

IN THE HIGH COURT OF SINDH AT KARACHI

Second Appeal No.3 of 2024

(*Fasih-ur-Rehman Alvi v. Dr. Tasneem Aslam Tariq*)

Before:

Sana Akram Minhas J

Appellant	Fasih-ur-Rehman Alvi Through, Mr. Khawaja Naveed Ahmed, Advocate
Respondent	Dr. Tasneem Aslam Tariq Through, Mr. Raja Muhammad Safeer, Advocate
<u>Date(s) of Hearing:</u>	18-8-2026 & 28-8-2026
<u>Date of Decision:</u>	15-10-2026

J U D G M E N T

1. **Sana Akram Minhas, J:** Through the present Appeal, filed under Section 100 of the *Code of Civil Procedure, 1908 (“CPC”)*, the Appellant has assailed the concurrent findings recorded against him by the two Courts below. These are:
- i) The Judgment dated 23.8.2022 and Decree dated 30.8.2022 (**“Impugned Trial Court’s Judgment”**) passed by the learned Trial Court, whereby it decreed the Respondent’s Civil Suit No.939/2019 (*Dr. Tasneem Aslam Tariq v. Fasih-ur-Rehman Alvi*) (**“Civil Suit”**), instituted, inter alia, for recovery of arrears of rent and damages. Against the total amount of Rs.7,948,211/- claimed in the Civil Suit, the Trial Court decreed an amount of Rs.4,248,211/- in favour of the Respondent.
- ii) The Judgment and Decree dated 28.10.2023 (**“Impugned Appellate Court’s Judgment”**) passed by the learned first Appellate Court (namely, XIth Additional District Judge, Karachi South), whereby the Appellant’s Civil Appeal No.186/2023 (*Fasih-ur-Rehman Alvi v. Dr. Tasneem Aslam Tariq*) (**“Civil Appeal”**) was dismissed, and the Impugned Trial Court’s Judgment was maintained.

Facts Pleaded In Complaint

2. Under Tenancy Agreement dated 10.8.2008, the Respondent let to the Appellant residential property bearing House No. B-14-B, Central Avenue, Phase 2, DHA, Karachi, measuring 1030 square yards ("**Subject Property**"), except approximately one-eighth (1/8th) thereof retained for storage, at a monthly rent of Rs.64,000/-. The tenancy was for eleven (11) months, extendable by mutual consent. The rent was subsequently agreed to be enhanced by 10% upon each renewal.
3. From 2008 to 2015, the Appellant persistently defaulted on payment of enhanced rent despite repeated demands. In 2015, the Respondent sought vacant possession but, at the Appellant's request, reluctantly granted a final six-month extension from 15.7.2015 to 14.1.2016 at a monthly rent of Rs.75,000/-, subject to the Appellant's undertaking to vacate. The Appellant unlawfully and unilaterally altered the agreement to extend the term until 15.7.2016 and continued in occupation thereafter. The Respondent issued notices dated 2.11.2015 (terminating the tenancy), 8.3.2016, 13.6.2017 and 11.7.2017, demanding payment of rent and/or vacation of the premises. On 14.5.2016, the Appellant executed a Promissory Note undertaking to vacate by 1.9.2016 and to pay rent at Rs.110,000/- per month from 15.7.2016 until vacation. Subsequently, at the Appellant's request, accounts were rendered and received by him on 4.9.2017, whereupon he acknowledged rent arrears of Rs.530,000/- and again undertook to vacate. He nevertheless failed to pay the arrears or vacate the premises.
4. Following legal notice dated 25.9.2017, the Respondent instituted Rent Case No.95/2017 under Section 17(2)(i) of the *Cantonment Rent Restriction Act, 1963*. The Appellant admitted the tenancy and monthly rent of Rs.110,000/- but disputed the enhanced rent. On 24.9.2018, the Respondent's application under Section 17(8) was allowed, and upon non-compliance, the Appellant's defence was struck off on 4.10.2018 with a direction to vacate within thirty (30) days. In execution proceedings instituted on 5.11.2018, upon failure of Appellant to file objections, writ of possession was ordered on 4.1.2019, and issued with police aid on 11.1.2019 with. On 17.1.2019, the Bailiff opened the locks and delivered possession to the Respondent. The Appellant's belongings, found inside the locked premises in his absence, were inventoried and secured in a sealed garage, from where they were released to him on 4.2.2019 in the presence of Bailiff pursuant to the Rent Controller's order.
5. Upon repossession, the Subject Property was found to have sustained extensive damage to its fittings, lawn, and other internal and external portions, as assessed by a professional contractor/valuer.

