IN THE HIGH COURT OF SINDH AT KARACHI

CP No.S-196 of 2022

[Muhammad Saeed Khan v. The District Judge East Karachi and 2 others]

Petitioner	:	Muhammad Saeed Khan through M/s. Khalid Javed and Munawar-uz- Zaman Juna, advocates
Respondent No.1&2	:	through Mr. Pervaiz Ahmed Mastoi, Assistant Advocate General Sindh
Respondent No.3	:	through Mr. Usman Tufail Sheikh, advocate
Applicant/Intervener	:	through M/s. Haq Nawaz Talpur and Najam Nek Markhand, advocates

Date of hearing	**:**	**23.12.2025**
Date of announcement	**:**	**21.01.2026**

O R D E R

Nisar Ahmed Bhanbhro, J. By way of this petition, the petitioner has called in question the judgement dated 02.02.2022 passed by the Court of Learned District Judge Karachi East (`**appellate Court**`) in First Rent Appeal No.125 of 2021 (re: Muhammad Saeed Khan v. M/s. Karachi Aero Club (G) Limited Company and another), whereby order dated 11.10.2021 passed by the Court of learned Rent Controller-X, Karachi, East (`**trial Court**`), allowing the ejectment application in Rent Case No.142 of 2019 (re: M/s. Karachi Aero Club (G) Limited Company V. Muhammad Saeed Khan) was maintained.

2. It is the case of the petitioner that he is a tenant, whereas respondent No.3 is the landlord in respect of a plot bearing Survey No.633, Block-6, Gulshan-e-Iqbal, University Road, Karachi (**the demised**

premises'). The tenancy was created by virtue of a lease deed dated 29.12.1998, duly registered with the Sub-Registrar, for a period of Thirty (30) years commencing from 01.11.1998. The rate of rent along with other terms and conditions has been duly provided in the said lease deed. Respondent No 3 (Landlord) sought ejectment of Petitioner from demised premises on the ground of default in payment of rent and change in use.

3. Mr. Khalid Javed, learned counsel for the petitioner, while assailing the concurrent findings recorded by the Courts below, contended that sufficient material and evidence were available on record to establish that the petitioner had already paid a substantial amount in advance, therefore, no default in payment of rent can be attributed to him. Learned counsel submitted that admittedly a sum of Rs.5,00,000/- (Rupees Five Lac) was paid in advance by the petitioner to the respondents, covering the period from 01.11.1998 to 31.10.2008. It was further contended that the rent for the month of November 2008 was duly offered by the petitioner; however, the landlord refused to accept the same. Thereafter, the rent was remitted through money order, which was also refused by the landlord, compelling the petitioner to deposit the same through M.R.C. No.252 of 2008. Learned counsel further argued that the Petitioner did not default in payment of rent, rather Petitioner had already deposited rent in advance until the month of December 2025. he argued that the Learned Courts below failed to consider the provisions of the Sindh Rented Premises Ordinance, 1979 (SRPO), and decided the case on assumption and presumptions. He argued that soon after the lease deed CNG station was established on the demised premises which is a petroleum product. He contended that lease agreement was not infringed and demised premises were not sublet. Lastly, learned counsel prayed for allowing the instant petition.

4. Mr. Usman Tufail Sheikh, learned counsel for respondent No.3, conceded that the petitioner is a lawful tenant of the demised premises under a registered lease agreement, whereby respondent No.3 had unequivocally leased out the demised premises to the petitioner for a fixed period of thirty (30) years. Learned counsel submitted that, prior to the present proceedings, respondent No.3 himself had instituted Suit No.427 of 2008 against the petitioner, challenging the lease on the allegation that the person who executed the lease on behalf of the landlord was not competent to do so. The said suit was hotly contested, wherein

the petitioner admitted his status as tenant of the landlord, and evidence was also recorded. Learned counsel further contended that the conduct of respondent No.3 amounts to a clear admission of tenancy, thereby attracting the principle of estoppel, which dis-entitled him from now adopting any inconsistent or contradictory stance regarding the validity of the lease or the status of the petitioner, particularly in view of the intervenor application. It was submitted that after withdrawal of the aforesaid suit, respondent No.3 served a legal notice dated 13.04.2019 through TCS and thereafter filed the ejectment application on the grounds of alleged default in payment of rent, illegal change of land use, and alleged subletting of the demised premises. Learned counsel alleged that the tenant himself admitted to having sent the money order to an incorrect address, and even while filing the M.R.C., he mentioned an incorrect address of respondent No.3. In support of his contentions, learned counsel placed reliance upon the cases of Muhammad Nazir Khan v. Ahmad and 2 others (2008 SCMR 521), Allah Mehar v. Syed Nazar Ali and 2 others (2016 MLD 636), Mst. Shahana Ashraf v. V-Additional District Judge, Karachi South (2013 MLD 731), Meezan Bank Limited v. Eduljee Dinshaw (Pvt.) Limited (2025 CLC 1510), Zubair Ahmed v. Syed Hasan Mehdi (1995 MLD 840) and Feroze Ahmed v. Mst. Zehra Khatoon (1992 CLC 735). Lastly, he prayed for dismissal of the instant petition.

