

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-453 of 2021

(Niaz Ahmed - vs - Farouq Inayat & Ors.)

Date Order with signature(s) of Judge(s)

Hg:/Priority.

1. For orders on office objections.
2. For hearing of Misc. No.2900 / 21
3. For hearing of main case.

Date of Hearing & Order: 21.08.2026.

Petitioners: Through Barrister Sarmad Khan, Advocate

Respondent No 1 Through Mr. Zubair Farooq, Advocate

Respondents No 2 to 7: Through Mr. Abdul Wajid Wyne, Advocate

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the concurrent findings, whereby the learned VIIth Rent Controller (South) Karachi (**Trial Court**) allowed the ejectment application in Rent Case No.727/2019 (re: Farouq Inayat v Niaz Ahmed & Another) vide its order dated 09.03.2021 (**1st Impugned Order**) and First Rent Appeal No. 64 of 2021 (Re: Niaz Ahmed & another vs. Farouq Inayat) vide its order dated 07.05.2021 (**2nd Impugned Order**) was dismissed by the Court of Learned Additional District Judge XII (South) Karachi (**Appellate Court**).

2. Short lived facts for disposal of instant petition are that Landlord (Respondent No 1) filed ejectment application against Petitioners on the ground of breach of Tenancy Agreement by change in use of tenement premises. On

service of notice Petitioners (Tenants) effected appearance through their Counsel on 19.07.2019 before Learned Trial Court but failed to file written statement, therefore, were debarred from filing written statement and defence struck off vide order dated 17.08.2019. Petitioners filed an application before Learned Trial Court, sought recall of order dated 17.08.2019, which was dismissed vide orders dated 19.12.2019. Another application against the orders referred above was filed that too met the same fate vide Trial Court's order dated 26.10.2020. Orders debarring petitioners from defense were assailed upon through First Rent Appeal No 173 of 2020, which was declined vide order dated 09.02.2021 by the Appellate Court, hence the order dated 17.08.2019 attained finality and Petitioners were proceeded in ex parties, however were granted an opportunity to cross examine the witnesses brought in witness box by Respondent No 1.

3. It further transpired from record that Respondent No 1 filed affidavit in evidence, and was cross examined by the other side. Learned Trial Court, after hearing the parties through their Counsel, allowed the ejectment application vide 1st Impugned Order. Paragraph 7 of the 1st Impugned Order reflected that, the ground which persuaded learned Trial Court to allow the ejectment application, was petitioners' failure to produce convincing or confidence inspiring evidence in rebuttal. For the sake of convenience the relevant portion from para-7 of the 1st Impugned Order is reproduced herein under:-

"The undisputed rent agreement between the parties is on record, breach of which is claimed by the applicant and towards such claim, I do not find any cogent and confidence inspiring evidence in rebuttal. Hence, there is no reason to disbelieve contents of eviction application, affidavit in exparte proof and documents produced on oath as there is no such inconsistency between pleadings and evidence brought on record."

4. Petitioners assailed upon the 1st Impugned Order by way of First Rent Appeal under section 21 SRPO, 1979. Learned Appellant Court dismissed the appeal on the ground that since a request was made by the Appellants (Petitioners) to remand the case back to Trial Court for decision on merits, which *prima facie* appeared to be unjustified as the Petitioners' side to bring defense was closed and orders of Trial Court in that regard attained finality. Learned Appellate Court dismissed rent case without conducting an exercise of re-appraisal of evidence, essential to determine whether Respondent No 1 successfully established a case for ejectment or not.

5. It is a settled principle of law that a party alleging the existence of a particular fact is required to establish the same. It was for the Respondent No 1 to establish that any breach in the terms of conditions of tenancy agreement were made or not. Once the initial burden to prove was successfully discharged, then onus to rebut the same shifted on the shoulders of other side. From careful examination of both the impugned orders, it appeared that no such finding was available to say that Respondent No 1 had proved his case for breach of terms and conditions of the Tenancy Agreement.

