

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**CP No.S-1011 of 2023**

*(Ebrahim Abdul Ali versus X-ADJ Karachi South and others)*

**CP No.S-1012 of 2023**

*(A. Tahir through its Proprietor Abbas Bandukwala & others versus X-ADJ Karachi South & others)*

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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**Date of hearing and order:- 23.02.2026**

Mr. Ghulam Abbas Pishori Advocate for the Petitioner  
in C.P. No. S-1011/2023 and in C.P. No. S-1012/2023

Mr. Mujahid Bhatti advocate for the respondent  
in C.P. No. S-1011/2023 and C.P. No. S-1012/2023

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**ORDER**

**Adnan-ul-Karim Memon, J.-** Petitioner Ebrahim Abdul Ali in C.P. No. S-1011/2023 has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs:

- i) *Send for the records and proceedings of the Rent Case No.878 of 2020 from the Tenth Court of Senior Civil Judge and Rent Controller, Karachi South.*
- ii) *Send for the records and proceedings of the First Rent Appeal No. 279 of 2022 from the Court of Xth ADJ Karachi South and Session Judge (Model Court) Karachi South.*
- iii) *Admit and allow the petition, by setting aside the Impugned judgment dated 22<sup>nd</sup> August 2023, passed by respondent o.1, and restore the judgment dated 29<sup>th</sup> October 2022, passed by the learned Rent Controller, the respondent NO.2;*
- iv) *In the meantime, suspend the Operation of the Judgment dated 22<sup>nd</sup> August 2023, to meet the ends of Justice, Equity, and Fair Play.*

Petitioner A. Tahir, through its Proprietor Abbas Bandukwala, in C.P. No.S-1012/2023 has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs:

- i) *Send for the records and proceedings of the Rent Case No.877 of 2020 from the Tenth Court of Senior Civil Judge and Rent Controller, Karachi South.*
- ii) *Send for the records and proceedings of the First Rent Appeal No. 280 of 2022 from the Court of Xth ADJ Karachi South;*
- iii) *Admit and allow the petition, by setting aside the Impugned judgment dated 22<sup>nd</sup> August 2023, passed by respondent No.1 and restore the judgment dated 29<sup>th</sup> October 2022, passed by the learned Rent Controller, the respondent No.2, by which the rent case stood dismissed.*

iv) *In the meantime, suspend the Operation of the Judgment dated 22<sup>nd</sup> August 2023, to meet the ends of Justice and Fair Play.*

2. The case of the petitioners, being tenants, is that they are aggrieved by and dissatisfied with the judgment dated 22<sup>nd</sup> August 2023 passed by the learned X-Additional District Judge, Karachi (South), in First Rent Appeal Nos.279 and 280 of 2022, whereby the judgment dated 29<sup>th</sup> October 2022 was passed by the learned X-Senior Civil Judge and Rent Controller, Karachi (South), in Rent Case Nos.877 and 878 of 2020 were challenged by Respondents Nos.3 to 7, who claim to be the owners of Godown Nos.2 and 3 situated on the ground floor of Chandan Apartment, Saddar, Karachi, and had filed rent applications under Section 15 of the Sindh Rented Premises Ordinance, 1979, through their Rent Collector. The petitioners, being tenants of the rented premises at a monthly rent of Rs.3,000/- and Rs.1,900/- respectively, payable in advance exclusive of electricity and other charges, had paid rent up to June 2020; however, after receipt of a legal notice requiring payment of rent to the Collector, they neither replied to the notice nor tendered rent from July 2020 onwards, and despite repeated demands by the Rent Collector, failed to make payment, thereby allegedly committing willful default and rendering themselves liable to eviction under the Sindh Rented Premises Ordinance, 1979.

3. Learned counsel for the petitioners contended that the learned Appellate Court misread the law and facts in holding the petitioners to be willful defaulters for the period July to September 2020, despite the admitted absence of any written tenancy agreement or mutually agreed date for payment of rent. He submitted that under Section 10 of the Sindh Rented Premises Ordinance, 1979, rent becomes payable by the 10<sup>th</sup> day of the succeeding month and, in terms of Section 15(2)(ii), a tenant cannot be treated as a defaulter unless rent remains unpaid for sixty days from the date it becomes due. He argued that after issuance of legal notice dated 23.07.2020, the petitioners attempted to tender the rent to the authorized attorney and nominated rent collector, which was refused, whereafter the rent for July to September 2020 was remitted through postal money order dated 25.09.2020 and, upon its return, was deposited before the learned Rent Controller under Section 10(3) of the Ordinance within the legally permissible period. It was thus contended that the petitioners had duly complied with the statutory mechanism and, in the absence of any deliberate failure to pay rent, the finding of willful default recorded by the learned Appellate Court is legally unsustainable and liable to be set aside. In support of his contention, learned counsel for the petitioner in both petitions has relied upon the cases of *Allies Book Corporation through L.Rs. v Sultan Ahmad and others* 2006 SCMR 152, *Muhammad Iqbal v Liaquat Dawood Kukda* 1999 MLD 1842, *Shaikh Israr v*

