

IN THE HIGH COURT OF SINDH AT KARACHI

First Rent Appeal No. 655 of 2000
[M/s. Delawala Enterprises *versus* Salman Saeed Mahmood]

Date of hearing : 23.02.2024 and 01.03.2024.
Appellant : Nemo.
Respondent : Salman Saeed Mahmood, through
Mr. Bilal Ahmed Khan, Advocate.

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Appellant has challenged the Order dated 29.04.2000 [the “**Impugned Order**”], that the learned Rent Controller erred in holding that the Petitioner [Applicant of Rent Case] used to accept rent in lump sum, by relying on the following receipts_

<u>Receipt No.</u>	<u>Period of Rent</u>
10.06.1991	May & June 1991
27.08.1991	August to December 1991
29.04.1992	June to March 1992

2. It is the stance of the Appellant that rent was to be paid on each month and not in lump sum and thus evidence was not properly evaluated; the Judgment cited of the Honourable Supreme Court-1999 S C M R 519 [Messrs Abdul Razzaque Abdul Sattar *versus* Abdul Shakoore and another] was not followed. Per averment of the Appeal, the Impugned Order is erroneous when it did not take note of the default of ten months and if the appraisal of evidence was properly made, then the Impugned Order should not have been passed, in particular, the crucial fact, that paying the rent after committing default, cannot be cured. Ground ‘L’ of the present Appeal has questioned the Impugned Order vis-à-vis status of the Appellant as a Partnership Firm and it is stated that Section 69 of the Partnership Act, 1932 [the “**Act**”], is not applicable; *secondly*, it is stated, that learned Rent

Controller did not have jurisdiction as a Court to settle legal questions about the status of partnership.

3. Mr. Bilal Ahmed Khan, Advocate representing Respondent, has rebutted stance of the Appellant. It is contended, that from the evidence it has come on record that the Appellant used to accept rent in lump sum also; since Appellant is an unregistered Partnership Firm, therefore, Section 69 of the Act is applicable and the Appellant has no legal status to file this Appeal as a Firm, but either individually or any of the authorized partners could have preferred this Appeal, and on this ground alone, this Appeal be dismissed. Argued, that depositing the rent in Court under Section 17 of the Cantonment Rent Restriction Act, 1963 [the “**Rent Law**”], upon refusal by the Landlord does not constitute the default, because statutory scheme of Cantonment Rent Law, is different from the Sindh Rented Premises Ordinance, 1979 [the “**SRPO**”]. In support of his contention, learned counsel has cited the following case law_

- i. **1986 S C M R 1857**
[*Abdul Aziz versus Abdul Ghani*];
- ii. **P L D 1976 Lahore 1052**
[*Mehrban Ali versus Haji Muhammad Qasim*];
- iii. **1991 M L D 1655**
[*Lala Niaz Ahmad versus Malik Ishtiaq Ahmad and others*]
- iv. **P L D 1960 (W.P.) Karachi 774**
[*Messrs United Cotton Factory, Hyderabad versus Ahmad Khan*];
- v. **P L D 2007 Karachi 78**
[*Messrs Marvi International through Partners versus Muhammad Aslam and 2 others*];
- vi. **1982 C L C 1241**
[*Messrs Construction Services (Pakistan) versus Ali Hussain*];
- vii. **2015 C L C 1786**
[*Mrs. Maryam A. Munif versus Mrs. Ghazal Bukhari through Attorney*];
- viii. **1991 M L D 651**
[*Fazal Hussain versus Mst. Bundu Hajjan*]; and
- ix. **2010 S C M R 1443**
[*Lt. General (Retd) Muhammad Afzal Najeeb versus Javed Sadiq Malik*] – **Javed Malik Case.**

4. Précis of the case law cited by the Respondent's Counsel is, that when there is sufficient evidence that the landlord has accepted arrears of rent and he is accepting the same in lump sum, then respondent / tenant cannot be held as a willful defaulter. Section 69 of the Act is explained; an unregistered partnership Firm cannot file a proceeding in its name unless it is registered [this case law on section 69 is cited by the Respondent's Counsel, to support his argument that the present Appeal in the name of the unregistered Partnership Firm is not maintainable]. If a landlord institutes a proceeding with unclean hands, then he is not entitled for any relief. Distinction is drawn between Section 17 of the Rent Law [*ibid*] and Section 10 of the SRPO (both relating to tendering of rent); held by the Hon'ble Supreme Court in Najeeb case (*supra*) that the above Section 10 of SRPO, includes "May be"; *whereas*, no such provision exists in the Rent Law.

