

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
CP NO. S-72 of 2022

Petitioner : Mirza Muhammad Akhlaq Baig through
Qazi Ajmal Kamal, Advocate and Junaid
Alam Khan, Advocate.

Respondent No.1 : Khalid Hameed & Others through
Mr. Noor Ahmed Malik Mehmood, Advocate

Respondents No.2: Nemo

Date of hearing : 18 April 2023 and 20 April 2023

ORDER

Mohammad Abdur Rahman, J. This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 impugning a Judgement dated 29 October 2019 passed by the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 which set aside an Order dated 26 August 2017 passed by the IInd Rent Controller Karachi (South) whereby Rent Case No. 1204 of 2016, being an application under Section 15 of the Sindh Rented Premises Ordinance, 1979, was granted in favour of the Respondent No. 1.

2. The Respondent No.1 claims to be the owner of three shops namely:
- (i) Shop No. 4, Ground Floor, Nazeer Bib Building, Survey No. 32, Sheet No. RS-3 Old Survey No. E-6, (192-A) Ramaswami Quarters, Karachi;
 - (ii) Shop No. 5, Ground Floor, Nazeer Bib Building, Survey No. 32, Sheet No. RS-3 Old Survey No. E-6, (192-A) Ramaswami Quarters, Karachi; and

- (iii) Shop No. 6, Ground Floor, Nazeer Bib Building, Survey No. 32, Sheet No. RS-3 Old Survey No. E-6, (192-A) Ramaswami Quarters, Karachi;

(hereinafter collectively referred to as the "Said Tenements").

3. The Respondent No. 1 acquired title to the Said Tenements through three separate registered Indentures of Sub-Lease each dated 5 January 2015 and which were each executed in favour of the Respondent No. 1 by Mr. Riaz Hussain Malik, who admittedly was the original owner of the Said Tenements. The Respondent No. 1 in his pleadings in Rent Case No. 1204 of 2016 contends that since the time when he acquired the Said Tenements he gave a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to the Petitioner and who thereafter paid rent amounting to Rs. 4,880 for each of the Said Tenements directly to the Respondent No. 1 for the month of March 2015 and for which month rent receipts were issued by the Respondent No. 1 to the Petitioner. The Respondent No. 1 further contended that since April 2015 the Petitioner has defaulted on his obligation to pay rent to the Respondent No. 1 and is as such liable to be evicted from the Said Tenements under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and hence he maintained Rent Case No 1204 of 2016 before the IInd Rent Controller Karachi (South).

4. The Petitioner entered appearance in Rent Case No. 1204 of 2016 and filed his Written Statement on 20 April 2017 alleging therein that although he had paid a pagri of Rs. 30,000 to Mr. Riaz Hussain Malik for each of the Said Tenements that at present he was the tenant of only one of the Said Tenements i.e. Shop No. 4, Ground Floor, Nazeer Bib Building, Survey No. 32, Sheet No. RS-3 Old Survey No. E-6, (192-A) Ramaswami Quarters, Karachi (hereinafter referred to as the "Petitioners Tenement")

and was paying a sum of Rs. 418 per month as rent. He further contends that he is not the tenant of the other two tenements which are held by two other tenants namely Muhammad Yousuf Baig and Mohiuddin Baig. He submits that in or around 2010, the Petitioner, Muhammad Yousuf Baig and Mohiuddin Baig lost contact with Mr. Riaz Hussain Malik and were thereafter compelled to deposit rent in MRC No. 434 of 2010, MRC No. 435 of 2010 and MRC No. 436 of 2010 each before the Vth Rent Controller Karachi South and where they have been depositing rent until July 2017. He alleges he has never received a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 from the Respondent No. 1 informing him that the Respondent No. 1 was the owner of the Petitioners Tenement and thereafter had no occasion to pay any rent to the Respondent No. 1. In this regard the Petitioner specifically denies having paid any rent to the Respondent No. 1 for the month of March 2015 and contends that the rent receipt that has been submitted by the Respondent No. 1 in respect of the Petitioners Tenement are forged documents which have been manufactured by the Respondent No. 1 to create the illusion that a relationship of landlord and tenant has existed as between the Petitioner and the Respondent No. 1 since March 2015 so as to base a case of default on payment of rent from that date. The Petitioner finally contends that while he and the other two tenants had been depositing rent in respect of the Said Tenements in MRC No. 434 of 2010, MRC No. 435 of 2010 and MRC No. 436 of 2010 before the Vth Rent Controller Karachi (South), upon receiving a notice of the filing of Rent Case No. 1204 of 2016 in April 2017, he immediately offered to pay a rent of Rs. 418 per month for the Petitioners Tenement to the Respondent No. 1 who refused to receive the same. On the Respondent No. 1 refusing to accept the rent, the Petitioner tendered the same through a money order dated 19 April 2017 receipt of which was also refused by the Respondent No. 1 compelling the Petitioner to maintain an application under Section 10 of the Sindh Rented Premises Ordinance, 1979 to deposit rent in the name of the Respondent No. 1.