5. Mr. Haq Nawaz Talpur, learned counsel for the applicant/intervener in CMA No 10232 of 2024, contended that the applicant is the legal and lawful owner of the property, which is being treated as rented premises in the instant petition. Learned counsel submitted that the petitioner, claiming himself to be a tenant, and respondent No.3, asserting ownership of the demised property, in collusion with each other, are attempting to usurp the property of the applicant. Learned counsel further submitted that in the year 1980, the Karachi Development Authority invited bids for public auction of its plots, including the subject property. The auction was held on 15.12.1980, wherein the applicant emerged as the successful bidder and upon completion of all codal formalities, including payment of the first and second installments on 28.01.1981, the KDA issued a formal allotment letter and handed over possession of the subject property to the applicant vide letter dated 16.03.1981. The remaining 50% of the cost of the plot, comprising installments Nos. 3 and 4, was paid on 08.09.1991.

Consequently, the applicant became the lawful owner of the subject property. Per learned counsel, in the year 1988, the brother of the petitioner, namely Fazal Mehmood Khan, obtained a license from the applicant to construct and operate a petrol pump on the subject property, resulting in the establishment of M/s Aftab Service Station near NIPA Chowrangi. After the demise of the petitioner's brother in 2018, the petitioner requested issuance of a fresh license, which was granted after negotiations, subject to payment of an annual advance license fee of Rs.150,000/- (Rupees One Hundred Fifty Thousand only), aggregating to Rs.1,800,000/- (Rupees Eighteen Hundred Thousand only). he argued that the Petitioner actually was tenant of Applicant and Respondent No 3 in collusion with petitioner had maneuvered the rent proceedings to deny the title of Applicant. He further argued that Respondent No 3 instituted a review application No 31 of 2014 (Re M/S Aero Club V. Ghulam Hussain) before Board of Revenue Sindh which was declined vide order dated 03.11.2020 wherein the ownership claim of Respondent No 3 was dismissed with an observation that the subject survey No 633 did not exist in revenue map, the order of Board of Revenue remained unchallenged thus attained finality. He prayed to allow instant application and remand of the case back to trial court for de novo trial.

6. Heard arguments and perused the material available on record.

7. Scanning of the record reveals that the there is no dispute over tenancy relationship in between Petitioner and Respondent No 3. The tenement premises were rented out to Petitioner for a period of 30 years through a registered deed agreement with rental amount of Rs. 12000/- per month for the first 10 years, Rs.15000/- per month for the second 10 years and Rs. 16000/- for the last 10 years. The tenancy agreement started from 01.11.19998 and will expire on 30.10.2028.

8. It is the case of the respondent No 3 (landlord) that until 2008, the rent was paid in terms of tenancy agreement but thereafter the Petitioner (tenant) failed to pay the monthly rent and he was in arrears of rent amount of Rs.1800,000/-. Besides, the default in payment of rent, the demised premises were Sublet to M/s. AB Services and AB CNG Station, therefore, eviction was sought. Tenant (Petitioner) denied the contentions of Landlord, asserted that monthly rent was regularly paid to the landlord until October 2008 but he refused thereafter the rent was sent through

postal money order that too was refused and finally the rent was deposited in rent case No 252 of 2008 and rent is paid there without any default. There is no change in land use and CNG was the part of petroleum product. Learned trial Court on the pleadings of the parties framed following issues:

> *"1. Whether the opponent committed willful default in payment of monthly rent and has not paid rent as agreed between the parties in terms of lease agreement?*
>
> *2. Whether the opponent had sublet the demised premises and using the demised premises for purpose other than that for which it was rented out and violated the terms of lease agreement?*
>
> *3. What should the order be?"*

9. In support of respective claims, the parties led evidence. Learned trial Court decided the issues No.1 and 2 in favour of the landlord and directed the petitioner to vacate the demised premises and deliver vacant possession to the landlord within 60 days' time. Learned Trial Court observed that Tenant had mentioned wrong address of Landlord in rent case and money orders and default in rent was deliberate and with mala fide intentions. Learned Trial Court further observed that demised premises were rented out for installation of petroleum product instead CNG station was established, which proved the breach of tenancy agreement.

