HIGH COURT OF SINDH AT KARACHI

Const. Petition No. S–1267 of 2024

Late Abdul Latif Through his Legal Heirs
V/S
Maulana Muhammad Ali Jauhar Memorial Cooperative Society Ltd. & others

Petitioner Late Abdul Latif through Legal Heirs	:	Mr. Nadeem A. Farooqui, Advocate
Respondent No.1 Maulana Muhammad Ali Jauhar Memorial Cooperative Society Ltd.	:	Mr. Khalil Ahmed Siddiqui, Advocate
Dates of Hearing	:	28.09.2026 & 02.11.2026.
Date of Judgment	:	16.11.2026

JUDGMENT

Muhammad Saleem Jessar, J.:- By means of this constitutional petition, the petitioner, now represented through his legal heirs, has called in question the judgment dated 27.08.2024 passed by learned XIVth Additional District Judge, Karachi-East, in First Rent Appeal No.37 of 2023, whereby judgment dated 09.02.2023 passed by learned XIIth Rent Controller, Karachi-East, in Rent Case No.265 of 2019 was maintained to the extent of default in payment of rent, while the finding regarding subletting was not sustained.

2. Briefly stated, respondent No.1, Maulana Muhammad Ali Jauhar Memorial Cooperative Society Ltd. (hereinafter referred to as "landlord"), instituted ejectment proceedings under Section 15 of the Sindh Rented Premises Ordinance, 1979 (hereinafter referred to as "Ordinance"), against the petitioner on two grounds, namely, default in payment of rent and subletting of demised premises without landlord's consent. The Rent Controller, after recording evidence and hearing the parties, allowed ejectment application through judgment dated 09.02.2023. The petitioner preferred First Rent Appeal No.37 of 2023, which was partly allowed to the extent that finding regarding subletting was not maintained, whereas the finding of default in payment of rent was

affirmed. It is this concurrent finding of default which forms the subject matter of the present constitutional petition.

3. Mr. Nadeem A. Farooqui, learned counsel for the petitioner, contended that the Courts below failed to appreciate the material evidence available on record in its proper perspective. According to him, petitioner had regularly paid rent, initially through challans issued by the landlord and subsequently through deposits into landlord's bank account. In support of his contention, he referred to the original rent receipts, bank challans and MRC No.07 of 2020. He particularly relied upon cross-examination of landlord's representative, available at page 173 of the record, contending that receipt of rent for the disputed period, namely July 2016 to November 2018, had been admitted. He maintained that such admission, read with the documentary evidence, rendered the finding of default unsustainable. Learned counsel further submitted that question concerning the ownership and authority of the landlord had not been properly determined, despite resolution dated 06.10.2018 having been brought on record. He also referred to the tenancy agreement, available at page 107, submitting that tenancy commenced in 1975 at a monthly rent of Rs.175/-, subsequently enhanced to Rs.530/-. He argued that the Courts below had failed to distinguish between contractual rent and prevailing market rent. He accordingly prayed that impugned judgments may be set aside.

4. Conversely, Mr. Khalil Ahmed Siddiqui, learned counsel for respondent No.1/landlord, supported the impugned judgments and submitted that petitioner had committed default in payment of rent for the period July 2016 to November 2018. He contended that subsequent payment or deposit of accumulated rent could not extinguish a default already committed within the meaning of Section 15(2)(ii) of the Ordinance. According to him, original ejectment application contained specific allegations of default and subletting, and evidence was duly examined by both Courts below. He further submitted that petitioner could not, after having acknowledged the tenancy relationship for several decades, defeat the ejectment proceedings merely by raising a dispute regarding ownership. Learned counsel also referred to considerable disparity between contractual rent and prevailing market rent, although his principal submission remained that default had independently been established. Reliance was placed upon the cases of *Mst. Zulekha Khanum v. Pervaiz Akhter and others* (2019 YLR 1817) and *Reckitt & Colman of Pakistan Ltd. v. Saifuddin G. Lotia and others* (2000 SCMR 1924). He maintained that concurrent finding of default was based upon appreciation of evidence and disclosed no

jurisdictional defect, perversity or material illegality warranting constitutional interference.

5. In rebuttal, learned counsel for the petitioner reiterated that admission made during cross-examination, coupled with rent receipts and bank challans, had not been properly appreciated and impugned judgments consequently suffered from misreading and non-reading of material evidence.