5. The IInd Rent Controller Karachi (South) after recording evidence and hearing the Petitioner and the Respondent No. 1 on 26 August 2017 **without framing an issue as to whether the Petitioner was a tenant of all the Said Tenements**, dismissed Rent Case No. 1204 of 2016 holding that the Petitioner had not defaulted on his obligation to pay rent to the Respondent No. 1 as:

- (i) the Respondent No. 1 had failed to adduce any evidence to prove that on acquiring title to the Said Tenements, including the Petitioner's Tenement, he had served on the Petitioner a notice under Section 18 of the Sindh Rented Premises Ordinance 1979 thereby obliging the Petitioner to pay rent to the Respondent No. 1;
- (ii) the allegation of the Respondent No. 1 that he had verbally communicated the transfer of the Said Tenements, including the Petitioner's Tenement, would not satisfy the statutory requirements of Section 18 of the Sindh Rented Premises Ordinance, 1979 to oblige the Petitioner to pay rent to the Respondent No. 1;
- (iii) the rent receipt for the month of March 2015 that were purportedly issued by the Petitioner to the Respondent No. 1 against rent tendered in that month by the Petitioner were doubtful;
- (iv) the Petitioner once he became aware of the acquisition of the Petitioner's Tenement by the Respondent No. 1 through Rent Case No. 1204 of 2016 had offered to pay the rent of Rs. 418 per month for the Petitioner's Tenement to the Respondent No. 1 and who had refused to receive the same. On such a refusal

being made by the Respondent No. 1, the Petitioner tendered the rent through a money order dated 19 April 2017 which the Respondent No.1 also refused to receive compelling the Petitioner to file an application under Section 10 of the Sindh Rented Premises Ordinance, 1979 to deposit rent in the name of the Respondent No. 1;

- (v) the Petitioner did not have notice of the purchase of the Petitioners Tenement by the Respondent No. 1, the depositing of Rent in MRC No. 434 of 2010, MRC No. 435 of 2010 and MRC No. 436 of 2010 before the Vth Rent Controller Karachi South would absolve the Petitioner of having defaulted on the payment of rent for the period from January 2015 until the receipt of the notice of Rent Case No. 1204 of 2016; and
- (vi) the application filed by the Petitioner under Section 10 of the Sindh Rented Premises Ordinance, 1979 was granted with directions to the Petitioner to deposit future rent from September 2017 in Rent case no. 1204 of 2016 before the IInd Rent Controller Karachi (South) with a further direction that the rent that had been deposited by the Petitioner in MRC No. 435 of 2016 before the Vth Rent Controller Karachi (South) for the period from January 2015 until August 2017 should also be withdrawn from that court and deposited by the Petitioner in Rent Case No. 1204 of 2016 and which rent the Respondent No. 1 was at liberty to withdraw.

6. Being aggrieved and dissatisfied with the order dated 26 August 2017 passed by the IInd Rent Controller Karachi (South) the Respondent No. 1 preferred an appeal under Section 21 of the Sindh Rented Premises Ordinance 1979 bearing FRA No. 536 of 2017 before the XIIth Additional

District & Session Judge Karachi (South) who by its Judgment dated 29 October 2019 was **after framing an issue as to whether the Petitioner was a tenant of all the Said Tenements** was pleased to allow the appeal and grant Rent Case No. 1204 of 2016 by holding that:

- (i) the averment of the Petitioner that he was the tenant of the Petitioner's Tenement and that the other two tenements were let by Mr. Riaz Hussain Malik to Mohiuddin Baig and Mirza Muhammad Yousuf had not been established as:
 - (a) the Petitioner had admitted in his Written Statement that the Said Tenements had been given to him by Riaz Hussain Malik against a Pagri of Rs. 30,000 per tenement indicating that he was the original tenant of each of the Said Tenements;
 - (b) the Petitioner had failed to depose Mohiuddin Baig and Mirza Muhammad Yousuf in Rent Case No. 1204 of 2016 to support this contention, and
 - (c) the Petitioner had failed to indicate specifically as to which of the three tenements were let to him and which were let to Mohiuddin Baig and Mirza Muhammad Yousuf

Hence the averment of the Respondent No. 1 that the Petitioner was the tenant of all the Said Tenements stood established;

- (ii) the receipt dated March 2015 that was produced by the Respondent No. 1 to show that the Petitioner had paid rent to

the Respondent No. 1 in that month was doubtful and could not be relied on;

- (iii) the institution of an application under Section 10 of the Sindh Rented Premises Ordinance, 1979 without first offering the rent to the Respondent No. 1 was in violation of Section 10 of the Sindh Rented Premises Ordinance, 1979 and would render the Petitioner liable to being evicted from the Said Tenements;
- (iv) the Respondent No. 1 had failed to bring on record the original receipt of the money order in evidence to show that the Petitioner had attempted to pay the rent to the Respondent No. 1; and
- (v) the Petitioner has failed to adduce any evidence that he had made an application under Section 10 of the Sindh Rented Premises Ordinance, 1979 for depositing rent in the name of the Respondent No. 1.

