

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-757 of 2022

Petitioner : Abdul Waheed son of Abdul Hakeem,  
through Mr. Hyder Raza Arain,  
Advocate

Respondent No.1 : Not present.

Date of Hearing : 08.04.2026

Date of Reasons : 14.04.2026

### J U D G M E N T

**MUHAMMAD HASAN (AKBER), J.-** The Judgment dated 28.05.2022 [**impugned Judgment**] passed by the learned District & Sessions Judge, Karachi (East) dismissing in *limine* First Rent Appeal No.117 of 2022 has been assailed in this petition, which emanates from order dated 18.04.2022 passed by the learned 1<sup>st</sup> Senior Civil Judge & Rent Controller, Karachi (East), in Rent Case No.158 of 2019, whereby Petitioner's application under Order IX Rule 13 CPC., for recalling *ex parte* order dated 16.10.2019 and the ejection order dated 19.11.2019, was dismissed.

2. Succinct facts are that Respondent No.1 filed Rent Case No.158 of 2019 under Section 15 of the Sindh Rented Premises Ordinance, 1979 [**SRPO**], against the petitioner *viz a viz* "Shop No. D-1/IV, Ground Floor, Eastern Apartment, Block No. 6, Rashid Minhas Road, Gulshan-e-Iqbal, Karachi" [**demised premises**] on the grounds of alleged default in payment of rent, and bona fide personal need. It was alleged that the petitioner had been a chronic defaulter since December 2017 and had failed to pay monthly rent of Rs. 3,350/- despite repeated demands. The Rent Controller, after issuing notices, proceeded *ex parte* against the petitioner vide order dated 16.10.2019 and ultimately passed an ejection order against him on 19.11.2019, followed by Rent Execution Application No.06 of 2020, and it was only upon receipt of notice in such execution proceeding that the petitioner came to know of the entire rent case and its outcome. This prompted the petitioner to file an application under Order IX Rule 13 CPC seeking recall of the *ex parte* order and the

ejectment order, to enable him to contest the matter on merits. The Rent Controller dismissed that application on 18.04.2022 and the learned District Judge dismissed the appeal in *limine* on 28.05.2022, hence this petition.

3. Heard learned counsel for the Petitioner, while no one has appeared for Respondent No.1 despite repeated notices issued by this Court.

4. The core question for determination in this petition is whether the petitioner was ever properly served in the rent proceedings and whether the Courts were justified in rejecting his application for recall of the *ex parte* order. As regards the manner of service, the record shows that although the first notice dated 15.07.2019 was issued for service on 23.07.2019 at the business address of the petitioner's shop, however in the **Bailiff's Report** it is recorded that the petitioner was found at his home. The notice did not contain the address of the petitioner's home. The Rent Controller accepted the Bailiff's account without examining the bailiff on oath, without applying its judicial mind, and without appreciating that the bailiff's endorsement itself does not even mention the name of the person from whom the petitioner's home address was obtained, nor does it mention the name of any person who confirmed the identity of the petitioner at the time of purported service. The Report of substituted service by pasting was also challenged by the petitioner on the ground that the witnesses shown in the pasting report hailed from entirely different parts of the city, one from District Central and the other from District West, which circumstance creates serious doubts about the authenticity of such pasting as well. Also, no acknowledgement report of the registered letter or courier was ever produced to show that the petitioner was served through postal means in the ordinary course. The Rent Controller also did not record that the notice was ever affixed on the notice board of the Court as required when substituted service is resorted to. In the face of these glaring gaps in the record of service, the learned Courts below ought to have given the petitioner the benefit of the doubt and allowed him the opportunity to contest the matter on the merits.

5. The petitioner's application under Order IX Rule 13 CPC. was supported by an affidavit in which he categorically stated on oath that he never received any notice of the rent case and that he first came to know of the proceedings only when a notice of Rent Execution Application No.06 of 2020 was served upon him. This sworn statement went entirely un rebutted because Respondent No.1 did not file any counter affidavit before the Rent Controller challenging the same. It is an established principle that an un rebutted and unchallenged statement made on oath

carries significant weight and cannot be lightly brushed aside by a Court of law. The Rent Controller and the learned District Judge failed to give any weight to this sworn and unchallenged narration of the petitioner, which was an error of law going to the root of the matter.

