

*Order Sheet*

## **IIInd Appeal No. 26 of 2026**

*[Muhammad Ali Khan vs. Shamsi Hospital and others ]*

Appellant Through Mr. M. Peer Rehman Mehsud, Advocate  
Date of Hearing & Order 03.02.2026.

**ARSHAD HUSSAIN KHAN, J.-** Through this Second Appeal, the appellant has called in question the judgment and decree dated **20.10.2025**, passed by the learned XIIth Additional District & Sessions Judge, East, Karachi, whereby Civil Appeal No.117 of 2025 was dismissed and the judgment and decree dated **25.02.2025**, passed by the learned XIIth Senior Civil Judge, East, Karachi, in Civil Suit No.2365 of 2021, were maintained with modification. Both the judgments and decrees hereinafter referred to as the **impugned judgments**.

2. Briefly stated, the facts giving rise to the present appeal are that respondent No.1 (Shamsi Hospital), being run by a foundation, rented out a portion of the hospital premises to the appellant for running a pharmacy on 20.06.2008 at a monthly rent of Rs.12,500/-, which was subsequently enhanced from time to time and lastly fixed at Rs.60,000/- per month. In the year 2020, upon default in payment of rent, the respondent instituted Rent Case No.395 of 2020 before the Rent Controller and also filed an application under Section 16(1) of the Sindh Rented Premises Ordinance, 1979. A tentative rent order was passed directing the appellant to deposit arrears amounting to Rs.13,20,000/- along with future monthly rent; however, upon failure to comply, the Rent Controller passed an ejection order on 03.09.2021. The said order was neither challenged nor complied with, and consequently, the appellant was evicted through execution proceedings. Thereafter, the respondent issued a legal notice for recovery of outstanding rent arrears and, upon non-payment, filed Civil Suit No.2365 of 2021 for recovery before the learned XIIth Senior Civil Judge, Karachi (East). The appellant contested the suit by filing a written statement along with a counterclaim. After a full-fledged trial, the learned trial Court partly decreed the suit, vide judgment and decree

dated 25.02.2025, allowing recovery of Rs.13,20,000/- as arrears of rent while dismissing the counterclaim and remaining reliefs. The appellant challenged the said judgment and decree through Civil Appeal No.117 of 2025. The learned lower appellate Court, while dismissing the appeal, modified the decree and held the appellant liable to pay Rs.15,20,000/- vide judgment and decree dated 20.10.2025. Hence, the appellant has assailed the concurrent findings of the Courts below through the present second appeal.

3. Learned counsel for the appellant has contended that both the learned trial court and the learned lower appellate court have failed to properly appreciate the evidence available on the record and rendered findings based on misreading and non-reading of material evidence. It was argued that the respondent/plaintiff did not discharge the burden of proof cast upon him under the law, particularly as no original documentary evidence or relevant record was produced to substantiate the claim of rent arrears, despite certain admissions made during cross-examination. Learned counsel has further submitted that the courts below erroneously relied upon a tentative order passed in rent proceedings, which, by its very nature, could not form the sole basis for decreeing a civil suit. According to learned counsel, the impugned judgments suffer from legal infirmities, perversity, and non-application of judicial mind, thereby giving rise to substantial questions of law warranting interference by this Court under Section 100, C.P.C.

4. Heard learned counsel for the appellant and with his assistance perused the material available on the record.

5. This Second Appeal has been filed under Section 100, C.P.C., which confines the jurisdiction of this Court in a second appeal to cases where the impugned decision is contrary to law, where a material question of law has not been determined, or where a substantial procedural error has resulted in miscarriage of justice. No second appeal lies on any other ground. A bare reading of Section 100, C.P.C. makes it ex facie clear that a second appeal is maintainable only on a question of law. The grounds raised in the present appeal, which were earlier agitated before the learned trial court as well as the learned lower appellate court, essentially seek a re-appraisal of factual controversies already adjudicated. Such an exercise is beyond the scope

of jurisdiction of this Court under Section 100, C.P.C., and no substantial question of law is shown to have arisen for consideration.

6. A careful perusal of the impugned judgments passed by the learned trial court as well as the learned lower appellate court reflects that both courts have concurrently recorded findings of fact after proper appreciation of oral and documentary evidence available on the record. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence<sup>1</sup>.

7. A careful scrutiny of the evidence demonstrates that the trial court meticulously evaluated all documentary and oral evidence, including the tenancy agreement, rent receipts, cheques, and proceedings under the Sindh Rented Premises Ordinance, 1979. The lower appellate court independently reviewed the record, addressed the contentions raised by the appellant in detail, and upheld the trial court's findings with appropriate modification. The factual findings, including the calculation of rent arrears, are supported by the record and do not suffer from any misreading, non-reading, or perversity.

8. Learned counsel for the appellant could not point out any substantial error, illegality, infirmity, or jurisdictional defect in the impugned judgments and decrees. The appeal, therefore, does not fall within any of the grounds provided under Section 100, C.P.C. The impugned judgments and decrees are well-reasoned, supported by the evidence on the record, and do not call for interference by this Court. Consequently, the instant Second Appeal, being devoid of merit, is dismissed in limine.

JUDGE

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<sup>1</sup> *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).