7. There being conflicting findings of the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 and of the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016, the Petitioner though Mr. Qazi Ajmal Kamal and Junaid Alam Khan, impugned the Judgement dated 29 October 2019 passed by the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 before this Court under Article 199 of the Constitution of the Islamic republic of Pakistan, 1973 and contended that the findings of the XIIth Additional District & Sessions Judge Karachi (South) in his Judgment dated 29 October 2019 passed in FRA No. 536 of 2017 were flawed in as much as

the XIIth Additional District & Sessions Judge Karachi (South) had failed to appreciate that:

- (i) admittedly no notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 was issued by the Respondent No. 1 to the Petitioner to inform the Petitioner that the Respondent No. 1 had acquired the Petitioners Tenement; and
- (ii) in the facts and circumstances, the Petitioner had done all that could be expected of him to tender the rent of the Petitioners Tenement to the Respondent No. 1 before having made the application under Section 10 of the Sindh Rented Premises Ordinance, 1979 to deposit the rent before the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016.

8. Mr. Qazi Ajmal Khan commenced his arguments by stating that both the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016 and the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 had concluded that the purported receipt for March 2015 that was adduced in evidence by the landlord had correctly been shown as a fraudulent document and could not be relied on. He further submitted that the first notice he got regarding the change in ownership of the Said Tenement was the notice issued by the IInd Rent Controller Karachi (South) of Rent Case No. 1204 of 2016 and whereafter he immediately offered the rent to the Respondent No. 1 and on refusal of the Respondent No. 1 to receive the rent he sent a money order to the Respondent No. 1 and when that too was refused he was compelled to file an application under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 before the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016 seeking permission to deposit the rent before that Court.

9. He contented that both the both the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016 and the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 had rightly concluded that no written notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 had been directly sent by the Respondent No. 1 to the Petitioner and that the Respondent No. 1 averment that he had verbally informed the Petitioner of the change in ownership was not sustainable. He argued that in the decision reported as *Jiand Rai vs. Arjan Das*¹ it was clarified that the notice that is required to be sent by the landlord under Section 18 of the Sindh Rented Premises Ordinance, 1979 cannot be verbal and must be in writing wherein Sadiq Hussain Bhatti, J. holding that:²

“ ... 8. On the question of default in payment of rent, the entire case of the petitioner is that he purchased the rented premises from his father in the year 2008 and informed the petitioner verbally about change of ownership. Since there is no such provision in the Sindh Rented Premises Ordinance, 1979 which permits a landlord to inform his tenant about change in ownership of the rented premises verbally, therefore, it was required that a notice under section 18 of the Ordinance was given by the landlord to the tenant.”

10. He emphasised that as the Respondent No. 1 had failed to adduce any evidence that he had ever sent a written notice to the Petitioner, his obligation to pay the rent to the Respondent No. 1 arose when he received the notice of Rent Case No. 1204 of 2016 and upon receipt of the notice of Rent Case no. 1204 of 2016 he immediately attempted to tender the rent to the Respondent No. 1 initially directly and thereafter through a money order and on the refusal of both he applied to deposit the rent with the IInd Rent Controller Karachi South in Rent Case No. 1204 of 2016 and which had correctly granted by that court in its order dated 26 August 2017.

¹ 2016 MLD 116

² *Ibid* at pg. 119

11. He contended that in light of such a fraud having been perpetuated by the Respondent No. 1 the manner in which the Petitioner tendered rent before the Rent Controller cannot be questioned. He relied on the decision reported as **Hirjibhai Behrana Dar-E-Meher vs. Messrs Bombay Steel Works, Partnership Firm**³ to state that while examining the conduct of the tenant prior to the deposit of rent in court, it was incumbent on the court to see whether such conduct amounted to "gross negligence" or could be considered as "dishonest" or whether it could be classified as a "wilful" or "deliberate" avoidance, or "intentional non-performance of obligation" to pay the rent to the Respondent No. 1, prior to holding the Petitioner liable for having defaulted on his obligations to pay rent to the Respondent No. 1. In this regard he referred to the following passage of that decision of the Supreme Court of Pakistan wherein it was held that:⁴

" ... We have carefully examined the provisions as contained in section 10(3) of the Sindh Rented Premises Ordinance, 1979 which is reproduced hereinbelow for ready reference:--

"(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 situated."

A cursory glance at the language in which the above subsection is couched will show that it is free from any ambiguity and no scholarly interpretation is called for. It simply means that where a landlord refuses or avoids to receive due rent the same can be tendered by means of money order or in the alternate it can be deposited with the learned Rent Controller in whose domain of jurisdiction the demised property is located. The tendering of rent by means of money order would be in two eventualities i.e. "refusal" or "avoidance" which are not synonymous or interchangeable terms and have been used to cover two different situations. The word "refusal" indicates categorical denial or renouncement in an unambiguous manner by the landlord while the word "avoid" with reference to the context reflects the conduct where the landlord instead of a categorical denial or refusal prefers to remain silent, shows reluctance to receive the rent and becomes unapproachable by keeping himself away to get the issue prolonged "to create the grounds of default". In both the above referred two situations the provisions as contained in section 10(3) of the Sindh Rented Premises Ordinance, 1979 can be invoked. The tendering of rent by means of money order can, be proved by producing its receipts, which has been done by the respondent. The only embargo, which can be placed in this particular sphere, is that the money order must be sent on a given and correct address. It was never the case of the appellant that money order has been sent on incorrect address. A careful analysis of the provisions as contained in section 10(3) of the Sindh Rented Premises Ordinance, 1979 would reveal that it is not obligatory for the tenant to show and prove that how, when, why and under

