

Judgment Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Ind Appeal No. 142 of 2010

[Pakistan State Oil Co. Ltd. Vs. Abdul Khaliq Gandakwala and others]

Appellant	Through Mr. Muhammad Nasir, Advocate
Respondent-3, KESC	Through Mr. Iftikhar Ahmed, Advocate
Date of Hg:	21.01.2026
Date of Judgment:	06.02.2026

ARSHAD HUSSAIN KHAN, J. Through this Second Appeal, the appellant has called in question the judgment dated 13-07-2010 and decree dated 22-07-2010, passed by the learned Vth Additional District Judge, Karachi East, in Civil Appeal No.19 of 2006, whereby the appeal was dismissed, and the judgment and decree dated 24-12-2005 and 31-12-2005, respectively, passed by the learned IVth Senior Civil Judge, Karachi East, in Suit No.1274 of 2002, were maintained. The appellant seeks reversal of the concurrent findings recorded by both the courts below primarily on the grounds of limitation, alleged misreading and non-reading of evidence, and erroneous interpretation of the terms of the lease deed.

2. Briefly the facts giving rise to the present appeal are that the suit was filed by the respondent No.1/plaintiff, claiming to be the owner and landlord of the property bearing Plot/Survey No.674/1, Sheet No.JM, Jamshed Quarters, situated at Clayton Road, Karachi, and seeking recovery of damages amounting to Rs.15,22,183/- and mandatory injunction. It was pleaded that appellant/defendant No.1 was inducted as a tenant under a lease deed dated 07-06-1969, whereby it had agreed to pay all local taxes, electricity and water charges except ground rent and income tax. It was alleged that during the tenancy period from 1969 to 1999, appellant failed to discharge the said liabilities, resulting in accumulation of dues payable to Excise & Taxation Department, KESC and KW&SB. After eviction of the appellant through rent proceedings and recovery of possession in the month of February 1999, the respondent No.1 received demand bills from the concerned departments and upon failure of appellant/defendant No.1 to clear the same despite notices, instituted the aforesaid suit for recovery, damages and consequential relief.

3. Learned counsel for the appellant has argued that the impugned judgments suffer from misreading and non-reading of evidence and are not sustainable in law. It was contended that the suit filed by respondent No.1 was barred by limitation, as the claim related to alleged dues spanning several decades and no lawful demand was raised within the prescribed period. The courts below, according to learned counsel, failed to consider this legal bar. It was further argued that respondent No.1 violated the terms of the lease deed, particularly Clause 5(a), by not issuing any notice of demand prior to alleging default, which fact was admitted in evidence. Learned counsel submitted that all challans and bills were issued in the name of respondent No.1 and no evidence was produced to show that such demands were ever conveyed to the appellant. Learned counsel has also contended that the claim for damages was neither proved nor legally maintainable, especially after the death of the original plaintiff, and that the appellate court erred in enhancing the damages and imposing compensatory costs. On these grounds, interference by this Court was sought.

4. On the other hand, learned counsel for respondent No.1 remained absent. However, learned counsel for Respondent No.3 appeared before this Court and submitted that all outstanding dues claimed in the suit have already been recovered from Respondent No.1. He further submitted that the dispute is now confined solely to the principal parties, that is, appellant and respondent No.1.

5. Heard learned counsel for the parties and perused the material available on the record.

From the record, it appears that after a full-dress trial, the learned trial Court decreed the suit vide judgment dated 24.12.2005 and decree dated 31.12.2005. The said judgment and decree were assailed before the learned IInd Additional District Judge, Karachi East, through Civil Appeal No.19 of 2006. Upon hearing the parties and examining the record, the learned lower appellate Court dismissed the appeal and, while upholding the judgment and decree of the trial Court, enhanced the damages awarded in favour of respondent No.1 from Rs.100,000/- to Rs.500,000/-, in accordance with the prayer clause of the suit, vide

judgment dated 13.07.2010 and decree dated 22.07.2010. These concurrent findings have culminated in the present Second Appeal.

6. It is evident from the concurrent findings of both the learned courts below that the appellant was legally and contractually obliged to pay all local taxes, electricity, and water charges during its tenancy, and its failure to do so resulted in accumulation of liabilities for which the respondent No.1 was entitled to recover the said amount from the appellant. The documentary evidence, including official bills, challans, and notices issued, coupled with the admission of the appellant's attorney in cross-examination, established that the liability for payment of such dues lay squarely upon the appellant, and no lawful claim for limitation could be availed by it given the circumstances of continuous default.

