. Mohammad Riaz* (2013 YLR 1200 Sindh).

19. In instant case, applicant's representative had narrated such fact in his affidavit in evidence while reiterating the contents of para No.4 of rent application. In his cross- examination too, he remained firm upon such stance

and learned counsel for the opponent could not shake his evidence. In the circumstances, the burden shifted upon the opponent / tenant to prove that he has paid the rent and that no default was committed by him. Perusal of the record reveals that the opponent / petitioner in his pleadings asserted that first Rent Case No.1366/2006 was disposed of on 19.05.2012 consequent upon a compromise having been arrived at between the parties. In para-3 of the written statement, he stated that he had deposited an amount of Rs.69588/- on 30-07-2012 in the court through same M.R.C. bearing No.1006/2006 in which previously he had been depositing the monthly rent. Thereafter, he deposited another amount of Rs.50000/- on 08-09-2012 in the same M.R.C. and then he deposited Rs.100000/- in the same MRC on 16-01-2014, Rs.50000/- on 31-03-2014 and further amount of Rs.50000/- on 08-04-2014. However, no plausible reason and justification has been furnished by the opponent as to why he continued to deposit the rent in the previous MRC after entering into compromise in Rent Case No.1366 of 2006 on 19-05-2012. There is no material on record to substantiate the fact that after aforesaid compromise, he ever tendered the rent to the applicant directly and that same was refused by the landlord. In this view of the matter, there seems to be clear violation of the provisions of Section 10 of Sindh Rented Premises Ordinance, 1979 which provides that the tenant shall pay / tender monthly rent to the landlord and it is only; when the landlord refuses to accept the rent, that the tenant is entitled to send the rent by money order and if again the landlord refuses to accept the rent through such mode, the tenant shall be entitled to deposit the same in court through MRC.

20. For this view, I am fortified by the judgment pronounced by this Court in the case of **Muhammad Younus and another Vs. Mansoor Ali (deceased) through LRs and others (2022 CLC 1787 Sindh)**, wherein it was held as under:

*“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."

21. Furthermore, from scrutiny of the record, it reveals that the rate of rent during the period from 2012 till 31.03.2014 was Rs.15,562.42. The rent case was filed on 29.01.2014 and thus, the total amount of rent to be paid from July, 2012 till filing of rent case in the month of January, 2014 at the rate of Rs.15,562.42 for 19 months, comes to Rs.295,681/- which was not paid by the opponent / petitioner. Rather, the opponent himself during his evidence, produced only two receipts showing deposit of rent in aforesaid MRC; one dated 05.09.2012 for Rs.50,000/- and the other dated 16.01.2014 for Rs.100,000/-. However, as per ledger report of MRC No.1008/2006, the Opponent had also deposited another amount of Rs.69558/- on 30.07.2012, which fact has been admitted by the Applicant / respondent too in para-3 of the rent application, therefore, the total amount paid / deposited by the Opponent during said period comes to Rs.2,19,658/.

22. Now, as stated above, the total amount of rent due and outstanding against the opponent was Rs.295618/-, whereas the opponent had paid a total amount of Rs.219,658/-towards rent during said period, thus still the Opponent was in arrears of Rs.76,023/- at the time of filing of rent application.

23. It is also pertinent to point out at this stage, that from aforesaid two rent deposit receipts produced by the opponent, it is apparent that the amount of Rs.50,000/- deposited on 05.09.2012, only covered the rent due and payable upto December, 2012 which fact has been admitted by the Applicant's witness too, saying that there was no default till December, 2012. However, it is an admitted position that the Opponent had not deposited / paid any rent from 08.09.2012 till January, 2014. In this view of the matter, apparently, the Opponent committed default in payment of rent.

24. Yet, there is another aspect of the matter. During pendency of proceedings before the Rent Controller, a statement of accounts was filed by the Opponent's counsel on 22.07.2023 mentioning therein that the opponent / tenant was depositing the rent at the rate of Rs.11508/- even in the year 2023, whereas, as per calculation of rent on the basis of admitted lease agreement, the rate of rent in the year 2023 was Rs. 25063.41. This fact, also strengthens the plea of the applicant / landlord that the Opponent has committed default in payment of monthly rent as agreed between the parties in the lease agreement dated 25.05.1992.

