

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-468 of 2023

Dated: _____ Order with signature of Judge(s)

- 1.For orders on CMA No.3652/2023.
- 2.For orders on office objection No.19 and reply as at 'A'.
- 3.For orders on CMA No.3653/2023.
- 4.For orders on CMA No.3654/2023.
- 5.For hearing of Main Case.

Dated of Hearing : 18.05.2023.

Petitioner : Abdul Sattar Abbas through
Mr. Aamir Nawaz Warraich,
Advocate.

Respondents : Mst. Samina Khalid & Others.

ORDER

Mohammad Abdur Rahman, J. This Petition is maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 impugning a judgement dated 17 April 2023 passed by the IX Additional District & Sessions Judge, Karachi (East) in FRA No. 173 of 2022 upholding an order dated 22 August 2022 passed by the VIII Senior Civil Judge & Rent Controller Karachi (East) in Rent Case 15 of 2020 granting an Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 filed by the Respondent No. 1 seeking to evict the Petitioner from Shop No. 10, Ground floor, Al-Shireen Building, Plot No.306, Alfred Street, Garden West, Karachi (the "Said Tenement").

2. The Respondent No. 1 is the owner of the Said Tenement and which shas purportedly been taken on rent by the Petitioner at a rent of Rs. 1,200 per month against a "Pagri" of Rs. 235,000 and on which the Petitioner is running a shop known as "Ramzan Medicos".

3. The Respondent No. 1 has maintained Rent Case No. 15 of 2019 before the VIII Senior Civil Judge & Rent Controller Karachi (East) for resuming the Said Tenement on the grounds of:

- (i) default of payment of rent;
- (ii) personal bona fide use of the Said Tenement by the daughter of the Respondent No. 1 for the use of the Said Tenement as a Clinic to establish her practice as a dentist; and
- (iii) subletting.

4. The Petitioner defended Rent Case No. 15 of 2020 by filing his Written Statement and contending that:

- (i) he had “purchased” the Said Tenement on a “good will” basis for a consideration of Rs. 235,000 and was admittedly paying rent of Rs. 150 per month for the Said Tenement to the Respondent No. 1;
- (ii) he had in the month of May 2019 attempted to pay the “goodwill” rent to the Respondent No. 1 who refused to accept the same. Being constrained by the refusal of the Respondent No. 1 to accept the rent, the Petitioner tendered the rent for a period of 9 months by postal money order which was “lastly” rejected by the Respondent No. 1 on 25 July 2019 causing the Petitioner to file an Application under Sub-section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 in the Court of the IX Senior Civil Judge Karachi (East) and wherein he had deposited “goodwill rent” of Rs.24,000 for the period from May 2019 to December 2020;

- (iii) no case for personal bona fide use had been made by the Respondent No. 1 as:
 - (a) the Said Tenement was “not suitable for the business of a dental clinic”; and
 - (b) the Respondent No. 1 was discriminating as against the Petitioner by choosing the Said Tenement over various other Shops that were owned by the Respondent No. 1 in the building housing the Said Tenement;
- (iv) there was no subletting as the person who it was alleged the Petitioner had sublet the Said Tenement too was his fact a partner in the business of the Petitioner and such a relationship could not be considered to be sub-letting within the meaning given to that expression under the proviso of Clause (iii) of Sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

5. The VIII Senior Civil Judge & Rent Controller Karachi (East) after recording evidence and hearing the Petitioner and the Respondent No. 1 in Rent Case No. 15 of 2020 held that:

- (i) notwithstanding the claim of the Petitioner having “Purchased” the Said Tenement on goodwill, the relationship of landlord and tenant existed as between the Petitioner and the Respondent No. 1 as the Petitioner had in his deposition admitted that the Said Tenement had been rented to him by the Respondent No. 1’s late husband and being a legal heir of her deceased husband, the Respondent No. 1 would come

within the definition of "Landlord" as given in Sub-Section (8) of Section 2 of the Sindh Rented Premises Ordinance, 1979.