6. There is another circumstance which the learned Courts below completely ignored. The Respondent No.1 had previously filed a Rent Case No. 371 of 2018 against the deceased father of the petitioner in relation to what appears to be the same or a connected tenancy. In those earlier proceedings, the petitioner appeared before the Rent Controller and moved an application pointing out that the case had been filed against a dead person, whereupon Respondent No.1 withdrew from such rent case. Such diligence and conduct of the petitioner in the earlier round of litigation demonstrates that he was not a person who ignored Court notices. Had he been properly served in the subsequent Rent Case No. 158 of 2019, he would have appeared and contested the matter, as he had done before.

7. The Courts below held that in view of Section 19(2) of the Sindh Rented Premises Ordinance, 1979, the Rent Controller had no power to rescind an *ex parte* order once it had been made. Such a view clearly appears to be in ignorance of principles repeatedly held in the cases of **Mst. Raheela Yasmeen**, **Mst. Kahirunnisa**, **Razia Gill**, **Har Ahmad**, **Feroze Ahmad**, **Glamour Properties Pvt. Ltd.**, **Rukhsana Shaheen** and **Yousuf**.<sup>1</sup> Such a view by the courts below cannot be applied mechanically when the very foundation of the *ex parte* order, namely, proper service upon the respondent, is itself in serious doubt. The finality attached to *ex parte* orders under Section 19(2) of the Ordinance of 1979 presupposes that valid service was affected in the first instance. When service itself is disputed, and the disputation remains unrebutted, applying the bar of Section 19(2) to permanently shut out a party from contesting would result in a grave miscarriage of justice and would be at odds with the constitutional guarantee of fair hearing enshrined in Article 10A of the Constitution.

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1. *Mst. Raheela Yasmeen through Attorney v. Muhammad Iqbal and 2 others* (2010 CLC 935), *Mst. Khairunnisa v. Muhammad Jaffar* (2001 YLR 166), *Razia Gill v. Mst. Leela* (1997 CLC 1126), *Har Ahmad v. M. Y. Kherati and another* (1996 MLD 1201), *Feroz Ahmad v. Kaley Khan through Legal Heirs* (1995 MLD 825), *S. Muhammad Saeed through Legal Heirs v. M/s. Glamour Properties (Pvt.) Ltd., Karachi* (1995 CLC 315), *Mst. Rukhsana Shaheen v. Mehmood Zafar Malik* (1994 CLC 1872), *Yousuf v. Assad-Ul-Haq and another* (1993 CLC 1787).

8. The learned District Judge also erred in dismissing the first rent appeal in

*limine* without even issuing notice to Respondent No.1 even though the appeal raised serious and substantial questions of law regarding service of process, the evidentiary value of an un rebutted affidavit, and the scope of Section 19(2) of the Ordinance of 1979. These questions merit a full hearing after notice. The summary dismissal of the appeal without hearing the other side was itself a procedural impropriety, and runs against the fundamental right of a fair trial guaranteed under Article 10-A of the Constitution of Pakistan.

9. Having carefully perused the record, I am of the view that both the Courts below fell into serious error in dismissing the petitioner's application and appeal. The findings recorded by both the Rent Controller and the Appellate Court suffer from a fundamental infirmity inasmuch as they failed to properly examine and appreciate the question of service of notice upon the petitioner.

12. In view of the above, I am satisfied that the impugned Judgment dated 28.05.2022 passed by the learned District & Sessions Judge, Karachi (East), and the impugned order dated 18.04.2022 passed by the learned 1<sup>st</sup> Senior Civil Judge & Rent Controller, Karachi (East), are not sustainable in law and are liable to be set aside.

13. Accordingly, this petition is allowed; the impugned Judgment dated 28.05.2022 and the impugned order dated 18.04.2022 are hereby set aside; the ejectment order dated 19.11.2019 passed by the learned Rent Controller is also set aside; and the execution proceedings arising out of the ejectment order have also become infructuous. The matter is remanded to the learned 1<sup>st</sup> Senior Civil Judge & Rent Controller, Karachi (East), with direction to allow the petitioner to file his written reply to the Rent Case No.158 of 2019 and thereafter to proceed to decide the said rent case afresh on merits in accordance with law, after giving due opportunity of hearing and evidence to both sides.

**JUDGE**