10. In First Rent Appeal, learned appellate Court dismissed the appeal by painstakingly appraising the evidence of the parties and concluded that the default in payment of rent was established. Appellate Court however did not render its deliberations on change in land use and dealt with the issue of default in payment of rent in following manner:

> *"I have gone through the payment history of rent in MRC No.252/2008, which is reproduced hereunder by mentioning its payment either well in time or otherwise:-*

SR NO.	DATE OF PAYMENT WITH MONTH & YEAR	AMOUNT	ADVANCE	WITHIN TIME	DELAYED PAYMENT
1	12.11.2008	Rs. 15,000/=	--	--No--	Two days
2	01.12.2008	Rs. 15,000/=	--	--Yes--	--No--
3	02.01.2009	Rs. 30,000/=	February 2009	--Yes--	--No--
4	06.03.2009	Rs. 30,000/=	April 2009	--Yes--	--No--

5	09.05.2009	Rs. 30,000/=	June 2009	--Yes--	--No--
6	10.07.2009	Rs. 30,000/=	August 2009	--Yes--	--No--
7	03.09.2009	Rs. 60,000/=	October, November & December 2009	--Yes--	--No--
8	08.01.2010	Rs. 90,000/=	February to June 2010	--Yes--	--No--
9	16.06.2010	Rs. 90,000/=	July to December 2010	--Yes--	--No--
10	06.01.2011	Rs. 90,000/=	February to June 2011	--Yes--	--No--
11	13.07.2011	Rs. 90,000/=	July to December 2011	August to December 2011	Three days delay for the month of July 2011
12	10.01.2012	Rs. 90,000/=	February to June 2012	--Yes--	--No--
13	27.06.2012	Rs. 180,000/=	July 2012 to June 2013	--Yes--	--No--
14	24.07.2013	Rs. 180,000/=	July 2013 to June 2014	--Yes--	August 2013 to June 2014 – Fourteen days delay for the month of July 2013
15	10.07.2014	Rs. 180,000/=	August 2014 to June 2015	--Yes--	No
16	23.10.2015	Rs. 180,000/=	November 2015 to June 2016	--Yes--	November 2015 to June 2016 – Four months delay in payment for the month of July, September & October 2015
17	27.09.2016	Rs. 180,000/=	October 2016 to June 2017	--Yes--	October 2016 to June 2017 – Three months delay for the month of July, August, and September 2016
18	06.07.2017	Rs. 180,000/=	August 2017 to June 2018	--Yes--	--No--
19	08.05.2018	Rs. 180,000/=	July 2018 to June 2019	--	Increased amount from November, 2018 has not been deposited
20	11.06.2019	Rs. 180,000/=	--		Rs. 16,000 per month was required to be paid from November, 2018 but the appellant deposited rent at the rate of Rs. 15,000/per month

It is a matter of fact that, in pursuance of lease agreement supra (tenancy agreement), the appellant was required to pay the rent at the rate of Rs. 16000/= per month for the last ten years i.e. from November, 2018 but it is surprising to note here that, the appellant has made payment of monthly rent from November, 2018 at the rate of Rs.15000/= per month instead of Rs.16,000/= per month; such act of the appellant tantamount to commit the willful default in payment of monthly rent, besides, at serial No.1 of the payment table drawn hereinabove, the appellant had committed two days default in payment of

monthly rent for the month of November, 2008. Be that as it may, the appellant tried to tender the rent to the respondent but he refused to receive the same, hence he filed the MRC supra and started to deposit the rent, however, at serial No.11 of the payment table supra, the appellant made payment of rent on 13.07.2011, with three days delay in payment, besides, at serial No.14 of the payment table supra, the appellant made payment for the month of July, 2013 on 24.07.2013 with fourteen days delay. Besides, it has been clearly mentioned at para-16 of the table drawn supra, the appellant made four months payment with delay for the month of July, September and October, 2015. Besides, at para-17 of the table supra, the appellant made three months late payment for the month of July, August and September, 2016. Thereafter, in pursuance of lease agreement, the appellant was required to pay the monthly rent at the rate of Rs. 16000/= per month for the last ten years i.e. from November, 2018, but the appellant has paid the monthly rent from November, 2018 at the rate of Rs.15000/= per month instead of Rs.16000/= per month, hence such act of the appellant comes within the definition of willful default. In this context, I am fortified by case of Sher Muhammad Vs. Mrs. Qudsia Bano, reported in 1999 MLD 3165, wherein it has been held that, even one default was sufficient to declare the tenant a willful defaulter."