6. SRPO, 1979 equally protected the rights of Landlord and Tenant. Legislation has laid down a procedure to be followed by Rent Controllers for deciding rent cases in expeditious manner, any deviation whereof would result in miscarriage of justice and would make the enactment redundant. Section 19 of the SRPO, 1979 being relevant is reproduced herein below:-

19. Procedure. (1) Where an application other than the application under section 14 has been made to the Controller under this Ordinance, he shall, unless the application is summarily dismissed by him for reasons to be recorded, issue a notice to the

respondent to file written reply, if any, within such period not exceeding fifteen days of the receipt of the notice.

(2) Where on the day fixed in the notice for the respondent to file written reply, it is found that the notice has been served but the respondent has failed to file his reply without any reasonable excuse, the Controller may, proceed to make an ex parte order and after such order has been made the Controller shall have no power to rescind such order.

(3) Where the respondent has filed the written reply, the Controller shall proceed to receive evidence first of the applicant and his witnesses and then of the respondent and his witnesses.

(4) A party to a case under this Ordinance shall prove the evidence of his witness by producing the affidavit of such witness a copy of which shall simultaneously be supplied to the other party and such other party shall have the right to cross examine the witness on such affidavit and if the witness has been cross-examined the party producing the witness may re-examine him.

(5) The Controller shall, instead of formally framing issues arising between the parties, state them briefly in the judgment and shall record findings on each such issue separately.

7. From perusal of the above provision of law, it is crystal clear that, under sub-section (5) of Section 19, the Rent Controller is obligated to briefly state in the judgment, the issues arising between the parties and record findings on each issue separately. From a perusal of both the impugned orders, it transpired that no such issues relating to core dispute were identified or discussed in the judgment, nor were any findings recorded with regard to the dispute between the parties. Rather, the rent case was allowed merely on the ground that there

was no reason to disbelieve the contents of the eviction application, when no evidence in defense was led.

8. When confronted with the above legal position, all the learned counsel for the parties failed to controvert the same. In the circumstances, where the learned Trial Court failed to adopt the procedure prescribed under Section 19 of the SRPO, 1979, a case for interference by this Court to exercise the powers of judicial review conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is made out.

9. In view of the above, this petition is allowed, and the orders dated 07.05.2021 and 09.03.2021 passed by the learned Courts below are hereby set aside. The matter is remanded back to the learned Trial Court for decision afresh on the basis of the available evidence. Learned Trial Court shall record its specific findings as to breach in terms and conditions of tenancy agreement by adopting the procedure prescribed under Section 19 of the SRPO, 1979.

10. As far as the case of Respondents No 2 to 7 is concerned, it further transpired from the record that Interveners who were not party to the rent proceedings before Courts below filed an application under Order I Rule 10 of C.P.C., the application was granted by this Court vide order dated 12.03.2025, they were ordered to be impleaded as party. In an effort to get the said order reversed, Respondent No 1 filed CPLA No 612-K of 2025 before Honorable Supreme Court of Pakistan, which was declined vide orders dated 06.01.2026. Pursuant to this Court's order, the interveners were impleaded as Respondents No 2 to 7 in the instant petition. The newly added Respondents agitate ownership rights in the demised premises and assert that they were the actual owners by way of purchase through auction from Evacuee Trust Property Board. Since the instant matter relates to admitted Tenancy Rights in between

Petitioners and Respondent No 1, needless to observe that decision in the rent case will not prejudice the right of either side as to the ownership. Since the Respondents No 2 to 7 were impleaded as party in the instant petition, they shall be at liberty to avail the remedy available under the law before Trial Court. If approached, learned Trial Court shall decide the fate of request in accordance with law.

11. Since this is an old rent case, Learned Trial Court is expected to decide the fate of the case within two months from the date of receipt of this order. Office is directed to send copy of this order to the learned Trial Court for compliance. Learned MIT - II to ensure compliance.

JUDGE

Approved for reporting