**JUDGMENT SHEET**
**THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS**

Civil Revision No. S-41 of 2026

| | | |
|---|---|---|
| Applicant | : | Nathoo Mal through Mr. Ghulam Nabi Meo, Advocate |
| Respondent No. 1 | : | PARCO Gunvor Limited through Mr. Farhatullah Yaseen, Advocate |
| Respondent No. 2 | : | Inspector Explosives (CIE), Government of Pakistan, not represented despite notice |
| On Court Notice | : | Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh |
| Date of Hearing | : | 24.08.2026 |
| Date of Judgment | : | 02.09.2026 |

**<u>JUDGMENT</u>**

**Muhammad Humayon Khan, J.:** Nathoo Mal, the Applicant, is aggrieved by the Judgment dated 07.01.2026 and Decree dated 08.01.2026 passed by the learned Additional District Judge-II/Model Civil Appellate Court, Mirpurkhas, allowing Civil Appeal No. 87 of 2025 against the Order dated 15.09.2025 passed in First Class Suit No. 56 of 2025 by the learned Senior Civil Judge-I, Mirpurkhas, whereby he had rejected the plaint of the said suit in *limine* under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter the "CPC").

2. PARCO Gunvor Limited, the Respondent No. 1, is a corporate entity engaged in the petroleum industry. The Applicant is a private citizen. Under a Lease Agreement registered vide No. 2293 dated 27.05.2015 before the Sub-Registrar, Mirpurkhas (hereinafter the "Lease Agreement"), the Applicant let out an area of his private land, being 01-00 acre located on Survey Nos. 106/7 and 106/8 in Tapo Kathri, Taluka Sindhri, District Mirpurkhas (hereinafter the "suit land") to the Respondent No. 1, a corporate entity, on lease for the construction of a petroleum station. The lease was initially for ten years from 27.05.2015 (though at some places in the plaint it is

stated to have begun from 19.05.2015), subject to renewals in terms of Clause 4(e) which reads:

> "That at the option of the Tenant [Respondent No. 1] on expiry of the period agreed here in above the Landlord [Applicant] shall grant to the Tenant lease of the Rented Land for further two renewal options of 10 years each on the terms and conditions mutually agreed upon between the parties."

The facts until now, including the execution of the Lease Agreement, are admitted as between both the parties.

3. The Respondent No. 1 pleads on the footing of the said clause 4(e) that, when the contract of ten years first expired on 18.05.2025 (though if it started on 27.05.2015, it would expire on 26.05.2025), the Respondent No. 1 continued in the occupation of the suit land by invoking the first renewal term and according to it this renewal was accepted by the Applicant by implication in the form of accepting rental payments without objection through online bank transfers being the same medium under which the Applicant used to receive rent when the lease was valid under the original term of ten years. It is also the Respondent No. 1's case that during this time it fully complied with the lease terms and conditions under the original agreement in view of such acceptance by the Applicant. It further pleads that it approached the Applicant in good faith to execute a written renewal but he refused to do so and, on the contrary, threatened it with dispossession. However, it pleads that due to continuous performance the lease renewal has been ratified by the Applicant which therefore continues to be in force under the option of renewal.

4. Upon institution of the suit, by Order dated 15.09.2025, the learned Senior Civil Judge rejected the plaint in *limine* holding it to be barred by law and not disclosing a cause of action. The Respondent No. 1 challenged the rejection in appeal, and by the impugned Judgment and Decree, the learned Additional District Judge set aside the Order dated 15.09.2025 and remanded the case back to the learned Senior Civil Judge for disposal on merit. This revision application challenges the impugned Judgment and Decree for effectively the same reasons that prevailed upon the learned Senior Civil Judge in rejecting the plaint of the Respondent No. 1's

suit. The revision was admitted on 02.04.2026 and on 24.08.2026 the case came up before me and I heard the learned Counsel for the parties at length.