7. It is further observed that the appellant's contention regarding non-issuance of demand notices under Clause 5(a) of the lease deed cannot absolve him from liability. The admitted correspondence and documentary evidence on record clearly demonstrate that the appellant was aware of its obligations to discharge the taxes and utility dues during the tenancy. The law is well-settled that a tenant who has contractually undertaken to pay statutory and municipal dues cannot later plead non-receipt of reminders as a defense to escape payment. The continuous failure to discharge these obligations over a prolonged period constitutes willful default, which was rightly held to be actionable by both the trial and appellate courts.

8. Insofar as the claim for damages is concerned, although the Courts below, taking into consideration the hardship and inconvenience allegedly suffered by the original plaintiff due to persistent defaults and prolonged litigation on the part of the appellant, deemed it appropriate to award damages, yet, while doing so, they completely overlooked a material and decisive fact. The respondent No.1, who had claimed consolidated damages of Rs.500,000/- on account of physical and mental torture, admittedly expired during the pendency of the proceedings before the learned trial Court.

In such circumstances, the well-settled doctrine of *actio personalis moritur cum persona* squarely applies, which postulates that a personal cause of action dies with the person. It has consistently been

held by the Hon'ble Supreme Court as well as this Court that purely personal claims, particularly those founded in tort, such as claims for pain, suffering, mental agony, or humiliation, do not survive the death of the injured party unless expressly preserved by statute.

The Hon'ble Supreme Court of Pakistan, in *Mir Shakil-ur-Rehman v. Yahya Bakhtiar* [PLD 2010 SC 612], while examining the survival of personal causes of action, held that the maxim *actio personalis moritur cum persona* is fully applicable where the cause of action is personal in nature and relates to reputation, pain, suffering, or mental agony of an individual. It was further observed that damages claimed for personal injury, mental pain, or humiliation are not heritable rights and, therefore, cannot be pursued by legal heirs after the death of the claimant. This pronouncement conclusively settles that mental torture and agony fall squarely within the category of personal torts, which extinguish upon death.

Similarly, this Court in *Zahid Hussain Awan v. United Bank Ltd. & another* [2018 MLD 1369] clearly distinguished between survivable causes of action and personal claims, holding that a cause of action personal to the deceased, such as damages for mental torture or harassment, does not survive to the legal heirs, whereas causes of action relating to property or contractual rights do. It was explicitly ruled that claims based on mental torture and harassment abate upon death, while claims relating to money, contracts, or property form part of the estate and may continue through legal representatives under Order XXII, CPC.

It was also observed that Order XXII, CPC permits substitution of legal representatives only where the right to sue survives. Survival of a cause of action is not automatic and depends entirely upon the nature of the right asserted. Personal suffering, emotional distress, and mental agony are inherently incapable of inheritance, as they cannot be valued independently of the deceased person's individual experience.

The Islamabad High Court, in *Muhammad Ali Tariq v. Thai Airways International* (PLD 2024 Islamabad 227), while reaffirming the aforesaid principle, held that the maxim *actio personalis moritur cum persona* applies with full force to tortious claims of a personal nature, whereas causes of action arising out of contract or statute may survive if they vest in the estate of the deceased. While permitting continuation of

a contractual/statutory claim, the Court categorically reaffirmed that personal damages are non-transferable and non-survivable.

9. Applying the settled principles to the present case, it is apparent that the suit involved two distinct and severable causes of action. The claim for recovery of unpaid rent, taxes, or other dues stems from a contractual or legal obligation, constitutes a property right forming part of the deceased's estate, and therefore survives for prosecution by the legal heirs. Conversely, the claim for damages on account of mental torture, agony, and hardship is purely personal and tortious in nature, does not vest in the estate, is not heritable, and accordingly stood extinguished upon the death of respondent No.1. Permitting legal heirs to pursue such a claim would effectively convert personal pain and suffering into a transferable right, which the law does not countenance.

10. The upshot of the above discussion is that the damages awarded by the Courts below on account of mental torture and agony are hereby set aside, whereas the concurrent findings relating to recovery of dues in respect of the subject property are maintained.

Accordingly, this Second Appeal is disposed of in the above terms.

JUDGE