³ 2001 SCMR 1888

⁴ *Ibid* at pgs. 1892-1894

which circumstances the refusal was made by the landlord. In this regard we are fortified by the dictum laid down in case titled *Fakhar Mahmood Gillani v. Abdul Ghafoor* (1995 SCMR 96) wherein it, was observed while considering a similar proposition that "the rent remitted by money order to the landlord albeit on his correct address shall be deemed to be a valid tender and it has no nexus with the refusal of the landlord to accept the rent. The responsibility of the tenant is only that he remits the rent through money order and it is not expected of him to follow the postman to its destination". The tenant stands absolved of his responsibility under the law when he tenders the rent due and where it is not accepted by the landlord the tenant cannot be made to suffer. The money order issued by the postal authority in official course of business and produced by the respondent give rise to presumption of remittance especially in absence of any worthy of credence evidence in rebuttal. *The eviction application cannot be succeeded merely on the basis' of alleged default,, which is required to be proved by the landlord. "Default' imports an element of gross negligence, dishonest withholding of rent and something more than mere non-compliance which certainly would imply greater responsibility for satisfactorily establishing "wilful" or "deliberate" avoidance, or "intentional non-performance of obligation regarding deposit of rent by tenant."* (*Habib Bank Limited v. Amanullah* 1986 CLC 2917, *Muhammad Yamin v. Mashroofullah Khan* 1980 CLC 848, *Najmuddin v. Zamir Ahmad* PLD 1982 Kar. 188, *Muslim Commercial Bank v. Karim Bakhtiar* PLD 1988 Quetta 1.) "The most liberal interpretation that has been given to the word covers only defaults which are unavoidable or are due to causes, for which the defaulter is, in no way; responsible. *Ghulam Muhammad Khan Lundkhor v. Safdar Ali*, (PLD.1947 SC 530). Let me mention it clear here at this juncture that the- landlord cannot be allowed to take benefit and adopt tactics to make out a ground for eviction..."

He emphasized that the Petitioner had in consonance with law been depositing rent with the rent controller before the change of ownership in in MRC No. 434 of 2010, MRC No. 435 of 2010 and MRC No. 436 of 2010 before the Vth Rent Controller Karachi South and upon receipt of the notice of Rent Case No. 1204 of 2016 he immediately attempted to tender the rent to the Respondent No. 1 initially directly and thereafter through a money order and on the refusal on the part of the Respondent No. 1 to receive either, he applied to deposit the rent with the IInd Rent Controller Karachi (South) in Rent Case No. 1204 of 2016. He stressed that such an action on his part can in no manner be considered as either as "gross negligence" or "dishonest" nor could be classified as a "wilful" or "deliberate" avoidance, or "intentional non-performance of an obligation" on the part of the Petitioner to evict him on the ground of having defaulted on his obligation to pay rent to the Respondent No. 1 for the Petitioners Tenement.

12. Relying on the decision reported as **Inayat Ullah vs. Zahoore-ud-Din and another**⁵ he contended that it was equally important for the court to examine the conduct of the landlord to see whether the landlord was attempting to induce a default on the part of the tenant and stressed that the negligence on the part of the tenant was to be examined against the conduct of the landlord to see whether such default had in fact been induced by the landlord. In that decision the Supreme Court of Pakistan approved the findings of the High Court that:⁶

“ ... In cross-examination he admits that the rent of two months was sent to him by the appellants through money-order and the same was returned by him as refused and unpaid. However, he has not uttered a single word about the alleged wilful and deliberate default. This shows that the respondent deliberately created difficulties in the way of the appellants by not accepting the rent in the hope that some omission or slip on the part of the appellants may enable him to carve out a ground for their eviction. On the other hand the appellants fully realised the situation and being conscious of their liability continued to pay rent properly. The conduct of the appellants indicates no element of negligence on their part. As soon as the respondent refused to receive the rent, the appellants reasonably adopted the alternate prescribed mode of tendering the rent by way of depositing it with the Rent Controller consistently. The learned Rent Controller as well as the learned Appellate Authority failed to notice this aspect of the case and decided the matter in issue against the appellants arbitrarily without any cogent evidence on the file.”

Emphasising the deceitful nature of the Respondent No. 1 he stressed that he has diligently complied with the requirements of the Sub-Section (3) of Section 10 read with Section 18 of the Sindh Rented Premises Ordinance, 1979 and his action cannot in any manner be considered to be unreasonable so as cause him to being evicted on the ground of having defaulted on his obligation to pay rent to the Respondent No. 1.