6. I have heard learned counsel for the parties and examined the controversy in the light of the impugned judgments, the material referred to during arguments and the applicable legal provisions. The principal question requiring determination is not whether this Court, upon an independent reappraisal of evidence, might reach a different conclusion, but whether the concurrent finding of default suffers from such jurisdictional error, material illegality, perversity or demonstrable misreading or non-reading of material evidence as would justify interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

7. Before addressing the factual controversy, it is necessary to examine the statutory scheme. Section 15(2)(ii) of the Ordinance provides for eviction where tenant fails to pay rent within fifteen days after expiry of the period fixed by mutual agreement between the landlord and tenant or, in absence of such agreement, within sixty days after the rent becomes due. The provision thus recognizes two distinct situations, depending upon whether the parties have mutually fixed the period for payment. The proviso to said clause affords limited protection where the ejectment application is founded solely upon default, tenant admits liability on the first day of hearing, no previous default has occurred and default does not exceed six months, subject to compliance with direction for payment. These statutory conditions cannot be disregarded or enlarged merely on equitable considerations.

8. The obligation to pay rent within prescribed period rests upon the tenant. Where rent is refused or circumstances otherwise necessitate recourse to the statutory mechanism, the Ordinance provides for lawful tender and deposit of rent. Section 10(3), read with relevant provisions of the Ordinance, affords protection to a tenant who adopts the prescribed procedure. The material distinction, therefore, is between payment or valid tender within the period permitted by law and payment made after default has already occurred. Mere eventual receipt of rent does not, without more, establish compliance with the statutory requirement of timely payment.

9. The legal position regarding subsequent payment of accumulated rent is well settled. In the case of *Reckitt & Colman of Pakistan Ltd. v. Saifuddin G. Lotia and others* (2000 SCMR 1924), Hon'ble Supreme Court considered the consequences of default and held, in substance, that a default already committed cannot ordinarily be wiped out by subsequent payment. The Court also attached significance to tenant's failure to establish the dates of tender and absence of proof that landlord had refused to receive rent. The principle is that tenant must establish compliance with the obligation imposed by law, and a subsequent attempt to discharge that obligation does not necessarily extinguish the consequences of an earlier breach.

10. Similarly, in *Mst. Zulekha Khanum v. Pervaiz Akhter and others* (2019 YLR 1817), this Court held that a practice of accepting accumulated rent at intervals does not override the statutory obligation to pay rent within time. It was further held that acceptance of accumulated rent does not, by itself, amount to waiver of the landlord's right to insist upon timely payment. The statutory obligation cannot be displaced by a practice inconsistent with the express requirements of the Ordinance. These principles, however, presuppose that default has first been established on the evidence and in accordance with the applicable statutory period.

11. Applying above principles, decisive consideration in present case is whether rent for disputed period was paid or validly tendered within time prescribed by law. The petitioner relies upon rent receipts, bank challans and the proceedings of MRC No.07 of 2020. Such documents are undoubtedly relevant; however, their legal effect depends upon the dates of payment or tender and the period to which each payment relates. Proof that rent was eventually deposited or received is not necessarily proof that it was paid within statutory period. Likewise, subsequent deposit of arrears cannot retrospectively convert an earlier default into timely compliance.

12. Particular emphasis was placed by learned counsel for the petitioner upon statement of landlord's representative recorded during cross-examination, available at page 173 of the record. An admission made during cross-examination constitutes relevant evidence and must be considered in its proper context. Nevertheless, an admission regarding receipt of rent and an admission regarding its receipt within the prescribed period are legally distinct. The former establishes payment or receipt; latter may establish compliance with the statutory obligation. Consequently, acknowledgment of receipt of rent for a

disputed period does not, by itself, negate an earlier default unless the admission, read in its entirety and with documentary evidence, establishes that payment was made within the period permitted by law.

13. The petitioner's contention regarding misreading and non-reading of evidence must be examined against this distinction. The question is whether impugned findings rest upon a legally permissible appreciation of the material evidence or whether an admission or document of decisive significance has been ignored or misconstrued. A constitutional Court cannot substitute its own assessment merely because same material is capable of another interpretation. Interference becomes permissible only where alleged evidentiary error is material and has resulted in a finding which cannot reasonably be sustained on the record.

14. At this juncture, it is appropriate to emphasize the scope and limitations of jurisdiction under Article 199 of the Constitution. The constitutional jurisdiction of this Court is supervisory and corrective in nature. It is neither a substitute for the statutory appellate remedy nor an additional forum for routine reappraisal of evidence. Where legislature has provided a specific mechanism for determination of a dispute and an appellate remedy against the original decision, the constitutional Court must exercise restraint in examining findings already recorded by the competent forums. Mere possibility that another view of the evidence could have been taken does not confer jurisdiction to interfere with findings otherwise supported by the record and consistent with law.