Muhammad Arif Khan 2001 YLR 442, Jiand Rai v Arjan Das and others 2016 MLD 116, Naeem Noor Muhammad alias Naeem Cyclwala v The IInd Addl. District Judge Karachi South and others 2017 CLC 626, Rajaldas Gianchand v Ist. Additional District Judge Karachi South and another 2018 CLC Note 97, Capri Autos v Dr. Masuma Hasan 2019 YLR 2500, Syed Fakhar Mahmood Gillani v Abdul Ghafoor 1995 SCMR 96, Sir E.H Jaffar and sons Ltd. v Sultan Karam Ali and others 1995 SCMR 330, and Hirjibhai Behrana Dar-e-Meher v Messrs Bombay Steel Works, Partnership Firm 2001 SCMR 1888. He prayed to allow both the petitions.

4. Learned counsel for the respondent landlords supported the impugned judgments of the Appellate Court and submitted that they are the lawful owners of the property by virtue of a registered gift deed dated 18.10.2009 and had subsequently executed a registered general power of attorney on 10.07.2020 in favour of Muhammad Waleed Qureshi, who, through authorized representatives, appointed a rent collector to manage the affairs of the tenants of the subject building. He contended that the petitioners paid rent only up to June 2020, and despite service of a legal notice directing them to pay rent to the authorized rent collector, they neither responded nor tendered rent thereafter. According to him, the petitioners committed willful default from July 2020 onwards, and therefore, the judgment of the learned Appellate Court is lawful and calls for no interference, rendering the petitioners liable to eviction from the demised premises. In support of his contention, learned counsel for the respondents in both petitions has relied upon the cases of Mst. Yasmeen Khan v Abdul Qadir and another 2006 SCMR 1501, Muhammad Asif Khan v Sheikh Israr 2006 SCMR 1872, Muhammad Amin Lasania v Messrs Ilyas Marine and Associates and others PLD 2015 SC 33, Allah Din v Habib PLD 1982 SC 465, Muhammad Suleman v Messrs Alvi Brothers 1991 CLC 1068, Kala Khan v Anjuman Musalmanane Mashrqui Punjab Karachi 1993 CLC 250, Arshad Khan v Mrs. Fauzia Nasir and 2 others 2005 CLC 787, Muhammad Younus and another v Mansoor Ali 2022 CLC 1787 and Messrs Atif Ali and another v Mst. Noor Jahan through Attorney and others 2015 CLC 310. He prayed to dismiss the petitions.

5. I have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. From the rival contentions of the learned counsel for the parties, the pivotal question which emerges for determination is whether the petitioners could legally be treated as willful defaulters in payment of rent for the period July to September 2020 to attract the penal consequences of eviction under the Sindh

Rented Premises Ordinance, 1979 and whether this Court under Article 199 of the Constitution can reappraise the evidence so assessed by the Appellate Court.

7. The learned Appellate Court, after examining the pleadings, evidence, and record of the case, observed that there was no dispute between the parties regarding the existence of the landlord/tenant relationship or the rate of monthly rent. The controversy primarily related to the alleged willful default in payment of rent for July, August, and September 2020. It was noted that in an earlier round of litigation, the matter had been remanded to the learned Rent Controller with directions to summon the postman for cross-examination, which direction was duly complied with. Upon appraisal of the evidence, particularly the testimony of the postman and the extracts of the post office record (Exh. C/1 & C/2), the Appellate Court found that the tenant had failed to substantiate his plea that rent for the defaulting period had been tendered through postal money order after alleged refusal by the landlord or his representative. The Appellate Court held that mere assertions regarding attempted tender of rent to the landlord's attorney or rent collector, without any cogent proof, were insufficient to discharge the tenant's statutory obligation under Section 10 of the Sindh Rented Premises Ordinance, 1979. It was noted by the Appellate Court that the admissions made by the postman during cross-examination further revealed that the produced documents neither confirmed the dispatch of the money orders to the landlord's address nor established that the same were personally tendered or refused in accordance with the prescribed procedure. Consequently, the Appellate Court concluded that the petitioners/tenants had not followed any of the legally recognized modes for payment or deposit of rent and had thus committed willful default in payment of rent for the period from July 2020 to September 2020. On this basis, the appeal was allowed, the judgment of the learned Rent Controller dated 20.10.2022 was set aside, and the ejectment application under Section 15 of the Ordinance was allowed, directing the tenant to vacate the demised premises within sixty days.