13. Regarding the production of a photocopy as opposed to the original of the money order that the Respondent No. 1 had refused to accept, he stated that in the decision reported as **Miss Zohra Masud vs. Afrab Ahmed**⁷ where a photocopy of a postal receipts of a money order was

⁵ 1987 SCMR 1313

⁶ *Ibid* at pg.1314

⁷ PLD 1993 Karachi 293

produced the same were admitted into evidence Imam Ali G. Kazi, J stating that:⁸

“ ... In the present case photostat copies of the postal receipts of the two money orders, whereby appellant had remitted rent to the respondent were filed and accepted without any objection from the respondent. The receipts stand proved and the same are, taken to be the proof of payment of rent under section 10(4) of the Sindh Rented Premises Ordinance, 1979.”

Relying on this decision the Petitioner argued that the XIIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 erred in excluding photocopies of the money orders, which contained the endorsement of the Respondent No. 1 refusing to accept the same, as at no time during the evidence was any objection to their being adduced into evidence ever raised by the Respondent No. 1. He submitted that once the refusal of the money order had come into play he had no other choice but to file an application under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 and which he had done in Rent Case No. 1204 of 2016 and which had been correctly granted by the IIInd Rent Controller Karachi (South) in his order dated 26 August 2017.

14. He stated that his depositing rent before receiving notice of Rent Case No 1204 of 2016 in MRC No. 434 of 2010, MRC No. 435 of 2010 and MRC No. 436 of 2010 before the Vth Rent Controller Karachi South in the name of the previous landlord Mr. Riaz Hussain Malik absolved him of any liability to pay rent to the Respondent No. 1 prior to that date. He relied on the decision of the Supreme Court of Pakistan reported as **Shehzan Limited vs. Abdul Ghaffar**⁹ wherein while considering the scheme of Section 18 of the Sindh Rented Premises Ordinance, 1979 and the liability of a tenant to pay rent to a new owner when the tenant was not served by the new landlord with a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 it was held that:¹⁰

⁸ *Ibid* at pgs. 295-296

⁹ 1992 SCMR 2400

¹⁰ *Ibid* at pg. 2419

“ ... *I may also observe that if a new owner of a premises fails to serve above notice on his tenant and if the latter, without having knowledge of the transfer of ownership continues to pay rent to his previous landlord, he shall not be liable to pay rent to the new owner for the period, for which the tenant might have paid rent to the previous owner.*”

This decision was followed by a single judge of this Court in the decision reported as **Syed Abid Ali vs. Ghulam Moinuddin Khan**¹¹ which was also relied on by the Counsel for the Petitioner.

15. The Counsel for the Petitioner emphasised the scheme of Section 10 of the Sindh Rented Premises Ordinance, 1979 by relying on two decision of Ali Sain Dino Metlo, J. the first being **Azeemuddin vs. Attiaq Begum**¹² wherein his lordship held that:¹³

“ ... 8. Subsection (2) of section 10 (ibid) provides that rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing and subsection (3) ibid provides that 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. It will be worth to reproduce the two subsection: -

"(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.

(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.

9. The use of words as far as may be in subsection (2) is not without significance. There can be situations in which it may be very difficult to pay rent directly to the landlord as for example where he is residing at a far place within or outside the country. Keeping in view the convenience of landlords, the law provides for the payment of rent directly to them but at the same time, it, visualizing the possible difficulties of tenants, does not make it mandatory. Non-mention of consequences and use of words `as far as may be' clearly shows that the provision is directory and not mandatory. The use of word `may' in subsection (3) also shows that refusal or avoidance to receive rent is not an essential condition for sending the rent by postal money order or depositing it with the Controller.

10. It is 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 without first trying the other.

¹¹ 2012 CLC 143

¹² 2008 CLC 1499

¹³ *Ibid* at pgs. 1502-1503

11. The two modes are also not exhaustive. They do not exclude other modes of payment. For example, payment through banking channel cannot be treated as illegal.

12. Moreover, refusal of landlord to receive rent directly is not the only justification for opting the other modes. Avoidance is also a justification and one may infer avoidance from the conduct of a landlord. In the present case, the conduct of the landlady in abruptly demanding rent at exorbitantly high rate of Rs.5000 in place of the agreed rate of Rs.605 per month is sufficient to infer her avoidance to receive rent at the agreed rate."

In the second decision reported as **Haji Abdul Ghani vs. VII the Additional District Judge Karachi South**¹⁴ while considering whether it was necessary for the landlord to refuse to accept the rent before resorting to sending a money order to depositing the rent in court, his Lordship stated that:¹⁵

" ... 6. It is not the case of the petitioner that the respondent had committed default in the payment of rent by not depositing rent regularly with the Controller. His case is that he was depositing the rent with the Controller without his or his Rent Collector's refusal to receive it.

7. According to subsection (2) of section 10 of the Sindh Rented Premises Ordinance, 1979, the rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing and subsection (3) (ibid) provides that 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. It will be worth to reproduce the two subsections:-

"(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.

(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".