5. Arguments heard. Record perused.

6. The only ground taken by the Appellant [Landlord] is of default. In his Affidavit-in-Evidence [*at page-141 of R&P*], it is acknowledged that lastly the Respondent [Tenant] paid the rent for fifteen months on 14.03.1992, against issuance of receipt by the Appellant but with a warning to tender the further rent punctually and regularly. The date of default, as alleged in Paragraph-6 so also in the Rent Application, is of 14.03.1992, although it is admitted that the Appellant later came to know that Respondent is depositing rentals in MRC [Miscellaneous Rent Case]. Appellant's witness has stated that Appellant is a registered Firm and produced a Certificate as Exhibit A/3, while admitting that the Partnership Deed was registered on 28.12.1994, but not when the rent case was filed. He has denied the suggestion that demised premises is on 'Pagri' or he has received the same from the Respondent. Admitted that Appellant used to receive the rent in **Lump Sum**; admitted that at the time of renting out the

Office / Premises, the Appellant received two months' advance rent which practice continued on other occasions as well. Admitted after seeing Exhibit O/1, [Rent Receipt] that the Appellant received the monthly rent of April 1993 to June 1993 and twelve months as arrears of rent; this particular reply is relevant, as the Appellant is claiming default from April 1993, although, he clarified in later part of his cross-examination, that he meant to say that after 14 March 1993, no rent was paid.

To a question has replied that cases in respect of other tenements were also filed on the ground of default, but after increasing their rents, Cases were compromised.

7. Respondent's witness has filed his Affidavit-in-Evidence in support of his stance and was subjected to cross-examination; in which he reiterated that after payment of rental up to June 1993, to the Appellant, he started depositing the rent in Court, because the Appellant did not receive the same. Admitted, that before starting of depositing the rent in MRC, it was not sent through money order to the Appellant. Nothing contradictory has surfaced in his cross examination.

8. The Case Law cited by the Appellant is considered. In Abdul Razzaque Case. [*ibid*, relied upon in the Appeal], the Honourable Supreme Court has dismissed the Appeal of the Tenant [appellant], because it is proven that earlier rents were paid as per the statutory scheme of SRPO, but, not in the subsequent months regarding which, default is claimed [by the respondent / landlord], as rent of January 1990 onwards were paid in March 1990. This Judgment is distinguishable, because, in the present *Lis*, it is proven that the Appellant / landlord had accepted Rents of past and present months in lump sum, hence, no default is committed; thus, the reported Decision(s) cited by the Respondent's counsel is relevant, including the adverse consequence of Section 69 of the Act. With regard to

the contention / ground of the Appeal that depositing of rentals in MRC by the Respondent, without first offering / tendering the same to the Appellant, itself is a default, is untenable, *inter alia*, in view of the Supreme Court Judgment handed down in the Javed Malik Case [*ibid*].

9. Learned Rent Controller, while dismissing the Rent Case, has discussed reasons issue-wise. The evidence about payment of lump sum rent, adverse consequences of Section 69 of the Act and deposit of monthly rent in MRC, have been taken into account and decided against the present Appellant.

Under Issue No.3, it has been observed on the basis of evidence led and admission made by the Appellant's witness, that the present Rent Case is also filed with the motive to enhance the rent, as is done by the Appellant in respect of other tenements / demised premises in the Subject Building.

10. In view of the above discussion, the Impugned Order is passed within parameters of law and there is no ground made out in the present Appeal to interfere in the same. Consequently, this Appeal is dismissed with no order as to costs.

Judge

Karachi.
Dated: 13.05.2024.

Riaz / P.S.