5. Mr. Ghulam Nabi Meo for the Applicant took me through the facts of the case as well as the impugned Judgment and Decree and the Order dated 15.09.2025 and thereafter contended that the impugned Judgment and Decree are erroneous on law and facts. He raised effectively the same arguments as the grounds of revision and his main thrust was the same interpretation of Clause 4(e) of the Lease Agreement as well as Sections 111(a) and 116 of the Transfer of Property Act, 1882, as understood by the learned Senior Civil Judge. He contended that the plaint was rightly rejected by the learned Senior Civil Judge and that the impugned Judgment and Decree are liable to be set-aside. He therefore prayed for this revision application to be allowed as prayed.

6. Mr. Farhatullah Yaseen for the Respondent No. 1 supported the impugned Judgment and Decree and naturally opposed the Order dated 15.09.2025 which according to him was erroneous both on facts and law. He contended that in the circumstances of the case the plaint could not have been rejected under Order VII Rule 11 of the CPC and the learned Senior Civil Judge was required to proceed on merit. He contended that Clause 4(e) of the Lease Agreement vests the option in the Respondent No. 1 to renew the Lease Agreement and there is no ambiguity in the same. He opposed the Order dated 15.09.2025 and stated that the learned Senior Civil Judge had assumed imaginary conditions which did not exist and that the Applicant had in fact accepted the renewal through his conduct. He stated that there was huge interest of the Respondent No. 1 in the suit land and that the impugned Judgment and Decree are in accordance with the law and facts.

7. It would appear that the entire dispute turns on the interpretation and proper construction of Clause 4(e) of the Lease Agreement and whether the Respondent No. 1 in fact has the legal character that it is seeking to assert under Clause 4(e) and the governing law.

8. In this backdrop, and before moving further, I may make note of two important things relating to the exercise of jurisdiction under Order VII Rule 11 of the CPC. The *first* is that the Court is presently concerned with sub-rule (d) of Rule 11 according to which a plaint may be rejected where the suit appears from the statement in the plaint to be barred by law. Within this jurisdiction, there are certain principles on which it is to be exercised. These may be stated as follows:

(i) For the purposes of Order VII Rule 11 of the CPC, the contents of the plaint are to be presumed as correct and the plaint will be rejected if, upon presuming the contents of the plaint as correct, the suit appears to be barred by law. See *Abdul Waheed v Mst. Ramzanu* 2006 SCMR 489, *Muhammad Altaf and others v Abdur Rehman Khan and others* 2001 SCMR 953 and *Haji Allah Bakhsh v Abdur Rehman and others* 1995 SCMR 459.

(ii) Apart from the plaint, the documents attached with the plaint or admitted by the plaintiff as well as facts and material the effect of which is beyond controversy is also to be taken into consideration. See *S. M. Sham Ahmed Zaidi through Legal Heirs v Malik Hassan Ali Khan (Moin) through Legal Heirs* 2002 SCMR 338, *Haji Abdul Karim and others v Messrs Florida Builders (Pvt) Limited* PLD 2012 SC 247 (hereinafter the "Florida Builders Case") and *Ahmed Ali Talpur v Sub-Registrar, Latifabad, Hyderabad and others* PLD 2025 SC 302.

(iii) Where the Court does undertake an exercise under Order VII Rule 11 of the CPC, it has the duty to do a whole and judicious reading of the plaint and read through any clever or astute drafting. See *Misree Khan and others v Abdul Ghafoor and others* PLD 2025 SC 24, *Ahmed Ali Talpur* and *Mst. Rehmat Begum v Mehfooz Ahmed and others* PLD 2024 SC 1108.

9. It will thus be seen that the jurisdiction to be exercised under Order VII Rule 11 (d) turns on points of law, because that is exactly

what it contemplates. The situation is of course different in mixed questions of law and fact and pure questions of fact and in which case the jurisdiction under Order VII Rule 11 of the CPC would not apply.