8. The use of words 'as far as may be' in subsection (2) is not without significance. There can be situations in which it may be very difficult to pay rent directly to a landlord as for example where he is residing at a far-off place within or outside the country. Keeping in view the convenience of landlords, the law provides for the payment of rent directly to them but at the same time, it, visualizing the possible difficulties of tenants, does not make it mandatory. Non-mention of consequences and use of words 'as far as may be' clearly shows that the provision is directory and not mandatory. The use of word 'may' in subsection (3) also shows that refusal or avoidance to receive rent is not an essential condition for sending the rent by postal money order or depositing it with the Controller.

9. Refusal of landlord to receive rent directly is not the only justification for adopting other modes of tendering it. Avoidance

¹⁴ 2008 CLC 1598

¹⁵ *Ibid* at pg. 1601

is also a justification and one may infer avoidance from the conduct of a landlord.”

16. The Respondent No. 1 through Mr. Noor Ahmed Malik Mehmood while supporting the Judgement dated 29 October 2019 passed by the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 stated that there was no illegality or infirmity in the judgement which required the interreference of this court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

17. He conceded that in the facts and circumstances the serving of a notice of the institution of Rent Case No, 1204 of 2016 should be considered as a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 and indicated that from that date onwards the obligation accrued on the part of the Petitioner to offer the rent to the Respondent No. 1. He emphasised that in the evidence there was no proof that the Respondent No. 1 had refused to accept the rent from the Petitioner and therefore no cause had arisen for the Petitioner to issue a money order to the Respondent No. 1 let alone to deposit the rent with the Rent Controller. He further contended that he had never received the money order and as such had no cause to refuse to accept the same.

18. Regarding the application that was filed under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979, it was clarified that even though an application was granted, payment in to the court has from the date of the Judgement dated 29 October 2019 passed by the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 been suspended and clearly thereafter the Petitioner is in default of his obligation to pay rent to the Respondent No. 1 making him liable to being evicted from the Petitioners Tenement. The Counsel for the Respondent No. 1 did not rely on any case law in support of his contentions.

19. I have heard the counsel for the Petitioner and the Respondent No. 1 and have perused the record. The Petition raises various issues regarding the interaction between the application of the provisions of Section 10 and Section 18 of the Sindh Rented Premises Ordinance, 1979 to regulate the obligation of a tenant to pay rent to a landlord so that the tenant may avoid being held to have defaulted on such an obligation and thereby rendering the tenant liable to being evicted under the provisions of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

20. Under the provision of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 it is a statutory obligation of every tenant to pay rent to the landlord failing which the tenant is liable to being evicted from the Said Tenement. Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 reads as under:

“ ... (ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application”

As such where a time period is specified in the agreement, it is the statutory obligation of the tenant to pay the rent to the landlord initially on a date mutually agreed as between the tenant and the landlord and if such a rent is not tendered within a period of 15 days from which date the rent was due, the omission on the part of the tenant will render the tenant being considered as having defaulted on his obligation to pay rent to the landlord and liable to being evicted from the tenement. In the event that there is no

date which has been mutually agreed as between the landlord and the tenant, then the tenant must submit the rent to the landlord within a period of 60 days from when the obligation to pay rent arises failing which the tenant will again be subject to being evicted from the tenement as having defaulted on his obligation to pay rent to the landlord.

21. The obligation of a tenant to pay the rent to the landlord when the tenement is transferred or inherited during the subsistence of the tenancy are regulated by Section 18 of the Sindh Rented Premises Ordinance, 1979 which clarifies that:

“ ... Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of sub-section (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant .

As can be seen where the tenement is transferred or inherited during the subsistence of a tenancy, the tenant is absolved from his liability to pay the rent to the new owner of the tenement until he receives a notice informing the tenant of the change in ownership. The Supreme Court of Pakistan in the decision reported as **Shehzan Limited vs. Abdul Ghaffar**¹⁶ has clarified the object of the Section by holding that:¹⁷

“ ... 20. The object of above section 18 of the Ordinance seems to provide protection to a tenant against the ground of default if he is unable to pay rent because of any change in the ownership of the rented premises on account of sale, gift, inheritance or by any other recognized mode of transfer. It is not uncommon that formalities to complete transfer of ownership in respect of an immovable property takes quite long period and sometime nobody accepts rent from the-tenant during the inter-regnum till the completion of formalities. So above section makes it mandatory on the part of the new owner to serve a notice under registered post upon his tenant and if the latter, upon the receipt of such notice, pays rent due within thirty days from the date-when the intimation should, in normal course, have reached the tenant he shall not be deemed to have defaulted. Since it is a beneficial provision, designed and intended for the benefit of tenants, it is to be construed liberally so that it may suppress the mischief aimed at, and may advance remedy. I am, therefore, of the view that a notice in terms of above section is mandatory even when a transfer of ownership pertains to a partial interest. I may also observe that if a new owner of a premises fails to serve above

¹⁶ 1992 SCMR 2400

¹⁷ *Ibid* at pgs.2418-2419

notice on his tenant and if the latter, without having knowledge of the transfer of ownership continues to pay rent to his previous landlord, he shall not be liable to pay rent to the new owner for the period, for which the tenant might have paid rent to the previous owner.”