15. It is equally settled that constitutional jurisdiction is not wholly excluded merely because a finding is described as factual or concurrent. Interference may be justified where the subordinate forum has acted without jurisdiction, exceeded its lawful authority, applied an incorrect legal test, ignored material evidence, misread a document of decisive significance or reached a conclusion so unreasonable that it cannot be sustained in law. The existence of such a defect must; however, be demonstrated; it cannot be presumed merely because the unsuccessful party disputes the conclusion. The distinction is between correction of an identifiable legal or jurisdictional defect and substitution of the constitutional Court's own opinion on questions already determined upon evidence.

16. In present matter, learned Rent Controller adjudicated the controversy after recording evidence, while learned appellate Court independently

examined grounds of ejectment and declined to maintain finding regarding subletting. The appellate judgment thus demonstrates that grounds of ejectment were treated separately and that the order of eviction was maintained on the surviving ground of default. The present petition cannot be converted into a second appeal for a fresh determination of the factual controversy merely because the petitioner seeks another appreciation of the rent receipts, bank challans and oral testimony.

17. As regards objection concerning ownership and authority, proceedings under the Ordinance are primarily concerned with existence of landlord-tenant relationship and statutory grounds of eviction. A detailed adjudication of competing proprietary titles ordinarily falls outside their scope. The question of authority to institute proceedings is, however, distinct from ownership and must be determined with reference to the tenancy relationship, the relevant documents and representative capacity in which proceedings were instituted. Mere raising of a title dispute does not, without establishing a material defect affecting the maintainability of the proceedings, invalidate an ejectment order. The petitioner's reliance upon the resolution dated 06.10.2018 must therefore be assessed in that limited context, rather than as an invitation to undertake a comprehensive inquiry into title.

18. The submission regarding difference between the contractual rent of Rs.530/- per month and alleged prevailing market rent of approximately Rs.200,000/- per month does not advance the case of either party on the question of default. Landlord cannot establish default merely by demonstrating that agreed rent is substantially lower than market rent. Equally, tenant cannot avoid the consequences of a default otherwise established merely because the contractual rent is nominal. Enhancement of rent and eviction for default are distinct matters governed by their respective statutory requirements. Present controversy must, therefore, be determined independently of alleged prevailing market rent.

19. The finding regarding subletting having not been sustained by learned appellate Court, that ground does not require reconsideration in the present petition. The legality of eviction order must be examined with reference to the surviving ground of default alone. Once such ground is lawfully established, the failure of another independent ground does not necessarily invalidate the order of eviction.

20. The governing principle is that the petitioner must demonstrate a defect of the nature recognized in constitutional jurisdiction. Mere disagreement with the factual conclusions of the Courts below or reliance upon a possible alternative interpretation of the evidence, is insufficient. Where the statutory forum and the appellate Court have reached a conclusion upon relevant evidence, this Court cannot disturb that conclusion unless it is shown to be legally unsustainable. To hold otherwise would convert the limited jurisdiction under Article 199 into an unrestricted second appellate jurisdiction, contrary to the statutory scheme and the settled principles governing judicial review.

21. In view of foregoing discussion, finding of default recorded by the Rent Controller and maintained by learned appellate Court is not liable to interference merely on the basis of subsequent payment or receipt of accumulated rent. The legal consequences of default must be determined with reference to the time when rent became due and the time when payment or valid tender was made. The authorities discussed above reinforce the principle that subsequent payment, by itself, does not extinguish a default already committed.

22. Consequently, where concurrent finding of default is supported by the record and no material misreading, non-reading, jurisdictional error or illegality affecting the decision is established, constitutional Court is not justified in substituting its own assessment for that of competent forums. Limited jurisdiction under Article 199 does not permit reopening of entire factual controversy merely to provide a further opportunity of contesting findings already subjected to statutory appellate scrutiny.

23. For the foregoing reasons and subject to concurrent finding of default being supported by the payment record and landlord's testimony as discussed above, no ground warranting interference under Article 199 of the Constitution is made out. Accordingly, this constitutional petition is dismissed, with no order as to costs. Impugned judgment dated 27.08.2024 passed in First Rent Appeal No.37 of 2023, maintaining the eviction order on the ground of default in payment of rent, is upheld.

Karachi
Dated: 16th November, 2026.
Approved for reporting.
Aamir/PS

Judge
Head of Const. Benches