10. The *second* proposition follows from the first and which is that it is well-established that the question of the proper construction of clauses in an agreement is a pure question of law and it is distinct from the proof of a document through evidence which is a factual matter. In *Gulzar Khan v Mst. Shahzad Bibi and another* PLD 1974 SC 204, being one in the plethora of authorities on this point, it was observed that:

> "While it is undoubtedly correct that an inference drawn from evidence amounts to a finding of fact, **yet it is well settled that the question of the proper construction of a document is a question of law and not of fact. In the present case, the question turns solely on the construction of the document by which the transaction was evidenced** and therefore, the High Court was right in regarding this as a question of law and giving its own interpretation, an interpretation with which we agree." [Emphasis added]

Reference may also be made to *Rafiq Dawood and 4 others v Messrs Haji Suleman Gowa Wala & Sons Ltd* 2009 CLC 1070 and *J.K. Twills and Drills (Pvt.) Ltd through Authorised Director and another v Premier Insurance Company of Pakistan Limited and another* 2023 CLD 1098.

11. As such, the Court has to presume the facts pleaded as correct, but it is not bound by the legal constructions or conclusions pleaded by the plaintiff. In my view, therefore, construction of clauses in an agreement or document is perfectly acceptable at the stage of Order VII Rule 11 of the CPC under two circumstances. The first is where the document is either admitted between the parties, such as in a counter-affidavit to an application under Order VII Rule 11 of the CPC or in any manner reliably before the Court. The second is where the document is disputed but the plaintiff relies upon the document to plead its legal character, because the facts pleaded (and therefore the validity of the document sourcing the legal character) have to be presumed as correct. The Court will then have to see whether, accepting the facts pleaded, the plaintiff has the legal

character according to the proper legal construction of the document or agreement relied on by it.

12. Having so understood the position of the learned Trial Court's jurisdiction under Order VII Rule 11 of the CPC, I now frame the following points for the determination of this revision with both having to be discussed together being interconnected:

**Point No. 1** What is the nature of Clause 4(e) as it emerges from its proper construction, and what legal character does it give rise to?

**Point No. 2** If the suit is not consistent with the legal character actually borne by the Respondent No. 1, what is the result?

**Discussion**

13. In constructing Clause 4(e) of the Lease Agreement, the Court has to apply certain basic principles of interpretation of documents that are well-settled. The principles relevant for the present purposes may be stated as follows:

(i) Under Article 102 of the Qanun-e-Shahadat Order, 1984, when the terms of a contract have been reduced to writing, no evidence shall be given in proof of the terms of the contract except the document itself (or the same document in the form of secondary evidence as per Articles 72 to 77). This applies after the document is proved or it is admitted by the parties. Under Article 103 of the QSO, no oral evidence is admissible to contradict, vary, add to or subtract from the written contract.

(ii) The words used in the document are to be given their plain, ordinary and literal meaning. The Court cannot add or imply anything or deviate from the contract in a way that is inconsistent with the express terms of the Contract. The Court interprets the contract already formed and does not make one for the parties nor amend it according to its understanding of what is reasonable. The intention is to be gathered from within the document. See *House Building Finance Corporation v Shahinshah Humayun Cooperative Housing Building Society and others* 1992 SCMR 19 at paras 10 and 11 (hereinafter the "Shahinshah Humayun case").

(iii) The 'ordinary' meaning so to be ascribed is in fact a meaning that a reading of the contract would convey to the reasonable person.

(iv) The Court has to give effect to every word of the contract and interpret it in a way that does not make any part of it redundant. See *Shahinshah Humayun case.*

(v) The Court is to exercise the principle of *ut res magis valeat quam pereat* (it is better for the thing to be saved than to be made void). The Court cannot ascribe to a contract a meaning against the law, and the parties cannot be assumed to have contracted against the law whether expressed in statute or binding case law. Thus, if a term is reasonably capable of two constructions, one being lawful and effective and the other being unlawful and ineffective, then the lawful and effective construction is to be adopted. See *The Interpretation of Contracts by Sir Kim Lewison, A Lord Justice of Appeal, 5th Edition* at 7.16 as referred to in *Saleem Shahadat v Mst. Noor Jahan and another* PLD 2019 Lahore 346, *Muhammad Ismail and others v Mst. Mussarat Zamani and others* PLD 1985 SC 86 (which in turn relies on *Archbolds (Freightage) Ltd. v S. Spanglett Ltd.* (1961) 2 WLR 170 at 179 and 1982), *Mian Zafar Iqbal and others v Bashir Ahmed and others* PLD 1989 Lahore 152.