As has been stated by the Supreme Court of Pakistan, the purpose of this Section is to ensure that a tenant is not entrapped into defaulting on his obligation to pay rent to a landlord on account of a change in the ownership of a tenement. It is therefore mandatory on the part of the landlord to issue such a notice to the tenant so as to inform the tenant of his obligation to pay the rent to the new landlord. I am in agreement with the decision in **Jiand Rai vs. Arjan Das**¹⁸ that such a notice should be in writing and cannot be made orally. I would also add that such a notice when issued must also be proved by the landlord to have been received by the tenant. To hold otherwise, aside from being contrary to the provisions of Section 18 of the Sindh Rented Premises Ordinance, 1979, would render the tenant subject to being evicted on the oral contentions of an unscrupulous landlord who would easily concoct such evidence to evict a tenant. Where a notice has not been sent under Section 18 of the Sindh Rented Premises Ordinance, 1979 and an application is filed by the landlord under the provisions of the Sindh Rented Premises Ordinance, 1979 a notice of which is issued by the Rent Controller and received by the tenant; such notice will suffice to meet the prescriptions of Section 18 of the Sindh Rented Premises Ordinance, 1979 and would amount to a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to inform the tenant of the change in ownership of the tenement.¹⁹ Finally, where albeit a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 is not issued by the landlord but a tenant is aware of the transfer or inheritance to the tenement and on the basis of this knowledge if the tenant **acts upon such information to**

¹⁸ 2016 MLD 116

¹⁹ See **Muhammad Yameenullah Pervez Malik vs. Mst Syeda Habiba Rizvi** 1990 MLD 2356 at pg. 2362; **Jodhpur Rajasthan Cooperative Housing Society Limited vs Yasmeen Aziz** 1996 MLD 1141 at pg. 1144; **Mst Mushtari Begum vs Mst. Zarqa Begum** 2006 MLD 573 at pg.577; **Muhammad Iftikhar Qureshi vs. Muhammad Yahya Qureshi** 2016 MLD 1134 at pg. 1138;

accept the new landlord, thereafter no notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 would be required to be issued by the landlord to the tenant to satisfy the provisions of that section.²⁰

22. In the event that a landlord refuses to accept the rent that is to be tendered by the tenant, the provisions of Section 10 of the Sindh Rented Premises Ordinance comes to the rescue of the tenant and prescribes that:

“ ... 10. (1) The rent shall, in the absence of any date fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than the tenth of the month next following the month for which it is due.

(2) The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.

(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.

(4) The written acknowledgement, postal money order receipt or receipt of the Controller, as the case may be, shall be produced and accepted in proof of the payment of the rent:

Provided that nothing contained in this section shall apply in the cases pending before the Controllers on the commencement of this Ordinance.

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**²¹ that:²²

“ ... 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 be a refusal or evasion 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 or evasion, 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

²⁰ See **Miss Abida Riasat Riazvi vs. Philomena Mathew** PLD 1994 SC 452 at pg.495

²¹ 2006 SCMR 1501

²² *Ibid* at pg. 1503-1504

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**²³ Anwar Zaheer Jamali, J. (as he then was) held that:²⁴

“ ... 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 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. Attiga Begum**²⁵ where Ali Sain Dino Metlo, J. held that:²⁶

“ ... 10. It also not necessary that before depositing rent with the Controller it should be sent by postal money order. The modes

²³ 2001 YLR 442

²⁴ *Ibid* at pg. 446-447

²⁵ 2008 CLC 1499

²⁶ *Ibid* at pg. 1503

are independent. Neither of the two modes is dependent upon the other. One may opt for any mode with first trying the other.”

The law to the extent of whether the options given to the tenant in Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance 1979 to the extent of whether the expression “or” as used therein is conjunctive or disjunctive is unsettled and which issue not being material to the subject lis will remain to be decided in an appropriate proceeding.

23. Having outlined the law above, turning to the Petition and as to whether the Petitioner on learning of the institution of Rent Case No. 1204 of 2016 had offered the rent to the Respondent No. 1, it is apparent that during his cross examination the Petitioner has contended that:

“ ... I have not directly pay the rent to the applicant voluntarily says that I have not ever met him.... It is correct to suggest that it is not mentioned in receipt bearing No. 1916 attached with my affidavit in evidence that the applicant had refused to receive it.

It is the first prescription of the Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 that prior to adopting any other course of action i.e. tendering rent by a money order or by depositing the rent directly with the Rent Controller, it is incumbent on the tenant to first tender the rent to the landlord and only where the landlord either refuses or avoids to accept the rent to thereafter adopt the secondary course of action i.e. tendering rent by a money order or by depositing the rent directly with the Rent Controller. It has come on record that the Petitioner on receipt of the notice of Rent Case No. 1204 of 2016 **correctly** treated the same as a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 but **incorrectly** issued a money order to the Respondent No. 1 without first offering the rent directly to the Respondent No. 1. In his cross examination the Petitioner clearly states that he had never directly offered the rent to the Respondent No. 1 and which would as per the decision of the Supreme Court in ***Mst. Yasmeen Khan vs. Abdul Qadir***²⁷ be an act which was not

²⁷ 2006 SCMR 1501

in consonance with the provisions of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979.