11. Learned Appellate Court concluded that the Tenant had paid the rent but it was short of the fixed amount of Rs 16,000 per month starting from the month of November 2019. As such the observation of the Trial Court that rent was paid improperly loses weight. From analysis of the payment of rent so made by the appellate Court it is crystal clear that Tenant had paid an amount of Rs 180,000 in the month of May 2018, and for the previous period until the month of June 2018 Tenant was not in default in payment of rent. Per clause 2, 3, 4 & 5 of the tenancy agreement Tenant was required to pay monthly rent by 10th of every month, however Tenant had deposited an amount of Rs 180,000 in advance for the period starting from month of July 2018. For the months of July 2018 to October 2018 Tenant was required to pay an amount of Rs 15000 per month which totals to Rs 64,000. From month of November 2018 to October 2019 Petitioner was required to an amount of Rs 16000 per month. To the admission of both the parties an amount of Rs 1,16,000 was deposited by tenant which totals for a period of Seven months, meaning thereby that the Tenant had already deposited rent until month of May 2019.

12. The Landlord instituted rent case in the month of April 2019, from the analysis of record it has been established that the rent was paid until the month of May 2019, thus it can be safely held that at the time of institution of rent case Tenant was not in default. This factual aspect has also been admitted by Counsel for Respondent No 3 by filing statement dated 23.12.2025 that Tenant had fully paid the rent until the month of

December 2025. Section 15 of the SRPO, 1979, stipulates the Rent Controller to pass ejection order when it is established on record that the tenant was in default of payment of rent, there was breach or infringement of tenancy agreement. For the sake of convenience, Section 15 of the SRPO, 1979, is reproduced below:

> *"15. (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.*
> *(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that –*
> *(i) ……*
> *(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment.*
> *provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;"*

13. From a perusal of the above provision of law, it can be deduced that the Court of Rent Controller is under obligation to pass the ejectment order if tenant was found in breach of conditions settled in the tenancy agreement, which is in consonance with the intent of legislature as word "shall" is embodied in Section 15 (ibid). However if the ejectment application is filed on the sole ground of default in payment of rent and the Rent Controller finds that there is no default in payment of rent or the default did not exceed for a period of six months and on the first date of hearing the tenant was ready to deposit the rent, and on deposition of the default amount ejectment application has to be dismissed.

14. It is a cardinal principle of law that the plea raised, in the pleading(s) by either of the party, would have no effect in the absence of evidence in proof of the same and does not equate the evidence rather the person who asserts a fact in pleadings has to prove the same by leading evidence, independent and unimpeachable, in its support, which is lacking in the present case because the landlord to its own admission deposed that rent was paid through MRC, even the Counsel for the Respondent filed statement that rent was paid until the month of December 2025, meaning thereby that the tenant was paying the rent in advance. It was onerous duty of the landlord to prove default in payment of rent which he failed. Learned Trial Court though in its findings observed that the rent was paid but objected upon the mode of payment. Trial Court observed that on refusal to receive rent amount, tenant sent the rent amount through postal money order by mentioning the wrong address. Trial Court further observed that the MRC was filed which too contained wrong address of Landlord.Section 10 of the SRPO dealt with the mode of payment of rent, which envisaged that the rent shall, in the absence of any date fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than the tenth of the month, the rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing, where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or, be deposited with the Controller within whose jurisdiction the premises is situate. The written acknowledgement, postal money order receipt or receipt of the Controller, as the case may be, shall be produced and accepted in proof of the payment of the rent. It transpired from the record that parties were on strained relations since 2003, it is why the landlord instituted suit No 427 of 2003 seeking cancellation of lease agreement, as such the presumption of truth lands in support of the Tenant's stance that landlord refused to receive rent. Once landlord refuses to receive the rent it is for the Tenant to opt either for deposit of rent with the rent controller or to send the same through money order, as sub section 3 of section contains word "may" which grants discretion to the Tenant to adopt either of the two modes embodied under SRPO. The payment of rent through MRC under the facts and circumstances of the case was justified. From the appraisal of the evidence of parties it can be safely held that the conclusion so

drawn by the two Courts below is self contradictory and even was not supported by the landlord, thus not tenable. It is held that the rent case on the ground of default was not maintainable as default in payment of rent is not borne out from the record.

15. SRPO was a beneficial legislature that protected the rights of landlord. In cases involving residential property, the landlord stands at a better footing to seek eviction. However in cases involving commercial activities wherein tenant enters into rent agreement for a long period of time to ensure the protection of investment made in the business, the court is required to observe reasonable restraint while deciding the rent application and may pass orders for ejectment when tenant was found guilty of breach of tenancy agreement. In the present case Tenant invested millions of rupees for installation of CNG site, in case of early eviction tenant will suffer huge financial loss. As such eviction could be ordered when breach of tenancy was apparent from the face of the record.