14. I now turn to Clause 4(e) and it will be seen from its plain reading that there are multiple future acts contemplated. In fact, to my mind, the clause can be safely broken up into three parts each having to be read effectively together:

| **First Part** | **Second Part** | **Third Part** |
|---|---|---|
| That at the option of the Tenant on expiry of period agreed here in above… | …the Landlord shall grant to the Tenant lease of the Rented Land for further two renewal options of 10 years each… | …on the terms and conditions mutually agreed upon between the parties. |

15. To my mind, the third part plays the most decisive role for the reason that it qualifies the words "shall grant" in the second part with a condition which requires a proper reading with the preceding parts. The words "shall grant" are dependent upon the qualifying condition which is "on the terms and conditions mutually agreed upon between the parties." The major emphasis of the learned Additional District Judge was on the word "shall" in "shall grant" which does indeed convey a mandate, however with all due respect the learned Judge ignored the remainder of the clause in construing it. As a matter of English grammar the word "shall" creates a mandate, but if it is qualified by some condition, then the performance becomes mandatory only upon the fulfillment of the qualifying condition and not otherwise.

16. I may note that clauses contemplating automatic renewal are not uncommon in the experience of the Court. However, the nature and language of such clauses is materially different and in which cases the landlord barters away their right of refusing consent at the time of the original lease. Such clauses are usually clear in providing that the tenant shall have the sole option to renew and that, when exercised, the landlord would be bound by the renewal on the same terms as the original lease. In *Faisal Ikram v Additional District Judge, Rawalpindi and 2 others* 2013 MLD 541, there was such a clause before the Lahore High Court where the original term being five years was "renewable for further term of five years with the same terms and conditions…" and in this background it was held that the tenancy could be renewed upon the same terms. The clause presently before the Court is materially different. In my view, therefore, the intention of Clause 4(e) is not to contemplate renewal solely at the option of the Respondent No. 1 but rather upon the

fulfilment of the qualifying condition of mutual agreement on terms and conditions.

17. It cannot be lost sight of that the words "shall grant…Lease…" in Clause 4(e) convey an act of positive nature, i.e. the execution of a fresh lease, as admitted by the Respondent No. 1 itself in para 16 of the plaint:

> "It is acknowledged that Clause 4(e) of the agreement requires the execution of a formal lease renewal deed in writing to effectuate the extension of the lease term."

This negates the competing reading of Clause 4(e) which is that the lease will be renewed automatically on exercising the option by the Respondent No. 1. That being the position, there is no possibility of extension without mutual agreement by a written lease. This view of Clause 4(e) is also consistent with the governing legal provision, which is Section 107 of the Transfer of Property Act, 1882 (hereinafter the "1882 Act") and which provides:

> "**107. Leases how made. –** A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.
>
> All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
>
> …"

It will be understood without difficulty from Section 107 that a lease for a period exceeding one year or from year to year has to be executed in writing and registered by compulsion of law. Therefore, what follows is that any unwritten or unregistered lease for a period beyond what is permitted in Section 107 would be against the express law (being incapable of giving rise to the ten-year leasehold estate pleaded by the Respondent No. 1) and therefore necessarily beyond the objective intention of the Lease Agreement, which under the safest legal construction was not to go against the law.