24. While noting that the conduct of the Respondent No. 1 in forging the receipt for the month of March 2017 does not bode well. I am of the opinion that such conduct cannot in any manner waive or negate the statutory prescription of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979. While the proposition of law advanced by the Petitioner that the conduct of the landlord was material in adjudicating as to whether the rent was deposited by the tenant in "gross negligence" or "dishonestly" or whether the conduct of the tenant could be classified as a "wilful" or one of "deliberate" avoidance" or "intentional non-performance of an obligation", was clearly correct. Such conduct on the part of the landlord and the tenant must be premised on the tenant, after having received notice of the change in ownership under Section 18 of the Sindh Rented Premises Ordinance, 1979, first offering the rent to the landlord and whereafter in the event of refusal or evasion on the part of the landlord to receive the rent, the conduct of the landlord and tenant would, as held by the Supreme Court of Pakistan in **Hirjibhai Behrana Dar-E-Meher vs. Messrs Bombay Steel Works, Partnership Firm**²⁸ and **Inayat Ullah vs. Zahoor-ud-Din and another**²⁹ be quite material. However as the Petitioner failed to even offer the rent to the Respondent No. 1, the reliance on these decision by the Petitioner was misplaced. There being no attempt on the part of the Petitioner to tender the rent to the Respondent No. 1, I am of the opinion that the XIIth Additional District & Sessions Judge Karachi (South) in his Judgement dated 29 October 2019 passed in FRA No. 536 of 2017 was correct in holding that such a conduct was in violation of the prescriptions of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 and which rendered the Petitioner liable to being evicted under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

²⁸ 2001 SCMR 1888

²⁹ 1987 SCMR 1313

25. Regarding the issue if as to whether the Petitioner was the tenant of all the Said Tenements or only the Petitioners Tenement, I am of the opinion that the Judgement dated 29 October 2019 passed by the XIIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 was correct. The Respondent No 1 in Rent Case No. 1204 of 2016 has stated that:

“ ... The Applicant abovenamed is the absolute and lawful co-owner/ landlord of three shops No. 4,5 an& 6, Ground Floor, Nazeer Bibi Building, Plot Survey No. 32, Sheet RS-3, (Old Survey # E-6, (192-A) Ramaswami Quarters, Karachi and the opponent above named is the tenant of the said three shops (hereinafter referred to as the “RENTED PREMISES”) at the monthly rental of Rs 4,880/- per month for each shop (Rs. 14,640/- for 3 shops) excluding utility bills and other charges pertaining to the rented premises required to be paid time to time separately by the opponent as a tenant.”

In response to these pleadings the Petitioner in his Written Statement has submitted that:

“ ... That the contents of Para 1 of the application is false, misleading hence denied, it is submitted that the demised premises acquired by the opponent by making payment pugri amount of Rs 30000/= per shop to its owner Riaz Hussain Malik.”

It is clear that after having admitted in his pleadings that each of the Said Tenements were in fact held by the Petitioner, it would thereafter be incumbent on the Petitioner to show as to how the said Muhammad Yousuf Baig and Mohiuddin Baig were introduced into their purported tenements as tenants. The Petitioner has neither moved an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 to implead Muhammad Yousuf Baig and Mohiuddin Baig as opponents to Rent Case No. 1204 of 2016 neither were they deposed to give evidence as to their status as tenants of Mr. Malik Riaz Hussain. I am therefore clear that in light of the admission on the part of the Petitioner in his written statement, that he had paid a “Pagri” of Rs. 30,000 to Mr. Malik Riaz Hussain for each of the Said Tenements would be sufficient to establish that he was the original tenant of each of the Said Tenements and it was thereafter incumbent on him to

adduce evidence to show that Muhammad Yousuf Baig and Mohiuddin Baig had thereafter legally displaced him as tenants. This as has been correctly pointed out by the XIIth Additional District & Sessions Judge Karachi (South) in the Judgement dated 29 October 2019 passed in FRA No. 536 of 2017 has not been done. I am therefore of the opinion that the finding of the XIIth Additional District & Sessions Judge Karachi (South) in the Judgement dated 29 October 2019 passed in FRA No. 536 of 2017 that the Petitioner was the tenant of each of the Said Tenements was correct and uphold the same.

26. On the basis of the findings as given above, I am of the opinion that the Judgement dated 29 October 2019 passed by the XIIth Additional District & Sessions Judge Karachi (South) in FRA No. 536 of 2017 which set aside an Order dated 26 August 2017 passed by the IIInd Rent Controller Karachi (South) whereby Rent Case No. 1204 of 2016, being an application under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979, was granted in favour of the Respondent No. 1 suffered from no illegality or infirmity and was in consonance with law. This Petition therefore was misconceived and along with all listed applications is therefore dismissed with no order as to costs.

JUDGE

Karachi dated 19 July 2023