- (ii) that the Petitioner had defaulted on paying rent as the Petitioner had:
 - (a) failed to prove that he had offered the rent to the Respondent No. 1 for the month of May 2019 and which rent the Respondent No. 1 had refused to accept;
 - (b) failed to prove that the Respondent No. 1 refused to accept the money order sent by the Petitioner for the period from May 2019 onwards;
 - (c) instituted MRC No. 852 of 2019 in the Court of XI Senior Civil Judge Karachi (South) in a Court not having proper jurisdiction
- (iii) the premises were required by the daughter of the Respondent No. 1 for establishing her dental clinic which requirement came within the purview of Clause (vii) of Sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and which requirement had not been unsettled by the Petitioner through his evidence.

It is apparent that no finding was given regarding the issue of sub-letting and which ground appears to have been abandoned by the Respondent No. 1.

6. Being aggrieved by the order dated 22 August 2022 passed by the VIII Senior Civil Judge & Rent Controller Karachi (East) the Petitioner maintained FRA No. 173 of 2022 before the IX Additional District Judge

(MCAC) Karachi (East), who was pleased to dismiss the appeal on the grounds that:

- (i) no evidence was available that the postal money order that had been sent by the Petitioner to the Respondent No. 1 was refused by the Respondent No. 1 as admittedly no endorsement was produced to this effect by the Petitioner on the postal money order; the burden on the Petitioner to prove such a fact having not been met the Petitioner could not have instituted MRC No. 852 of 2019 before the XI Senior Civil Judge Karachi (South);
- (ii) that as the landlord had a choice to choose as between their various tenements as to which tenement they required for the personal use, an allegation of mala fide could not be attributed to the landlord decision to select the Said Tenement;
- (iii) that no proof of the payment of goodwill has been produced in evidence.

7. The Advocate for the Petitioner appeared before this Court and agitated that:

- (i) the evidence that was adduced by the Petitioner was not properly appreciated either by the VIII Senior Civil Judge & Rent Controller Karachi (East) in Rent Case No. 15 of 2020 or by the IX Additional District Judge (MCAC) Karachi (East) in FRA No. 173 of 2022;

- (ii) the Petitioner having “purchased” the Said Tenement against the payment of goodwill confers proprietary rights in favour of the Petitioner over the Said Tenement disentitling the Respondent No. 1 for maintaining an application under Section 15 of the Sindh Rented Premises Ordinance, 1979.

He did not rely on any case law to support his contentions at the time of the hearing of this Petition.

8. I have heard the Advocate for the Petitioner and perused the record.

A. PAGRI

8. The “Pagdi-Kirayedar” system, as it was referred to in Colonial India and which is now referred to as “Pagri” in Pakistan evolved in pre-partition Bombay as a system to evade taxes payable to the British government. Under this system, on being introduced by an owner of a property as a tenant into a tenement, the tenant was issued a receipt for a premium paid by the tenant i.e. the “Pagri” (which was usually a substantial sum) and which along with the payment of a very low monthly rent represented his financial obligations to the landlord. In consideration for the payment of such “Pagri” the tenant was entitled, at the time when he chooses to relinquish or transfer his tenancy, to receive an amount from the new tenant to compensate him for the “Pagri” that was paid. This could be settled in a variety of ways but usually involved a sum of money being paid by the new tenant and which was divided as between the landlord and the old tenant with the new tenant taking on the obligation to pay the monthly rent.