18. Mr. Farhatullah Yaseen for the Respondent No. 1 referred me to *Mrs. Zehra Begum v Messrs Pakistan Burmah Shell Ltd* PLD 1984 SC 38 on the basis of which he stated that the lease was automatically renewed. However, on a closer look the circumstances

in which it was decided are materially different. *Firstly*, it is clear on the face of the judgment that the Hon'ble Supreme Court was not concerned with, and therefore did not decide, whether a fresh ten-year lease estate could be created without compliance with Section 107 of the 1882 Act. *Secondly*, the ratio of *Mrs. Zehra Begum* has already been interpreted by the Hon'ble Supreme Court in *Muhammad Naseem Khan and 5 others v United Bank Limited* PLD 2000 SC 753 by holding that *Mrs. Zehra Begum* does not contemplate a lease in favour of the tenant without the consent of the landlord. *Thirdly*, the Hon'ble Supreme Court there had a case where it was an established fact that the first renewal had already taken place in May 1975 upon the same terms and conditions and was subsisting until 1985, meaning that the Hon'ble Supreme Court proceeded upon a renewed term already subsisting and the issue was only whether the landlady could obtain premature ejectment under the rent control law. *Fourthly*, the nature of the conditions for renewal, being embodied in Clause 4(e), in the present case is quite different and it is not appropriate to say that in the presence of the words "*shall* grant" and "terms and conditions *mutually agreed*" the renewal could be subsisting or automatic and so in my opinion the ratio in *Mrs. Zehra Begum* would not operate on the facts of the case.

19. I have therefore concluded that clause 4(e) upon its pure construction contemplates as follows:

i) first, that the Tenant (Respondent No. 1) shall exercise the option of renewal if it so desires;

ii) second, that if the Tenant (Respondent No. 1) does in fact exercise that right, the clause permits it to initiate the contemplated renewal exercise subject to the third part; and

iii) third, that the fresh lease should be executed upon the terms and conditions to be mutually agreed between the Landlord (Applicant) and the Tenant (Respondent No. 1). The final lease being one of ten years would have to be embodied in a written instrument compulsorily registrable under Section 107 of the 1882 Act read with Sections 17(1)(d) and 49 of the Registration Act.

20. It thus seems to me that Clause 4(e) is an example of what one may call an “agreement to agree” or an “agreement to negotiate.” Such agreements are not concluded contracts but merely agreements where the parties agree that they will enter into a contract in the future if they reach a mutual understanding of the terms of the contract so to be formed. Thus, a possible future bargain is envisioned without specifically providing as to what the bargain would be. And parties are not disentitled from saying in an otherwise valid contract that they will make another one later if they agree to future terms when the time arrives, but since the terms of the future contract are not yet certain, and because Courts cannot force the parties to reach a mutual agreement, these agreements to agree or negotiate are not enforceable as a matter of law. The clearest position on the underlying concept is in English common law and in particular in Lord Buckmaster’s speech in *May and Butcher Limited v The King* [1929] UKHL 2 = [1934] 2 KB 17 which goes:

> “…It is of course perfectly possible for two people to contract that they will sign a document which contains all the relevant terms, but it is not open to them to agree that they will in the future agree upon a matter which is vital to the arrangement between them and has not yet been determined.”

In *Muhammad Matloob and 10 others v Jamshed K Marker and 2 others* PLD 2006 Karachi 523 it was held on the same basis that for a contract to be formed there has to be consensus *ad idem* upon all the material conditions of the contract.

21. In *Aroma Travels Services (Pvt.) Ltd. through Director and 4 others v Faisal Al Abdullah Al Faisal Al-Saud and 20 others* 2017 YLR 1579 it was held by this Court that agreements to negotiate are not enforceable before Courts. Later on, in *Messrs Aploi (Private) Limited through Authorised Representative v Federation of Pakistan and 4 others* 2023 MLD 505 it was held that agreements to agree do not create “a concluded and enforceable contract.” Such agreements to agree or negotiate where the final terms are left open to be mutually agreed being uncertain are also covered by Section 21(c) of the Specific Relief Act, 1877, which provides that a contract the terms of which the Court cannot find with reasonable certainty are not specifically enforceable.