16. Adverting to the issue regarding change in land use of the demised premises. It is the case of the Landlord that lease agreement was entered into for establishing petroleum site, the tenant instead installed the CNG Station. During course of the arguments, counsel for the respondents placed on record the copy of the rules regulating the installation of CNG Station. Counsel for the respondent painstakingly tried to convince the Court that CNG was not part of the petroleum products. The Petroleum Products are regulated under the Mines and Oil Fields and Mineral Development (Government Control) Act, 1948 and the Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971, whereas, CNG stations are regulated through Compressed Natural Gas (CNG) (Production and Marketing) Rules, 1992 made by the government by exercising its powers conferred under the Mines and Oil Fields and Mineral Development (Government Control) Act, 1948. CNG is an alternate fuel source used as a substitute or alternate to the petrol and falls within the definition of petroleum product.

17. Moreover, the parties entered into agreement in 1998 and CNG station was installed soon thereafter the claim for the change of land use was instituted in the year 2019 meaning thereby at the time of installation

of CNG station Landlord had offered no resistance, meaning thereby that he was conscious of the fact that he had entered into tenancy for operation of a CNG station. The objection was on legal challenge that CNG was not the petroleum products, in fact for all the purposes CNG was a petroleum product which is self evident from the fact that CNG and petrol are regulated under the provisions of same statue.

18. Through CMA No.10232/2024 applicant seeks his impleadment as party to the proceedings. It is the case of the applicant/intervener that the demised premises were not owned by the respondent M/s. Karachi Aero Club. In this regard, the applicant has placed on record the order dated **3rd February 1949** passed by the Senior Member Board of Revenue on the application of respondent No.3 M/s. Karachi Aero Club, whereby claim fothe respondent No.3 regarding ownership of the demised premises has been declined. At the same time, the applicant has placed on record the report from Karachi Development Authority which reflects that neither the applicant/intervener nor Karachi Aero Club are owners of the demised premises. Besides, memo of plaint of the Suit seeking declaration, cancellation, possession, recovery and perpetual injunction has also placed on record, needless to observe that in rent proceedings, the Court of Rent Controller cannot enter into dispute as to the title of the demised premises. It has to regulate the tenancy between the parties. Under Section 2(f) of SRPO, the landlord is defined as follows:

> *"2. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context, –*
>
> *(f) "landlord" means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises;"*

19. From the above definition of the landlord, it is deducible that a person collecting the rent also falls within the definition of the landlord and can file a rent application. In the present case, the petition was paying the rent to the respondent No.3, therefore, M/s. Karachi Aero Club squarely falls within the definition of the landlord and the present rent application was rightly filed. Since the parties are already under litigation over title of the demised premises any observation by this Court at this stage may prejudice the case of either side. The fate of the present petition and observations tendered by the Courts below will not in any manner

affect the rights of the applicant/intervener if he successfully establishes his claim before Civil Court regarding the right of the ownership as such this application under Order 1 Rule 10 being without merits is accordingly dismissed.

20. This Court is saddled with a balancing task to do complete justice between the parties. Bestowed with supervisory and corrective powers in terms of article 199 of the constitution this Court sparingly interferes in the concurrent findings of the fact rendered by the courts below, only in the cases where the findings are found to be based on any illegality or irregularity and wrong exercise of jurisdiction are the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence. This Court cannot substitute the finding of the Courts below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below. In the present case the findings of courts below were based upon surmises and conjecture and wrong interpretation of law as such were flawed and deviant to the settled proposition of law for appreciation of law thus caused serious miscarriage of justice, inviting interference by this Court.

21. The case laws relied upon by the parties with utmost respect are distinguishable from the facts and circumstance of this case thus are distinguishable.

22. In the wake of above discussion, this petition is allowed. The judgement dated 02.02.2022 passed by the Court of Learned District Judge Karachi East in First Rent Appeal No.125 of 2021 (re: Muhammad Saeed Khan v. M/s. Karachi Aero Club (G) Limited Company and another), and order dated 11.10.2021 passed by the Court of learned Rent Controller-X, Karachi, East in Rent Case No.142 of 2019 (re: M/s. Karachi Aero Club (G) Limited Company V. Muhammad Saeed Khan) are set aside. The rent application filed by the Landlord / respondent No.3 is dismissed. Parties to bear own costs.

JUDGE

APPROVED FOR REPORTING

Nadir*