8. In view of the foregoing findings recorded by the learned Appellate Court, it is evident that the petitioners failed to establish, through legally admissible and reliable evidence, that the rent for the period July to September 2020 was tendered to the landlord in accordance with the modes recognized under Section 10 of the Sindh Rented Premises Ordinance, 1979.

9. The statutory obligation cast upon a tenant is not merely to assert payment or attempted tender of rent but to demonstrate that such tender was made through any of the legally sanctioned methods, including payment directly to the landlord,

remittance through postal money order, or deposit before the Rent Controller in the event of refusal.

10. The Appellate Court, upon proper appraisal of the testimony of the postman and the postal record (Exh. C/1 & C/2), rightly concluded that the petitioners had failed to prove dispatch or tender of the alleged money orders at the correct address of the landlord or refusal thereof in the prescribed manner.

11. In the absence of proof of valid tender or deposit of rent before the Rent Controller, the inevitable consequence under the law is that the tenant incurs the liability of willful default, which attracts eviction under Section 15 of the Ordinance.

12. It is by now a settled principle of law that where a tenant fails to establish payment or lawful tender of rent within the stipulated period, such omission constitutes willful default, disentitling him from the protection available under the rent laws. However, in the present case, the learned Appellate Court considered the documents / extracts as discussed supra and formed opinion as under: -

*“17. In order to see as to whether the respondent had actually sent the rent for the defaulting period to the landlords, their attorney, or their rent collector through a money order. In fact the rent controller had accepted the version of the respondent that he had tendered the rent to the landlord through money order, but evidence of the postman (Exh. C) and his cross-examination dated 28/09/2022 in juxtaposition with the examination of the relevant record and proceedings. I have also carefully scanned the two documents, which are the extracts of the post office department (C/1 & C/2). For the sake of convenience, the relevant replies/admissions of the postman are hereby reproduced as under:-*

- ❖ It is correct to suggest that the document which I had produced at C/1 & C/2 on 01.12.2021 was not in my absolute custody. Voluntarily says that his office record is present in our office.*
- ❖ The record that I had produced was in the custody of the money order paid branch, and that was headed by one Ejaz Malik at the relevant time.*
- ❖ It is correct to suggest that the document which I had produced before this Court was attested by a senior post master named Fareed.*
- ❖ It is correct to suggest that documents which I had produced before this Court was neither in my sole custody nor I had attested the same.*
- ❖ It is correct to suggest that from the documents, which I had produced at the Exh. C/1 & C/2, it cannot be determined as to on which address the said money order was sent and returned accordingly; it had not personally sent to serve the money order that is mentioned in the present rent case.*
- ❖ It is correct to suggest that I have not produced any other document except that is produced at Exh. C/1 & C/2. Remarks at Exh. C/1 & C/2 were endorsed by clerk of our office who was of money order branch.*

- ❖ *It is correct to suggest that the postman who had gone to serve a money order at the address had not put his remarks on Exh. C/1 & C/2.*
- ❖ *It is correct to suggest that the endorsement on Exh. C/1 & C/2 were not made in my presence. It is correct to suggest that I had not accompanied the postman who had gone to serve the money order and hence I cannot say as to whether he had actually gone or not. It is correct to suggest that on the documents produced at Exh. C/1 & C/2 the address of the person in whose favour money order was sent, was not mentioned.*

18. *In view of the above admissions on the part of the postman, it clearly appears that the rent had not been tendered through money order as per the specified procedure. Thus, under such circumstances, it can safely, certainly, and without any hesitation be said that the tenants had committed willful default for the aforesaid period, and the evidence of the postman did not support their version.*

19. *In this context, while I have gone through the above mentioned reported case laws so relied upon by the learned counsel for the appellants and found that these reported case laws also fully supported their version in respect of default.*

20. *In view of the above-stated position, circumstances, and detailed discussion, the net result thereof is that the respondent/opponent/tenant had committed willful default in payment of rent for the period of July, 2020 to September, 2020. Accordingly, the point in hand stands answered in the affirmative.*