22. The situation as between the Applicant and the Respondent No. 1 with regard to Clause 4(e) is the same. The parties, to my mind, agreed that the option of triggering the renewal mechanism will lie with the Respondent No. 1, but consistent with the subsequent parts of Clause 4(e), the renewed lease shall be concluded upon terms to be mutually agreed and, as also admitted by the Respondent No. 1, by a written registered instrument. The only term that is settled under Clause 4(e) is that there would be an option of two renewals each being ten (10) years, but all other material terms, such as the rent, the mode of payment, the obligations and rights of the parties being potential lessor and lessee, are left open to be mutually agreed later on. What follows is that Clause 4(e) is an agreement to enter future negotiations at the choice of the Respondent No. 1, but not a contractual obligation compelling the Applicant to renew the lease and is not at all capable of renewing the lease automatically without mutual consensus as to terms and conditions. In fact, the Respondent No. 1's case is no better than those which I shall now discuss.

23. The first case is *Muhammad Naseem Khan* cited above, which was decided by the Hon'ble Supreme Court. The dispute was between United Bank Limited and private landlords, and the bank was seeking the automatic effect of renewal upon a similar renewal clause as in the present case. It was observed as follows at paras 3 and 10:

> "3. Case of the respondent/Bank is that they are tenants in the said premises for the last 25 years and that a registered lease was executed by the then landlord in its favour for five years, which was valid till 31-12-1995, as such, when the eviction application was filed it was premature. **It is also their case that according to the agreement, it is within their option to apply for renewal of tenancy for further period on terms and conditions to be mutually settled by the parties.**
>
> 10. …**extension of lease is always contingent upon the consent of the landlord and such period cannot be extended unilaterally. Mst. Zehra Begum (supra) does not contemplate a perpetual lease in favour of tenant without the consent of the landlord.**" [Emphasis added]

24. The next case is *TOTAL Parco Pakistan Limited through Authorized Officer v Pakistan Civil Aviation Authority through Director*

*General, Karachi and 2 others* 2023 YLR 1616, in which a very similar renewal clause was present in the contract between the two parties. The case was before my learned brother, Adnan Iqbal Chaudhry J, who held:

> "20. The other leg of the Plaintiffs submission was that the proviso to clause 5 of the lease deed dated 23-04-2013 was a covenant to renew the lease on its expiry and binds the CAA to such renewal. That clause-5 reads as follows:
>
> > '5. On the expiry of the tenure of the lease hereby created or on sooner determination of the lease in the event of breach if any of the condition as mentioned above, the Lessee shall without delay peacefully vacate the premises and shall hand over to the Lessor free of all costs such buildings, on the said land. **Provided further that on expiry of the period agreed here in above at the option of the Tenant, the Landlord shall grant to the tenant lease of the Rented Land for further renewal option on the terms and conditions mutually agreed upon between the parties.'**
>
> 21. **Firstly, the proviso to clause 5 only envisaged further lease if the parties 'mutually agreed' and did not by itself constitute an agreement to lease to renew the lease. In Heysons Commercial and Industrial Corporation Ltd. v. Trustees of the Port of Karachi (1987 CLC 591) it was held by this Court that the word 'mutual' signified that there had to be consensus between the parties on the terms for renewing the lease, and until there is such consensus it cannot be presumed that both parties agreed or complied with the renewal clause…**" [Emphasis added]

It is to be noted that, although his Lordship was not inclined to reject the plaint in that case, that was because there was a prayer for specific performance of an agreement to lease which according to the parties before his Lordship had manifested by a document that required evidence. The application for injunction by the tenant was still dismissed having failed to demonstrate a *prima facie* case. The circumstances in which the plaint survived in that case and those presently before me are different to that extent but the principle laid nevertheless very clearly applies.