6. In these circumstances, the Respondent instituted the Civil Suit on 17.7.2019, claiming Rs.4,000,000/- as damages for repair and restoration of the Subject Property and Rs.3,948,211/- in rent arrears and other dues, including Rs.1,230,000/- represented by three cheques issued by the Appellant in her favour. The latter claim comprised rent up to January 2019, water and conservancy charges, Sui gas and electricity bills, watchman's salary, and locksmith, packing, and cleaning expenses. The Respondent alleged that the three cheques had either been deposited by the Appellant under an incorrect name or merely shown to her without being deposited. The total claim amounted to Rs.7,948,211/-.

Respective Submissions

Submissions Of Appellant (Defendant in Civil Suit)

7. Learned Counsel for the Appellant contended that the Trial Court decided all issues in favour of the Respondent (Plaintiff) without affording the Appellant an opportunity to lead evidence, despite his illness and applications filed by his regularly appearing Counsel explaining his inability to attend Court; that closure of his right to lead evidence deprived him of the opportunity to substantiate his defence and testify on oath; that the Trial Court failed to consider his sworn Written Statement; that the claim for rent arrears fell within the Rent Controller's jurisdiction and was allowed without examining the relevant record, despite the Appellant's assertion that rent had been deposited up to date; and that the Respondent's subsequent claim, following the Appellant's ejectment, was false, fictitious, and legally untenable.
8. Regarding the appellate proceedings Counsel contended that the first Appellate Court dismissed the Appellant's Civil Appeal without considering its grounds or assigning cogent reasons; that it likewise overlooked the Appellant's Written Statement and the circumstances leading to closure of his evidence, including his illness, advanced age, and Counsel's repeated appearances with applications explaining his absence; and that the judgments of both Courts below were, therefore, one-sided, legally unsustainable, and liable to be set aside.

Submissions Of Respondent (Plaintiff in Civil Suit)

9. Learned Counsel for the Respondent contended that the Appeal was not maintainable, as it challenged concurrent findings based on proper appreciation of evidence without identifying any material illegality warranting

interference; that, despite repeated opportunities, the Appellant failed to lead evidence, resulting in closure of his right under Order 17 Rule 3 CPC vide order dated 13.8.2022, which was neither sought to be recalled before the Trial Court nor challenged before the first Appellate Court and had attained finality; that, even on 23.8.2022 (the day the Impugned Trial Court's Judgment was announced), instead of seeking recall, the Appellant sought adjournment of final arguments due to the unavailability of his senior counsel, without producing any medical record to substantiate his alleged illness; and that his Written Statement contained mere denials and neither effectively rebutted the Respondent's claim nor established payment of rent through documentary evidence.

10. Counsel further contended that the jurisdictional objection was misconceived, as the Civil Court was competent to recover outstanding rent, citing 2017 MLD 2106 (*Rahim Muhammad v. Syed Noor Shah*); that the Appellant had failed to prove payment of rent before the Rent Controller, resulting in his ejectment for default, which remained unchallenged; that the allegation that his defence had been ignored was misleading, particularly as he had never sought recall of the order closing his evidence; and that the Appellant had obtained an ad interim order dated 15.1.2024 from this Court by falsely claiming denial of an opportunity to cross-examine the Respondent, despite having done so, as reflected in the Diary Sheet dated 12.2.2020. Counsel accordingly submitted that the Appeal was misconceived and meritless and liable to be dismissed with costs.