9. The system as can be seen is a cash-based system and the obligations that arise from it are rarely recorded in writing as between the landlord and the tenant. This practice was imported into Karachi from Bombay and continues to be prevalent in most of the old city areas of the city and has since spread throughout Pakistan. The practice has been

recognised by statute in India¹ and has more recently been recognised in Punjab under the Punjab Rented Premises Act, 2009 wherein Sub-Section (e) of Section 2 defines “pagri” as follows:

“ ... “pagri” includes any amount received by a landlord at the time of grant or renewal of a tenancy except advance rent or security”

Further recognition of the obligations involved in respect of “pagri” are found in the definition of the “Final order” in Sub-Section (b) of Section 2 of Punjab Rented Premises Act, 2009 wherein the expression is defined to mean”

“ ... “final order” means a final order passed by a Rent Tribunal culminating the proceedings *including an order in respect of adjustment of pagri*, advance rent, security, arrears of rent, compensation or costs but shall not include an order passed in an execution proceedings”

(Emphasis is added)

It would seem that while the obligations that arise out of the payment of “Pagri” are now justiciable in the rent courts in Punjab,² however as no such parallel amendments have been made in the provisions of the Sindh Rented Premises Ordinance, 1979, such an amount is not recoverable or adjustable by a tenant in Sindh; any claim in respect of any obligation arising out of “Pagri” including but not limited to the repayment of the amount, would therefore come within the jurisdiction of a court of competent civil jurisdiction subject to the terms of the Specific Relief Act, 1877.³

10. This issue in respect of the impact of the payment of Pagri and the rights that emanate therefrom in respect of tenements regulated by the Sindh Rented Premises Ordinance, 1979 has been dealt with threadbare by the courts. It has been held that the obligations arising out of an agreement involving the payment of “Pagri” even if recorded in writing could

¹ See Section 56 of the Maharashtra Rent Control Act, 1999

² See *Muhammad Ismail vs. Muhammad Aslam* 2020 MLD 226

³ See *Muhammad Sharif vs. Iftikhar Hussain Khan* 1996 MLD 1505

not override the statutory rights conferred under Section 15 of the Sindh Rented Premises Ordinance, 1979 on a landlord to evict a tenant.⁴ It has also been held that the amount paid as “Pagri” cannot be adjusted as against rent payable by a tenant to a landlord to defend a case of default.⁵ Finally in **Tahira Dilawar Ali Khan vs. Mst. Syeda Kaneez Sughra**⁶ where it is claimed that the payment of an amount as Pagri would entitle a person to a lease in perpetuity it has been held that such a right could not be established unless the document recognizing such a right was registered under Section 17 of the Registration Act, 1908. Anwar Zaheer Jamali, J (as he then was) elaborating that:⁷

“ ... 23. The submissions of Mr. Mushtaq A. Memon as regards payment of Pugri by the petitioners predecessor; creation of lease in perpetuity vide tenancy agreement, dated 21-12-1967; and temporary engagement of the son of respondent No.1 to earn some livelihood (as admitted by the landlady in her cross-examination) as grounds for disqualification of respondent No.1 for seeking eviction of petitioners from the rented shop, have also no force as payment of Pugri, (though also disputed by respondent No.1) has not been accepted by the Superior Court as bar for seeking eviction of tenant under section 15(vii) of the Sindh Rented Premises Ordinance, 1979. Similarly the claim of lease in perpetuity in respect of rented shop in favour of petitioners, cannot be accepted on the basis of tenancy agreement, dated 21-12-1967 for more than one reason. Firstly, the tenancy agreement being unregistered has lost its legal validity for enforcement of rights after expiry of one year (See section 107 of the Transfer of Property Act and section 17 read with section 49 of the Registration Act). Secondly, the claim of personal need has an over riding effect on such alleged terms of lease provided in the tenancy agreement, being against public policy and the provisions of Sindh Rented Premises Ordinance, 1979.”