25. The last case to be discussed, which is also referred to by Adnan Iqbal Chaudhry J. in *TOTAL Parco*, is *Hyesons Commercial and Industrial Corporation Ltd v The Trustees of Karachi Port Trust* 1987 CLC 591. The case was also decided by an earlier bench of this Court with reference to a similar clause contemplating that the

Landlord (Karachi Port Trust) shall "at the expense of the tenants grant to them a lease of the premises for a further term of 25 years on such fresh terms, **covenants and conditions as may then be *mutually* agreed upon**" (emphasis added). The Court held as follows:

> "…There is no dispute about the meaning of the word 'mutual' but the fact remains that there is no consensus between the parties to the terms and conditions of the new lease. The plaintiffs did not even indicate that they would be the reasonable rent for the plot in their possession. It is true that when the terms of the lease are to be settled mutually it should be decided with the consensus of the parties, but in the present case they have failed to come to terms jointly…"

26. One could conceivably divide optional renewal clauses into two kinds, the first being an "option to renew" where the right to renew is exclusively vested in the lessee (as happened in *Faisal Ikram*), and the second being "optional to *seek* renewal" where the option is not to automatically renew but to invoke a certain mechanism of renewal such as happened in *Muhammad Naseem Khan*, *Total PARCO* or *Hyesons* or, for all that matters, in the present case.

27. Now I turn to the argument to which the Respondent No. 1 has resorted after the rejection of the plaint. (This plea is not raised in the suit.) It is that the Respondent No. 1 is a tenant by holding over and so it has continued protected rights as a lessee. The concept of tenancy by holding over comes from Section 116 of the 1882 Act, which provides:

> "**116. Effect of holding over. –** If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, **in the absence of an agreement to the contrary**, renewed from year to year, or from month to month, according to the purpose for which the property is lease, as specified in section 106." [Emphasis added]

Under Section 106 so referred, it is provided that, in the absence of a contract or local law or usage, an immovable property lease for agricultural or manufacturing purposes shall be year-to-year, while for all other purposes it shall be month-to-month.

28. In *Hyesons Commercial and Industrial Corporation* it was held with reference to *Gobinda v Dwerka* 26 IC 262 and *Dasrethi v Sarat* AIR 1934 Cal 135 that the words "in the absence of an agreement to the contrary" refer to the terms of holding over and that a renewal clause is such a term. In *Shanti Prasad Devi and another v Shankar Mahto and others* 2005 INSC 285 = AIR 2005 SC 2905 = (2005) 5 SCC 543, it was held in similar circumstances at paras 18 and 19 that:

> "18. …The agreement of renewal contained in clause (7) read with clause (9) required fulfilment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell within the expression 'agreement to the contrary' used in Section 116 of the Transfer of Property Act. Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specific conditions.
>
> 19. …In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was 'an agreement to the contrary' within the meaning of Section 116 of the Transfer of Property Act. In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by 'holding over' on mere acceptance of the rent offered by the lessee…The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was 'holding over' as a lessee within the meaning of Section 116 of the Transfer of Property Act."

29. I therefore hold that, in view of Clause 4(e), there was an "agreement to the contrary" as provided in Section 116 of the 1882 Act and as a result, I am afraid, the plea of the Respondent No. 1 that it is a tenant by holding over is incorrect and misconceived. There is no holding over in the presence of Clause 4(e), even accepting the pleas of the Respondent No. 1, and the mere fact that the Applicant has been accepting rent cannot constitute a holding over tenancy in view of the agreement of the parties as reflected in Clause 4(e) as rightly observed in *Shanti Prasad Devi* by the Indian Supreme Court.

30. Thus, even after taking the Respondent No. 1's pleadings at face value, it must follow that:

i) Clause 4(e) is only an agreement to negotiate upon the terms and conditions of the future renewal that have been left open to mutual agreement by the parties. It does not provide for renewal unilaterally simply because the Respondent No. 1 exercises its option.

ii) It is seen from the own admissions of the Respondent No. 1 made in the plaint that no such mutual agreement as to terms and conditions was reached nor any such instrument has been pleaded or provided and that the Applicant is most unwilling to reach such mutual agreement (otherwise he would not have, allegedly, threatened the Respondent No. 1 to leave the property). Therefore, from the statements of the plaint itself, there is no renewal. Since no such mutual agreement took place, Clause 4(e) on its own is not capable of giving rise to the renewal pleaded by the Respondent No. 1.

iii) Clause 4(e) operates as "agreement to the contrary" under Section 116 of the 1882 Act, and as such there is no tenancy by holding over.

