

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. S-1469 of 2024

Petitioner : Through Mr. Muhammad Ali Waris
Muhammad Nadeem Lari, Advocate

Respondent No.1 : Through M/s. Abdul Qayum and
Muhammad Aftab Hassan Haider, Advocates

Dates of Hearing : 17.08.2026, 07.09.2026 & 21.09.2026.

Date of Judgment : 05.10.2026

J U D G M E N T

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioner has challenged Judgment dated 12.11.2024 passed by learned District Judge, Karachi East in First Rent Appeal No.85 of 2024 filed by the petitioner / tenant, whereby he has maintained the order dated 13.03.2024 passed by XIIIth Civil Judge/Rent Controller, Karachi-East in Rent Case No.211 of 2022 filed by Respondents.

2. Briefly facts of the case are; that respondent No.1 filed rent case against the petitioner / opponent under Section 15(2)(ii)&(vii) of Sindh Rented Premises Ordinance, 1979 in respect of a small shop bearing No.2, situated on Plot No.11(19), Hyderabad, Colony, Jamshed Road, Karachi, seeking his ejectment on the ground of default and personal bona fide need of his children.
3. Upon service of Notice, the opponent / tenant filed written statement, stating therein that for last 25/26 years he has been doing denting work in the

demised shop with the permission of respondent No.1, subject to the condition that the opponent shall pay 25% of his daily earning from the business as commission to respondent No.1. It was further stated by the opponent that he does not want to keep said shop under tenancy and wants to handover same to respondent No.1 within 2 days. However, subsequently, he moved application seeking amendment in the written statement, which was dismissed. However, the opponent / petitioner did not challenge said order, thus same attained finality.

4. In the ejectment case, an application was filed by the applicant / respondent under section 16(1) SRPO, 1979. Said application was allowed vide order dated 10.03.2023, whereby the petitioner / opponent was required to deposit the arrears of rent at the rate of Rs.10,000/- per month w.e.f. April, 2022 till passing of tentative order. The opponent / petitioner was also directed to pay future monthly rent at same rate on or before 10th of each English calendar month. The COC of the Court submitted report before the Presiding Officer, stating therein that, in compliance with the tentative rent order, no arrears and future monthly rent were deposited by the opponent. Consequently, the Rent Controller struck off defence of opponent / petitioner vide order dated 13.03.2024.

5. The opponent / petitioner assailed said order by filing F.R.A No. 85 of 2024. After hearing advocates for the parties, Learned District Judge, Karachi East vide order dated 12.11.2024 dismissed the appeal and maintained the order passed by Rent Controller. The opponent has challenged said order of the Appellate Court by means of instant constitutional petition.

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

7. Learned counsel for the petitioner submitted that the property in question is joint property which aspect of the case has not been taken into consideration by the two courts below. He further submitted that the petitioner is not a tenant, but is merely a worker employed at the shop owned by one Faisal, who and other co-owners, have already instituted a Civil Suit for declaration, distribution / partition, mesne profits and permanent injunction in the Court of XIIth Senior Civil Judge, Karachi East. In said proceedings, an application under Order VII Rule 11 CPC filed by the respondent / defendant, Mohammad Aftab, was allowed and the plaint was rejected. Being aggrieved by that order, Civil Appeal

No. 86 of 2024 was preferred, which was subsequently dismissed by VIth Additional District Judge, Karachi East. Thereafter, Second Appeal No. 256 of 2025, titled Mst. Raeesa Kareem and others vs. Muhammad Aftab and others, was filed before this Court, wherein restraining orders are presently operating. In support of his contentions, learned counsel placed on record a copy of the order dated 16.12.2025 and has also filed a statement dated 16.01.2026 along with a set of documents, which were taken on record and copies thereof were supplied to learned counsel for the respondent. It was further submitted that in this view of the matter, the status of respondent being owner / landlord is still under dispute, therefore, he is not entitled to receive rent.

8. Learned counsel further submitted that petitioner Muhammad Nadeem is not the tenant, but he is merely an employee of Faisal, who is one of co-sharers in the demised premises. He further submitted that the Rent Controller as well as the Appellate Court have not decided issues in accordance with the law, thereby causing miscarriage of justice, which constrained the petitioner to maintain this petition. According to learned counsel, the Rent Controller has wrongly struck off defence of the petitioner through the impugned order.

9. In support of his arguments, learned counsel placed reliance on the cases of *Rehmatullah vs. Ali Muhammad and another* (1983 SCMR 1064) and *Meer Gul vs. Raja Zafar Mehmood through legal heirs and others* (2024 SCMR 1496).