Questions For Determination

11. Based on the competing submissions, the following questions fall for determination:
 - i) Whether the Trial Court erred in law in closing the Appellant's right to lead evidence vide order dated 13.8.2022 under Order 17 Rule 3 CPC, and whether the said order, having neither been assailed nor sought to be recalled, attained finality?
 - ii) Whether the Courts below, in proceeding to decide the Civil Suit without the Appellant's evidence despite his plea of illness and inability to appear, committed any material illegality or denied him a proper opportunity of defence?
 - iii) Whether the Courts below failed to consider the Appellant's Written Statement and defence, thereby committing a material error of law?

- iv) Whether the Civil Court had jurisdiction to entertain and decree the Respondent's claim for arrears of rent?
12. The matter has been heard and the available record perused.

Decision

Chronology Of Proceedings Before The Trial Court

13. As per the record, the Civil Suit was instituted by the Respondent (Plaintiff therein) on 17.7.2019, the Written Statement was filed by Appellant (Defendant therein) on 17.10.2019, and issues were framed on 12.12.2019. The Respondent filed her Affidavit-in-Evidence on 20.1.2020, followed by the Affidavit-in-Evidence of her witness (namely, Edwin Sadiq), on 28.1.2020. The Respondent's examination-in-chief was recorded on 30.1.2020, when the Appellant was called absent. The matter was thereafter adjourned to 6.2.2020 and 8.2.2020, on both occasions on the Appellant's application, to enable him to cross-examine the Respondent. The Respondent was eventually cross-examined by the Appellant's Counsel on 12.2.2020.
14. Thereafter, the matter was repeatedly adjourned for the cross-examination of the Respondent's witness (Edwin Sadiq), on 8.3.2021, 3.4.2021, 9.7.2021, 4.9.2021, 25.9.2021, 22.11.2021 (on which date the witness's evidence was recorded, but he could not be cross-examined due to the absence of the Appellant's Counsel), 4.12.2021, 2.2.2022 and 2.3.2022. A "*last and final chance*" was granted on six (6) occasions during this period, either on the Appellant's application or owing to his Counsel's absence. On 2.3.2022 (when the last adjournment granted as a "*last and final chance*"), the case was adjourned for 12.3.2022. On 12.3.2022, the Appellant was called absent, whereupon the right to cross-examine the Respondent's witness was closed, and the matter was thereafter fixed for the Appellant's evidence on 28.3.2022.

Closing The Evidence Of Appellant (Defendant in Civil Suit)

15. On 28.3.2022, 21.4.2022, 10.5.2022, 31.5.2022, 26.7.2022 and 13.8.2022, the matter repeatedly came up for the Appellant's evidence. Significantly, the Diary Sheets record no appearance by the Appellant on any of these dates. Moreover, on each occasion, either an application for adjournment was moved on his behalf or his Counsel was called absent, yet a "*last and final chance*" was granted to the Appellant. On 26.7.2022, the matter was adjourned to 13.8.2022, when the Appellant was again called absent and his side for evidence was consequently closed. Later that day, the junior associate of the

Appellant's Counsel appeared and moved an application for adjournment, whereupon the matter was fixed for final arguments on 23.8.2022. On the latter date, the Appellant's Counsel was again absent, and the Trial Court proceeded to pronounce its Impugned Judgment. Later that day, the junior associate of the Appellant's Counsel once again appeared and moved an application for adjournment.

