

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 786 of 2023

Abdul Ghafoor Petitioner.

Versus

Nasir & another Respondents.

Mr. Muhammad Imran Ameer, Advocate for the Petitioner.

Mr. Faraz Faheem Siddiqui, Advocate for Respondent No.1.

Dates of hearing : 10.03.2025, 21.03.2025 & 18.08.2025.

Date of announcement : 26.09.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has been filed impugning the judgment dated 16.08.2023 passed in First Rent Appeal No.83/2022. The said First Rent Appeal emanated from the order dated 08.04.2022 passed by the learned Rent Controller in Rent Case No.341/2019 whereby the ejectment application filed by the Respondents under Section 15(1)(2)(ii) of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”) was allowed. Consequently, the Petitioner was directed to vacate the tenement in question. Thereafter, the said order was impugned as noted above in the First Rent Appeal and the same was dismissed vide impugned judgment. The learned counsel therefore impugned the concurrent findings of the learned Courts below.

2. Prior to recording the contention of the respective counsels, it will be necessary to highlight a timeline simplifying the dispute between the parties. It is reflected from the record that father of Respondent No.1 namely Syed Riasat Ali was the owner of the tenement and the tenement was let out to the Petitioner by the deceased by virtue of Tenancy Agreement dated 07.06.2005. Subsequently,

father of the Respondent No.1 expired on 31.01.2016. It is also evident that earlier the Petitioner filed a suit for permanent injunction against the deceased father of Respondent No.1 bearing Civil Suit No.1129/2016. Subsequently, the said suit was decreed restraining the Respondents from dispossessing the Petitioner without due course of law.

3. The learned counsel for the Petitioner primarily argued that there is no relationship of landlord and tenant between the respective parties as the Petitioner was the tenant of Syed Riasat Ali and did not know about his demise. He has further stated that there is no privity between the Petitioner and the present Respondent who claims to be the legal heir of late Syed Riasat Ali. Further he has argued that there is no default in payment of rent and the findings of the Courts below are liable to be set aside. He has further stated in this regard, that he filed an MRC in a timely manner and deposited the rent, therefore the findings of the Courts below on this issue are liable to be set aside.

4. Conversely, learned counsel for the Respondent has argued that the relationship of landlord and tenant between the parties is admitted and in this respect the stance taken by the Petitioner is misconceived. He has invited my attention to the Civil Suit filed by the Petitioner for permanent injunction in which an application was filed informing the Court that Syed Riasat Ali had passed away. He has further argued that news of the death of Syed Riasat Ali was very much in the knowledge of the Petitioner therefore the plea taken by him in the rent case is contrary and misconceived. In respect of default, the learned counsel has submitted that prior to depositing rent in MRC the Petitioner had already committed default. He has further argued that prior to sending money order, the said MRC was filed and the same can only be classified as default.

5. I have heard both the learned counsels and perused the record. I will first examine the contention regarding the relationship of landlord and tenant between the parties. I agree with the contention of learned counsel for the Respondent that the Petitioner was aware about the death of Syed Riasat Ali and cannot at this stage take the plea that he has taken. The application filed by the present Respondent

intimating the court above the death of his father was filed in the suit preferred by the Petitioner. Thereafter, the Petitioner himself filed an amended title in the noted suit. The said fact has also been admitted by the Petitioner in his Written Statement filed in the noted rent case.

6. It is ironic that the Petitioner in his cross examination admitted his failure to dispatch a money order prior to filing of the MRC for the reason that he did not know the address of the present Respondent. However, perusal of the Written Statement filed by the Petitioner in the noted rent case indicated a contrary stance taken by the Petitioner, more particularly in paragraph number 6, wherein he states that he attempted to remit rent through money order. In light of what has been held above, both learned Courts below have rightly held that relationship of landlord and tenant existed between the Petitioner and the Respondent

7. On the issue of default it has been admitted by the Petitioner that no money order was sent prior to deposit of rent in the MRC. The contrary stance taken by the Petitioner has already been highlighted in the aforementioned paragraph. No further deliberation in this regard is warranted. Further, it is apparent from the record that the Petitioner first tendered rent in the MRC on 03.11.2016 which inevitably meant that the Petitioner even prior to filing of the MRC had committed default. In this respect also the concurrent findings of the court below require no interference.

8. The limited scope of writ petitions against concurrent findings was elaborated in the case of Shajar Islam Versus Muhammad Siddique and 2 others¹ wherein it was held as under: -

“The learned counsel for the Respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ

¹ PLD 2007 SC 45

jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.”

In light of what has been held above, the instant petition is dismissed alongwith all pending applications. There is no order as to cost.

J U D G E

Nadeem Qureshi “PA”