10. On the other hand, learned counsel for respondent No.1, Mohammad Aftab, submitted that judgment / order passed by the courts below are in accordance with law, having been passed after taking into consideration relevant factual and legal aspects of the case and assigning justified reasons. It was submitted that the petitioner is tenant of respondent No.1 by virtue of a tenancy agreement. He was paying monthly rent to respondent No.1; however, from April, 2022 he defaulted in payment of the rent. It was further submitted that in the written statement filed by the petitioner / tenant, he did not deny the fact regarding payment of rent, so also personal *bona fide* need of the respondent No.1. It was further submitted that the petitioner in his written statement has not called in question the genuineness of his signatures appearing on the tenancy agreement relied upon by respondent No.1, rather has he showed his willingness to vacate the premises within 2 days. According to him, said admitted by him in his written statement stood proved, as it is settled law that the facts having been admitted, need not to be proved by any other mode. Learned counsel prayed for

dismissal of instant constitutional petition. In support of his contentions, he has relied upon the case reported as *Muhammad Rafique and others v. Manzoor Ahmad and others* reported in 2020 SCMR 496.

11. It seems that the petitioner/opponent in his written statement admitted that for the last 25/26 years, he is working as denter in demised shop and was paying 25% commission from his income **to the respondent**. It is also noteworthy that in the written statement, the petitioner / opponent also showed his willingness to vacate the demised within two days. It is a settled principle of law that the admitted fact need not to be proved by other modes. In this connection, reference may be made to the case of *Muhammad Iqbal Vs. Mehboob Alam*, reported in 2015 SCMR 21, wherein it was held by Honourable Supreme Court as under:

“It is a settled principle of law that a fact admitted needs no proof, **especially when such admission has been made in the written statement** (see PLD 1975 SC 242),...”

12. In another case, reported as *Muhammad Rafique and others Vs. Manzoor Ahmad and others* (2020 SCMR 496), it was held by the Apex Court:

“Now, the record and in particular the pleadings of the parties clearly show that the vendor (i.e., the original contesting defendant) did not deny execution of the agreement to sell. A fact admitted need not be formally proved.”

13. In instant case, the petitioner / opponent admitted that he was making payment of rent to the respondent. Although, petitioner has termed such payment as “commission”; however, when a person occupies a premises and uses the same for residential or commercial purpose and makes certain payment in lieu of such occupation to the owner / landlord of such premises, such payment can surely be termed as ‘rent’ being paid to the landlord and the person occupying such premises as ‘tenant’. Needless to emphasize that the law recognizes even verbal tenancy. It is also an admitted fact that the petitioner subsequently moved an application for making amendment in the written statement; however, said application was dismissed, but such dismissal order was not challenged by the petitioner before higher forum, thus such dismissal order attained finality.

14. It is also significant to point out that respondent No.1 in the ejectment application has stated that on 5th February, 2022 a Tenancy Agreement **was**

reduced into writing. It is also an admitted position that the petitioner, while denying execution of such tenancy agreement, had moved an application for verification of his signatures on said Tenancy Agreement through Handwriting Expert. However, said application was dismissed. However, again the petitioner / opponent did not call in question rejection of said application, thus same also attained finality.

15. Respondent No.1 alongwith ejectment application had annexed two rent receipts for the purported payment of rent for the months of February and March, 2022 by the petitioner / opponent to him. However, there is no indication that the petitioner / opponent has disputed such receipts. In view of these facts, it can safely be held that there was relationship of landlord and tenant between the parties.

16. The petitioner has also pleaded that; in view of pendency of civil litigation regarding title / ownership of the property in question between respondent No.1 and other co-owners of the property, the status of respondent No.1 being owner / landlord is under dispute, therefore, he is not entitled to receive rent. In this context, it may be observed that notwithstanding any defect in the title of the respondent, a tenant would be estopped to deny the relationship of landlord and tenant and stop payment of rent on such ground. This point was elaborately discussed by Honourable Supreme Court in the case of **SAIFUDDIN and another SAIFUDDIN and another Vs. SENIOR CIVIL JUDGE/RENT CONTROLLER-VIII, KARACHI (SOUTH) and 7 others, 2007 SCMR 128**, wherein it was held as under:

*“4. The petitioners having admitted their induction in the premises in their possession as tenant by the respondent, have accepted the existence of relationship of landlord and tenant between them and the respondents, therefore, **notwithstanding any defect in the title of the respondents, they would be estopped to deny the relationship of landlord and tenant at a subsequent stage on the ground that a third person having setup his title in the property, has sent them a notice under section 18 of the Ordinance. The ownership of the property is not an essential condition to create relationship of landlord and tenant rather a person without being owner of the property may acquire the status of landlord of the property, therefore, the defect in the title of landlord may not be as such a valid ground to deny his status as landlord of the property.**”*

Reference in this context may also be made to the cases of *Gul Sher Abat Khan v. Mumtaz Ali Khan & Others* reported in 2019 MLD 1991 and *Saifullah and another v. Chaudhry Ghulam Ghous* **2000 CLC 1841**.