(Emphasis is added)

11. Regrettably despite the issue of the obligations arising out of the payment of “Pargi” being settled, the point is raised *ad nauseum* by tenants in an attempt to non-suit a landlord who files an application under Section 15 of the Sindh Rented Premises Ordinance, 1979. In this Petition, the Petitioner despite alleging the payment of a “Pagri” of Rs. 235,000 at the

⁴ See **Azizur Rehman vs. Pervez Shah** 1997 SCMR 1819 at pg. 1822; **Raees Ahmed Pasha vs. Kamaluddin** 2004 MLD 587 at pg. 591

⁵ See **Mrs. Nargis Latif vs. Mrs. Feroz Afaq Ahmed Khan** 2001 SCMR 99;

⁶ PLD 2007 Karachi 50

⁷ *Ibid* at pg. 60

time of entering into the tenancy agreement with the Respondent No.1's husband has admittedly failed to adduce any evidence to substantiate such a fact and which has correctly been relied upon by both the VIII Senior Civil Judge & Rent Controller Karachi (East) and IX Additional District Judge Karachi (East) to hold that there was no basis for the Petitioner to claim that he had paid such an amount as "goodwill". Needless to say, even in the event that such proof had been adduced in evidence, it would not have permitted the Petitioner to deny the relationship of a "landlord and tenant" as between the Petitioner and the Respondent No. 1 as such a payment would:

- (i) not create any right, title or interest in favour of the Petitioner unless it was done through a registered document, and
- (ii) not override the statutory rights conferred on the Respondent No. 1 under the provisions of the Sindh Rented Premises Ordinance, 1979

I therefore see no legal infirmity or misapplication of evidence on the part of either the findings of VIII Senior Civil Judge & Rent Controller Karachi (East) or in the findings of the IX Additional District Judge Karachi (East) and to this extent uphold these findings.

B. DEFAULT

13. The provisions of Sub-section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 state as under:

" ... (3) Where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or, be deposited with the Controller within whose jurisdiction the premises is situate."

The provisions of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 have been interpreted by the Supreme Court of

Pakistan in the decision reported as **Mst. Yasmeen Khan vs. Abdul Qadir**⁸ that:⁹

“ ... Although, in view of Section 10 of Sindh Rented Premises Ordinance, 1979, a tenant is supposed to tender rent to the landlord/landlady and in case he/she has avoided or refused then rent is to be sent through money order or deposited in the office of the rent controller .”

(Emphasis is added)

While the proposition is well settled that there must a be refusal on the part of the landlord to receive the rent prior to the tenant sending a postal money order, there is some dispute as to whether after such refusal is made by the landlord, as to whether the tenant must first send a postal money order which also must be refused prior to depositing the rent with the rent controller or in the alternative as to whether the tenant can bypass the sending of a postal money order altogether and directly deposit the rent before the rent controller. As is apparent the interpretation of the word “or” in subsection (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 is critical and it has to be seen as to whether the expression should either be read conjunctively or disjunctively. In **Shaikh Israr vs. Muhammad Arif Khan**¹⁰ Anwar Zaheer Jamali, J. (as he then was) held that:¹¹

“ ... 15. A plain reading of above-quoted provision of law would show that use of word "or", which is normally used in disjunctive sense, in sub-rule (3) of section 10 of the Ordinance at two places is significant. In the first place use of word "or" in-between the words "refused" and "avoided", which carry different meanings, denotes a situation where a tenant can make a valid and legal tender of rent to the landlord despite, as such, there is no refusal of landlord from accepting rent from his tenant but the tenant could show that the landlord by his conduct avoided to accept rent. In the second place use of word "or" in between the two modes of payment of rent prescribed under sub-rule (3) viz. to pay rent by postal money order and deposit with the Controller, visualizes