31. What, then, is the legal character of the Respondent No. 1? The answer to this is found in the meaningful definition of the word "tenant" in 2(j) of the Sindh Rented Premises Ordinance, 1979 as including not only a person occupying the property under a valid tenancy agreement (or lease for that matter) but also someone in occupation of the property "after the termination of his tenancy." It seems to me that Section 2(j)(i), in its second part, is reflective of the common law concept of "tenant at sufferance" as someone who occupies the property under a lease or tenancy that has been determined or terminated. As such, in my view the Respondent No. 1, according to its own pleas, is still a tenant though only at sufferance and to the extent provided in Section 2(j)(i) of the 1979 Ordinance (also known as a statutory tenant), and not by the operation of a lease. I fully agree with the learned Senior Civil Judge in his understanding of this concept, though I disagree that the Respondent No. 1 is a trespasser because its original entry was under a valid lease. That confers upon the Respondent No. 1 a right

not to be dispossessed without due process and upon the Applicant to initiate proceedings for ejectment, but in no way does it confer upon the parties a legal right to stay without a valid lease (which has not taken place due to the conditions agreed in Clause 4(e)) or to dispossess the other without due process (which is a constitutional right).

32. Now the only aspect which remains to be considered is the effect of the legal character of the Respondent No. 1 upon the maintainability of the suit. It will be seen that the legal character being asserted is that of a renewed lessee and at times the Respondent No. 1 has even claimed "permanent, vested rights" in the land and whereas the injunction prayers are also consistent upon the plea that the lease has been renewed automatically although, as already discussed, Clause 4(e) is incapable of giving rise to any such automatic renewal.

33. To my mind, the only relief perhaps the Respondent No. 1 could claim in the circumstances of its case was an injunction restraining the Applicant from dispossessing it except with the due process of the law. However, no such prayer has been specifically made as required by Order VII Rule 7 of the CPC, and the Court will not be moulding any prayer without (unlawfully) changing the nature of the pleadings or the suit. The suit is constructed on the grounds that the lease has been renewed and that the Respondent No. 1 is a lawful tenant for the next ten years and even statedly until 2045, which is not correct. For such circumstances it is well established that the plaint of a suit which is barred by law is liable to be rejected.

**Conclusion**

34. I therefore answer **Point No. 1** as per para 30 above, and **Point No. 2** by stating that the suit is barred under Sections 42 and 56(f) read with Section 21(c) of the Specific Relief Act, 1877. As such I hold and order that:

i) Although the learned Additional District Judge had the jurisdiction to interpret and construct the Lease Agreement, he exercised it with material illegality and irregularity in a manner that made a material portion of Clause 4(e) of the Lease Agreement meaningless and redundant with the result that an otherwise stillborn suit was incorrectly held to be maintainable.

ii) Accordingly, the impugned Judgment dated 07.01.2026 and Decree dated 08.01.2026 warrant interference in revisional jurisdiction and are set-aside.

iii) The plaint in First Class Suit No. 56 of 2025 filed before the learned Senior Civil Judge-I, Mirpurkhas, is consequently rejected under Order VII Rule 11 of the CPC.

35. For these reasons and in the above terms, this revision application is allowed and all listed applications are disposed of.

36. However, on a perusal of the record, it appears that no court-fee stamp has been filed with the revision application although the valuation of the original suit was Rs. 20,000,000/-. In the interest of merit and to avoid technical findings, this Judgment is being made subject to the Applicant supplying court fee of Rs. 15,000/- in this case plus penal costs of Rs. 20,000/- to be paid for purchase of books in the High Court Bar Association, Mirpurkhas, positively within seven (7) days from the announcement of this judgment. In the meantime, this revision is deemed to be pending, and the judgment shall be deemed to take effect from the eighth ($8^{th}$) day of its announcement and that too only if due compliance is made by the Applicant. The receipt of the costs mentioned above is to be filed before the Court to reflect compliance. In case of failure, the office shall list the matter for non-compliance.

**JUDGE**

**<u>Approved for reporting</u>**

***Faisal***