16. It will thus be seen that, between 28.3.2022 and 13.8.2022, the Appellant was afforded six (6) opportunities to produce his evidence, with a specific caution of "*last and final chance*" on each occasion. Despite these repeated opportunities and express cautions, the Appellant (or his witness, if any) neither appeared in person nor availed himself of the opportunity to produce his evidence. In these circumstances, the Trial Court was justified in closing his side under Order 17 Rule 3 CPC.
17. In **Tahir Hussain Mehmoodi v. Liaqat Ali (2014 SCMR 637)**, the Supreme Court held that Order 17 Rule 3 CPC is penal in nature and must be strictly construed and applied. Where its provisions are attracted, the Court cannot adopt a lenient approach or grant concessions to a delinquent litigant on the grounds of procedural technicalities, exercise of discretion, or the desirability of adjudication on merits. Such an approach would undermine discipline in civil litigation and unfairly prejudice the opposing party by allowing the delinquent litigant an undue advantage. Compliance with the law is not a mere technicality but a constitutional duty imposed upon the Court under Article 4 of the *Constitution of Pakistan, 1973*. Accordingly, where Order 17 Rule 3 CPC is duly attracted, the Court has no option but to act in accordance with its mandate.
18. In **Tanveer Khan v. Naseer-ud-Din (2015 SCMR 1401)**, the Supreme Court highlighted that where a party, despite having availed adequate opportunities to produce evidence and having been expressly cautioned that the last opportunity would be final, fails to produce evidence on the date fixed, its right to produce evidence may lawfully be closed under Order 17 Rule 3 CPC, in the absence of any reasonable justification for such failure. Once a matter is fixed for a party's evidence, it is incumbent upon that party to produce the same without requiring any further direction from the Court.
19. In **Moon Enterpriser CNG Station v. Sui Northern Gas Pipelines Limited (2020 SCMR 300)**, the Supreme Court underscored that where a party is granted a last opportunity to produce evidence with a warning of the consequences of default, the Court must enforce its order and, upon failure to produce evidence, close the party's right to do so in accordance with Order 17 Rule 3 CPC. Repeatedly granting further opportunities after an express order

of last opportunity undermines the authority of judicial orders and makes a mockery of the law. Accordingly, the Court must honour its order and refrain from granting successive extensions after the warned opportunity has been availed and defaulted.

20. In **Duniya Gul v. Niaz Muhammad (PLD 2024 SC 672)**, the Supreme Court deprecated the prevailing pattern of excessive adjournments in the lower courts which transform trials into lengthy and frustrating proceedings and reiterated that Order 17 Rule 3 CPC is attracted where:

- i) Time is granted to a party, at its request, to produce evidence, with a specific warning that the opportunity is final and failure to produce evidence will result in closure of that right; and
- ii) The party fails to produce its evidence on the date fixed as the last opportunity.

Once these conditions are fulfilled, the Court must enforce its order and close the defaulting party's right to produce evidence, rather than grant further adjournments without compelling reasons.

Appellant's Failure To Challenge Trial Court's Order Dated 13.8.2022 And Its Consequent Finality

21. Another important aspect requires consideration. The Trial Court's Order dated 13.8.2022 (whereby the Appellant's right to produce evidence in his defence was closed under Order 17 Rule 3 CPC), was never challenged by the Appellant before any competent forum. Consequently, the said order remained unassailed and attained finality. The Appellant cannot, therefore, seek to reopen the question of closure of his right to produce evidence in the present proceedings without having first challenged the said order in accordance with law before the appropriate forum in the judicial hierarchy.

Failure To Substantiate Plea Of Illness And Produce Evidence Despite Repeated Opportunities

22. With regard to the Appellant's contention that, despite his illness and his Counsel's presence and applications explaining his absence, the Trial Court closed his right to lead evidence, it is pertinent to note that the Appellant has produced no documentary evidence whatsoever in support of his alleged illness. Furthermore, the presence of Counsel and the filing of applications explaining the Appellant's absence could not dispense with the Appellant's obligation to produce evidence, particularly when the matter had repeatedly been adjourned for that purpose. The obligation to enter the witness-box and

adduce evidence in support of his defence rested upon the Appellant and/or his witnesses and not upon the Counsel; Counsel's appearance could not substitute for their evidence. In these circumstances, the Appellant's reliance on his Counsel's presence and the alleged applications moved on his behalf does not justify his failure to produce evidence despite the repeated opportunities afforded by the Trial Court.