⁸ 2006 SCMR 1501

⁹ *Ibid* at pg. 1503-1504

¹⁰ 2001 YLR 442

¹¹ *Ibid* at pg. 446-447

a situation which puts both the modes at par and thus, gives an option to the tenant to follow any of the two modes for tender/payment of rent to the landlord. However, such a construction and interpretation of section 10(3) of the Ordinance giving both options to the tenant may lead to a situation where the tenant may exercise such options for causing harassment and inconvenience to the landlord which may defeat the spirit of subsection (2) of section 10 of the Ordinance. Thus, to give a, more pragmatic and rational interpretation to the above provision of law and to check and restrict such discretion of the tenant to -a reasonable extent, the real test for examining the validity or otherwise of tender/payment of rent would be dependent on examination of overall conduct of the landlord and tenant in each case and the satisfaction of the Controller that whether tender of rent by money order or deposit of rent in the office of Controller, as the case may be, was justified and bona fide or the same was mala fide aimed at causing harassment anti inconvenience to the landlord. In the former case, same will be considered as valid tender/payment in the later case as invalid.”

A different interpretation has been cast on this section in the decision reported as **Azeemuddin vs. Mst. Attiqah Begum**¹² where Ali Sain Dino Metlo, J. held that:¹³

“ ... 10. It also not necessary that before depositing rent with the Controller it should be sent by postal money order. The modes are independent. Neither of the two modes is dependent upon the other. One may opt for any mode with first trying the other.”

14. The burden of proving that the tenant had defaulted on the rent entitling the landlord to evict the tenant under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been considered by the Supreme Court of Pakistan in the decision reported as **Allah Din vs. Habib**¹⁴ wherein it was held that:¹⁵

“ ... It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 12 92) I) of the Sind Urban rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the

¹² 2008 CLC 1499

¹³ *Ibid* at pg. 1503

¹⁴ PLD 1982 SC 465

¹⁵ *Ibid* at pg. 468

onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question.”

In Paragraph 15 of her Affidavit-in-Evidence the Respondent No.1 has deposed that:

“15. ... I say that opponent further fails to pay monthly rent to applicants after filing of present ejectment application or deposit the same before this Honorable Court in the present case.”

As the burden is now on the tenant to prove that the requirement of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 were fully complied with before the filing of an application under Sub-section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 seeking permission to deposit rent in Court. It is to be noted that faced with the option of sending a postal money order or directly depositing the rent with the rent controller, the Petitioner choose to send a postal money order. During the course of his deposition, the Petitioner has stated that:

“ ... It is fact that last monthly rent was paid by me to applicant in the money of April 2019. It is incorrect to suggest that applicant never refused to receive the money rent. It is fact that money. Order (Ex. O/12) it is not written that applicant either returned or refused to receive the money order containing on rent.”

While, if the Petitioner had deposited the rent directly with the rent controller without having first offered the rent to the Respondent No. 1 through a postal money order, there may have been room for the Petitioner to argue that after the Respondent No. 1 had refused to receive the rent, that he had every right to deposit the rent directly with the Rent Controller. However, as the Petitioner has elected to send the rent through postal money order, it was incumbent on him to obtain an endorsement confirming the refusal of the Respondent to receive the rent or to obtain an endorsement that the Postal Money Order had been returned. Suffice to say that prior to obtaining either endorsement, the Petitioner would not have had a right to deposit the

rent directly with the Rent Controller in MRC No. 852 of 2019. Such a failure would amount to default and would render the Petitioner liable to being ejected from the Said Tenement under the proviso of Clause (iii) of Sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

C. PERSONAL BONA FIDE USE

17. The provision of Clause (vii) of Sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 state that:

“ ... (vii) the landlord requires the premises in good faith for his own occupation or use or for the occupation or use of his spouse or any of his children.”

It is clear that the landlord when seeking an application to the Rent Controller under this Section can maintain the same either for his own person or for the personal use of his spouse or for the personal use of his children. In Rent Case No. 15 of 2020, the Respondent No. 1 has contended that she required the Said Tenement for the use of her daughter who, being as qualified dentist, wished to establish her practice in the Said Tenement.