Point No.2

21. *In the light of the above detail discussion on Point No.1 and the result thereof, since it has been held that the respondent/opponent/tenant had committed willful default in payment of rent for three months as pointed out hereinabove. Accordingly, the First Rent Appeal merits consideration, and the same stands allowed and thereby the impugned judgment being against the law, facts, circumstances and based on misreading and non-reading of the evidence of the parties dated 20.10.2022 stands set-aside. Resultantly, the ejectment application u/s 15 of the Ordinance (Rent Case) stands allowed, and thereby the respondent/tenant is hereby directed to vacate the demised premises within 60 (Sixty) days and deliver its vacant and peaceful possession to the appellants/applicants without fail.”*

13. From the above, it can be inferred that in the absence of proof of payment or valid tender of rent, the tenant becomes liable to eviction on account of willful default. Likewise, mere assertion of tender without substantiation through legally acceptable evidence does not absolve the tenant of the statutory consequences of default, as opined by the Appellate Court.

14. The submissions advanced by the learned counsel for the petitioners are misconceived and do not withstand scrutiny in light of the record and the settled principles governing Sections 10 and 15 of the Sindh Rented Premises Ordinance, 1979 for the reason that firstly, the absence of a written tenancy agreement or a specifically agreed date for payment of rent does not absolve the tenant from complying with the statutory mandate. Section 10 of the Ordinance itself prescribes the time and mode of payment, and the obligation to pay rent regularly

is independent of any written agreement. The statutory scheme makes it incumbent upon the tenant not only to tender rent within time but also to strictly follow the legally recognized modes of payment or deposit. Mere assertion of attempted tender, without cogent proof of valid dispatch, refusal, or lawful deposit within the prescribed period, does not constitute compliance with Section 10.

15. Secondly, the contention that the rent was remitted through postal money order dated 25.09.2020 and later deposited before the learned Rent Controller loses force in view of the categorical findings of the learned Appellate Court. After summoning the postman and examining the postal record, the Appellate Court found that the alleged money orders were neither proved to have been dispatched at the correct address nor shown to have been tendered and refused in accordance with law. These are findings of fact based upon appraisal of evidence and cannot be displaced by mere reference to dates or general assertions of compliance.

16. The case law relied upon by learned counsel is distinguishable on facts. In *Allies Book Corporation v. Sultan Ahmad*, protection was extended to the tenant where lawful tender or deposit of rent had been established in accordance with the statutory mechanism. Similarly, in *Syed Fakhar Mahmood Gillani v. Abdul Ghafoor and Sir E.H. Jaffar and Sons Ltd. v. Sultan Karam Ali*, the Supreme Court emphasized that where the tenant demonstrates bona fide compliance with the prescribed mode of payment, the penal consequence of eviction should not follow. However, the ratio of these authorities is predicated upon proof of valid tender or deposit. In the present case, the learned Appellate Court has expressly found that such proof was lacking. Where the foundational fact of lawful tender is not established, the protective principles enunciated in the cited judgments are inapplicable. Likewise, the judgments reported as *Hirjibhai Behrana Dar-e-Meher v. Messrs Bombay Steel Works and Capri Autos v. Dr. Masuma Hasan* reiterate that a tenant must strictly adhere to the statutory mechanism and that benefit accrues only where compliance is affirmatively proved. They do not lay down that a tenant can avoid eviction on the basis of unsubstantiated claims of attempted payment.

17. Furthermore, the plea based on Section 15(2)(ii) regarding the sixty-day period is also misconceived. The relevant consideration is whether rent remained unpaid and whether the tenant availed the lawful mechanism within time. Once the Appellate Court found that the alleged money orders were not proved and the deposit was not shown to be in strict conformity with Section 10(3), the element of default stood established. The Ordinance does not protect a tenant who fails to demonstrate lawful tender within the statutory framework.

18. Lastly, the findings recorded by the learned Appellate Court are findings of fact arrived at after remand, examination of the postman, and scrutiny of documentary evidence based on the cross-examination of the witness. In these circumstances, the authorities cited by learned counsel for the petitioners are distinguishable and do not advance the petitioners' case. The conclusion of willful default recorded by the learned Appellate Court is based on proper appreciation of evidence and correct application of law.

19. The constitutional jurisdiction under Article 199 of the Constitution is extraordinary and discretionary, meant to correct orders passed in violation of law or without lawful authority. It does not extend to reappraisal of evidence or substitution of findings of fact recorded by the Courts below after proper appreciation of evidence, unless such findings of Appellate Court suffer from a jurisdictional defect, misreading, non-reading of material evidence, perversity, or patent illegality. Therefore, the petitioners were rightly held to be willful defaulters, attracting eviction under the Sindh Rented Premises Ordinance, 1979.

20. Accordingly, the instant Constitutional Petitions, being devoid of merit, are dismissed, leaving the parties to bear their own costs.

J U D G E