25. It is also noteworthy that, according to the terms of the lease agreement between the parties, the monthly rent was to be enhanced by 10% after every three years, thus, calculating the rate of rent accordingly, it seems that in the year 2012 even as per his own claimed rate of increase, the monthly rent was Rs.10629.36, while in the year 2014 it was Rs.11,692.29 and present rate of rent comes to Rs.15562.42, whereas the Opponent in his affidavit in evidence disclosed the rate of rent in the year 2012 to be Rs.8000/- per month. Likewise, as per the Statement of Rent submitted by his Counsel, monthly rent is still Rs.11508/-. In the circumstances, the Opponent has proved himself to be defaulter on this score too.

26. In view of above, it is evident that the Opponent committed default, firstly when after entering into compromise in Rent Case No.1366/2006 on 19.05.2012, he did not tender the rent directly to the landlord, then by depositing the rent in the same old MRC No.1008/2006 in gross contravention of the provisions of Section 10 of Sindh Rented Premises Ordinance, 1979, then by depositing the rent of July and August, 2012 in the month of September, 2012, and thereafter by not depositing any rent from October, 2012 till January, 2014, so also by non-enhancement of rent by 10% in accordance with lease agreement.

27. It is also significant to point out at this juncture, that the rate of rent of Rs.12,863/- per month being prevalent on 30-01-2014, has also not been denied by the petitioner / tenant in his written statement and even in his cross-examination, the opponent categorically admitted that till the year 2012, he had been paying the rent at said rate of Rs.12,863/-, thus, it becomes an admitted position that the rate of rent in the month of July, 2012, was Rs.12,863/-.

However, during course of further evidence of the parties in the second round of litigation, the opponent / respondent in his cross-examination conducted on 06-01-2021, made improvement in his version by taking a new plea that in the month of July, 2012, he was paying rent at the rate of Rs.7,860/- per month and also denied that at that time viz. July, 2012, the monthly rent was Rs.12,563/-. Such assertion apparently seems to be contrary to the plea raised by him in his evidence recorded on said date viz. 06-01-2021 to the effect that rent was being paid by him from 2006 to 2012 in M.R.C No. 1008 of 2006 and when he was confronted with the fact that during the period commenced from 10-04-2007 to 11-01-2011, he was paying the rent at the rate of Rs.9,664/- per month, the opponent / respondent tried to justify the same by saying that, in fact, he used to pay extra amount in Court through M.R.C. When he was further confronted with the fact that rent was being deposited by him at the rate of Rs.11,598/- per month in M.R.C. 1008 of 2006 during the period commenced from 11-01.2011 to 10-08-2011, he again took the same plea that he used to pay extra amount to avoid default. It seems that claim of the petitioner / tenant that in the month of July, 2012, rent was being paid / deposited by him at the rate of Rs.7,860/- per month, was raised for the first time in the second round of evidence, that too during his cross examination. In the circumstances, such claim / plea, on the face of it, is baseless and unfounded and cannot be believed on the basis of mere oral statement made in cross- examination, being in conflict with his own conduct of depositing rent at the rate of Rs. 8,875/- per month from November, 2006 onwards. The petitioner / tenant also miserably failed to prove sudden slash in the rate of rent from Rs. 11598/- per month to Rs. 7,860/- per month in the year 2012, as admittedly he deposited the rent upto 30-02-2012 at the rate of Rs. 11,598/- per month and thereafter he deposited Rs. 50,000/- in lump sum on 07-09-2012, thus, the rate of rent of Rs. 7,860/- per month claimed by him remains unsubstantiated and uncorroborated.

28. To sum-up, it may be concluded that the petitioner was / is a persistent defaulter in payment of monthly rent and I do not find any justification to interfere with the concurrent findings of facts recorded by two courts below on this point.

29. Even otherwise, it is now well settled that concurrent findings of the Courts below could be interfered with by this Court in exercise of its extra

ordinary constitutional jurisdiction **only in exceptional cases**, which is not available in instant case.

30. In this context, reference may be made to the case of *MUHAMMAD SALIK ATHAR through Attorney Vs. MUHAMMAD OBAID and 3 others*, reported in **P L D 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.”

31. The upshot of above discussion is; that instant constitutional petition against concurrent findings of the two courts below being not maintainable, is also devoid of merits. Consequently, the petition is hereby dismissed and the eviction order passed by the Rent Controller on 22.07.2023 is maintained. The petitioner / tenant is directed to hand over peaceful and vacant possession of the demised premises to the respondent / landlord within a period of one month's time without fail.

**JUDGE
HEAD OF CONST. BENCHES**

Karachi
Dated. 28.09.2026
Approved for reporting,