18. It is settled law that the burden of proving personal bona fide use under Clause (vii) of Sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 vests initially on the Respondent No. 1 who has to adduce evidence to this fact. The Respondent No. 1 has in her affidavit in evidence complied with the burden and stated that:

“ ... 17. I say that my daughter namely Shumaila Campwala has passed her passed BDS Examination from University of Karachi in the year 2017 and also completed one year House Job from Fatima Jinnah Dental College Hospital Karachi and in as much as Pakistan Medical & Dental Council also granted License for practicing to her and she is registered as Dental Practitioner with PM&DC 22971-D. I beg to produce the copy of her Degree of Bachelor of Dental Surgery, certificate of completing house job and license granted by

PM&DC to her for practice as Exhibits A/4, A/5 & A/6 respectively.

17. I say that Shop in question/demised premises let out to opponent is located on the ground floor is reasonably and in good faith required by applicant daughter Dr. Shuamila Campwala for her own personal need, use as she want to establish her Dental Clinic in the demised premises/ shop in question which is in tenancy of opponent.
18. That the demised premises/shop under the tenancy of opponent is required by applicant in good faith for her above named daughter own use who is qualified Dental Surgeon who wants to start & establish her own clinic in it but due to non-vacation of demised premises/shop by the opponent she had been suffering."

That once the Respondent No. had adduced such evidence, the burden of proving that:

- (i) there was "bad faith", or
- (ii) that the Said Tenement could not be put to the use as has been claimed by the landlord burden

would shift on the Petitioner.

19. The Petitioner in his Affidavit-in-Evidence has deposed that:

- " ... 6. I say that the applicant along with her daughters & son are living in said Flat. That (Late) Khalid Campwala is owner of whole Plot in which multistoried building constructed known as Al-Shirin Manzil comprising Three blocks having residential Flats and 12 Shops on Ground Floor which are mostly on Goodwill rent. That (Late) Khalid Campwala was owner of several properties in which her daughter can utilize the dental clinic. The said subject shop is very much small for a dental clinic, the size of subject shop is around 150 Sq. fts. which not sufficient to establish a dental clinic. That the applicant have another property at Bombay Bazar which was let out by (Late) Khalid Campwala to Allied Bank of Pakistan and many other good properties which is very much suitable for reasonable dental clinic. That I am old in age and unable to give threat to the application as I had good brotherhood relationship with (Late) Khalid Campwala."

20. It is apparent that the Petitioner has maintained two grounds as against the Applicant:

- (i) that the size of the shop was not adequate to accommodate a dental practice
- (ii) the Respondent No. 1 had a numerous other shops that could have been utilised by the Respondent No. 1 as opposed to the Said Tenement.

21. It has been settled by the Supreme Court of Pakistan in **Wasim Ahmad Addenwalla vs. Shaukh Karim Riaz**¹⁶ that in the event that the landlord has available to him different tenements it would be his sole discretion to choose which of those tenements he required for his personal use and the simpliciter availability of another tenement could not be considered the basis to maintain a plea of mala fide on the part of the landlord. There is also nothing recorded in the evidence to give credence to the contention of the Petitioner that the size of the Said Tenement would not be sufficient to accommodate the needs of the Respondent No.1

22. I therefore see no infirmity in the decision of either the VIII Senior Civil Judge & Rent Controller Karachi (East) or in the decision of the IX Additional District Judge Karachi (East) and had come to the conclusion that neither the judgment passed on 17 April 2023 by the IX Additional District Judge Karachi (East) in FRA No. 173 of 2022 nor the order dated 22 August 2022 passed by the VIII Senior Civil Judge & Rent Controller Karachi (East) in Rent Case No. 15 of 2020 and which had caused me to dismiss this Petition on 18 May 2023 while observing that the time period of 30 days that had been granted to the Petitioner for vacating the premises in the Judgment dated 17 April 2023 passed by the IX Additional District &

¹⁶ 1996 SCMR 1055

Sessions Judge, Karachi (East) in FRA No. 173 of 2022 should be enhanced to a period of 6 months with effect from 17 April 2023 and the foregoing are the reasons for that order.

JUDGE

Karachi dated 7 July 2023