17. Now adverting to the point of striking off defence, it may be observed that perusal of the contents of Section 16(2), makes it quite apparent that in case of non-compliance of the order passed under Section 16(1) of the Sindh Rented Premises Ordinance, it is incumbent upon the Rent Controller to strike off the defence of the tenant. For the sake of convenience, contents of Section 16(2) are reproduced as under:

"16(2).--Where the tenant has failed to deposit the arrears of rent or to pay monthly rent under subsection (1) his defence shall be struck off and the landlord shall be put into possession of the premises within such period as may be specified by the Controller in the order made in this behalf."

In this connection, reference may be made to the case of *Safeer Travels (Pvt.) Ltd. Vs. Muhammad Khalid Shafi through Legal Heirs*, reported in PLD 2007 SC 504, wherein Honourable Supreme Court held as under:

"4. By going through the relevant provisions of the Ordinance contained in section 16(2), it is quite evident that once the default has been committed, the Rent Controller has got no discretion and has been left with no option but to strike off the defence of the tenant,....."

Since the word "shall" has made it obligatory for the Court that in case of default, the defence will have to be struck off."

18. Reference may also be made to the case of *Abdul Qayyum Paracha vs. Ghulam Hussain and others*, reported in 1985 SCMR 580, wherein the Apex Court held that in case of default in the payment of the arrears of rent or the future rent, the Rent Controller is empowered to strike off defence and order his ejectment without taking any further proceeding in the case.

19. In the case of *Fazalur Rahman vs. Mst. Sarwari Begum and others*, reported in 1986 SCMR 1156, it was held:

"3 .The learned Rent Controller was competent to strike off the defence of the appellant as there was no other option left for him. Appellant himself took the risk of depositing the rent on the last date and urged that the Clerk of the learned Court, who prepared deposit challans, was not present and, therefore, the rent could not be deposited in time. We are not impressed with this argument. The appellant himself took the risk of depositing the rent on the last date and the consequence thereof should also be borne by him."

20. In the case of *Muhammad Yousaf vs. Muhammad Bashir and others*, reported in 1990 SCMR 557, the contention of learned counsel for the petitioner / tenant was that; as it was a delay only of one day, the High Court should not

have taken a strict view of the so-called default as the petitioner was compelled by the circumstances. Such contention was repelled and it was held that; *the default under section 13(6) is of peculiar nature and the Rent Controller has no discretion to condone it, as distinguishable from the default in payment and rent relatable to other provisions of section.*

21. In the case of *Syed Muhammad Zaman vs. Abdul Khaliq*, reported in 1991 SCMR 1982, it was held that; *once it was found that a default had been committed, the Rent Controller had no discretion in the matter but had to strike off the defence.*

22. In the case of *Misbahullah Khan vs. Mst. Memoona Taskinuddin*, reported in 1995 SCMR 287, it was held that; *tentative rent order can be passed by the Rent Controller even if ground of default is not alleged for seeking eviction.*

23. In the case of *Asif Chughtai vs. Mrs. Zile Huma and others*, reported in 1995 SCMR 741, it was held that; *the petitioner having failed to deposit the arrears of rent and future rent as directed on 9-3-1993, by the learned Rent Controller, even till today, cannot successfully seek interference in the order of his ejectment passed in consequence thereof, from the premises in question.*

24. In the case of *Khawaja Muhammad Mughees vs. Mrs. Sughra Dadi*, reported in 2001 SCMR 2020, delay of even only one day in depositing the arrears of rent was not condoned, although the reason for such delay was alleged to be; that the last date was a gazetted holiday.

25. In the case of *M.H. Mussadaq vs. Muhammad Zafar Iqbal and another*, reported in 2004 SCMR 1453, it was held:

"10. ...According to subsection (9) of section 17 of the Act, if the tenant fails to deposit the amount of rent before specified date, or, as the case may be, before 5th of the month, his defence shall be struck off. On its bare perusal, it is manifest that the above provisions are mandatory in nature and even one day's delay in making the deposit would be default within its meaning and Rent Controller has no power to extend time and condone the same."

26. Even otherwise, it is now well settled that concurrent findings of the two 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.

27. 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.”

28. The upshot of above discussion is; that instant petition against the concurrent findings of two Courts below being not maintainable, is also devoid of merits. Accordingly, the petition is hereby dismissed, alongwith all pending Misc. Applications. The petitioner / tenant is directed to vacate the premises / shop in question and hand over its vacant and peaceful physical possession to Respondent No. 1 / landlord within 30 days from the date of this judgment positively.

29. It may be clarified that; as the issue of title and ownership between respondent No.1 herein namely, Aftab Ahmed, and other legal heirs of late Haji Mohammad Sahab is pending in the court, therefore, the party ultimately succeeding in such civil proceedings, shall be at liberty to resort its remedy available under the law in respect of premises / shop involved in instant case.

Karachi
Dated. 05.10.2026
Approved for Reporting.

JUDGE
HEAD OF CONST. BENCHES