Written Statement No Substitute Of Evidence

23. The Appellant's further contention that his Written Statement, being already on record, ought to have been considered by the Courts below notwithstanding the closure of his right to lead evidence is misconceived. Pleadings define the parties' respective cases but do not, by themselves, prove the facts pleaded. The mere filing and verification of a written statement under Order 8 Rule 1 CPC, does not constitute evidence. Its averments cannot, in the absence of proof in accordance with law, be treated as substantive evidence or as a substitute for evidence adduced before the court. The Appellant's Written Statement, therefore, did not absolve him of the burden of proving his defence, nor dispense with the requirement to lead evidence, despite the repeated opportunities afforded by the Trial Court, which he failed to avail himself of.
24. The principle that a written statement does not, in itself, constitute evidence and cannot be admitted as an exhibit unless the person who filed it is examined before the court is firmly established by a long line of judgments of the Supreme Court, spanning the era of the *Evidence Act, 1872*, and continuing under the *Qanun-e-Shahadat Order, 1984*. Reference may be made to **Khair-ul-Nisa v. Muhammad Ishaque** (PLD 1972 SC 25); **Khawaja Auto Cars Limited v. Muhammad Yousuf** (1991 SCMR 2223); **Muhammad Bashir v. Iftikhar Ali** (PLD 2004 SC 465); and **Federation of Pakistan v. Jaffar Khan** (PLD 2010 SC 604). The broader principle concerning pleadings generally was also recognized in **Muhammad Nawaz v. Member Judicial Board of Revenue** (2014 SCMR 914).
25. Indeed, in **Jaffar Khan** (supra) – where the trial court had similarly closed the evidence of the defendant (Federation in the cited case) under Order 17 Rule 3 CPC, and decreed the plaintiff's suit on the basis of the material available on record, notwithstanding the defendant's contention that the trial court had failed to consider the pleas raised in his written statement and the documents relied upon by him – the Supreme Court considered and rejected a contention substantially mirroring the one advanced by the Appellant's Counsel in the present Appeal. The Appellant, therefore, cannot rely upon the mere presence

of his Written Statement on record to overcome his failure to prove his defence through evidence.

Maintainability Of A Civil Suit For Recovery Of Arrears Of Rent

26. The primary object of rent laws is to regulate the relationship between landlord and tenant and the rights and obligations arising therefrom, rather than to provide an exclusive remedy for the recovery of arrears of rent. Where the tenant has vacated the demised premises, a claim for unpaid rent assumes the character of a post-tenancy monetary claim, which may be pursued through an independent civil suit for recovery, provided that the suit is instituted within the period prescribed by the applicable law of limitation and is not otherwise barred by law.
27. In **Ahmad Taimure Bukhari v. Murrawwat Burjees** (1991 SCMR 1569), the Supreme Court upheld the maintainability of a suit for recovery of arrears of rent under the *Cantonments Rent Restriction Act, 1963* – the same statute under which the present Respondent had instituted ejectment proceedings against the Appellant – notwithstanding prior ejectment proceedings, as the arrears had neither been adjudicated upon nor relinquished under the compromise concluding those proceedings. The said decision establishes that termination of a tenancy, or conclusion of ejectment proceedings, does not, by itself, extinguish an accrued claim for unpaid rent. Accordingly, the Respondent's Civil Suit for recovery of arrears of rent remains maintainable notwithstanding the termination of the tenancy.

Conclusion

28. The Appellant has failed to establish any substantial error of law or other ground warranting interference under Section 100 CPC. Accordingly, the Impugned Judgments and Decrees of both the learned Trial Court and the first Appellate Court are maintained, and the instant Second Appeal, being devoid of merit, is **dismissed**. There shall be no order as to costs.

JUDGE