

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

C.P No.S-37 of 2024  
C.P No.S-38 of 2024  
C.P No.S-39 of 2024  
C.P No.S-44 of 2024  
C.P No.S-45 of 2024  
C.P No.S-46 of 2024

Petitioner in C.P  
No.S-37 of 2024 : Haroon-ur-Rasheed

Petitioner in C.P  
No.S-38 of 2024 : Tahir Hussain

Petitioner in C.P  
No.S-39 of 2024 : Shamshad Ali

Petitioner in C.P  
No.S-44 of 2024 : Shabbir Ahmed Memon

Petitioner in C.P  
No.S-45 of 2024 : Shabbir Ahmed Memon

Petitioner in C.P  
No.S-46 of 2024 : Shabbir Ahmed Memon  
Through M/s. Sarfraz A. Akhund,  
Qadeer Ahmed and Mujeeb Rehman  
Malano, Advocates

Respondents No.1to3 : Shahnawaz Memon and others  
in all petitions : Through M/s. Muhammad Zubair  
Malik and Co., Advocates

Respondents No.4&5 : Mr. Ghulam Abbas Kuber, AAG

**ORDER**

Date of hearing : **17<sup>th</sup> May 2024**

Date of decision : **31<sup>st</sup> May 2024**

>>>>>>>> <<<<<<<<<<

**ARBAB ALI HAKRO, J:** By virtue of this Order, I adjudicate on the titled petitions bearing C.Ps No.S-37, 38 & 39 of 2024. These petitions have been filed by the Petitioners, who are the tenants, in opposition

to distinct orders. Concurrently, C.Ps No.S-44, 45 & 46 of 2024 have been instituted by the Petitioner, one of the co-sharers, against the identical orders that the tenants have challenged in the aforementioned C.Ps. These contested orders originated from rent applications and First Rent Appeals that were adjudicated by the learned I-Rent Controller, Sukkur (“**Rent Controller**”) and the learned V-Additional District Judge, Sukkur (“**the appellate Court**”).

2. In C.Ps. No. S-37, 38 and 39 of 2024, the Petitioners, who are the tenants, have impugned the Judgments dated 09.02.2024. These Judgments, which are the result of a thorough legal process, were passed by the learned appellate Court. As a result of these Judgments, their rent appeals were dismissed. Furthermore, the Ejectment Orders dated 24.12.2022, which were passed by the learned Rent Controller in Rent Applications No.08, 10 and 12 of 2014, were upheld.

3. In C.Ps No.S-44, 45 & 46 of 2024, the Petitioner, who is one of the co-sharers, has also challenged the aforementioned Judgments and Orders. The Petitioner asserts that the Petitioners in C.Ps No.S-37, 38 & 39 of 2024 are his tenants and have regularly remitted rent to him.

4. The pertinent facts of the case are that Respondents No.1 & 2, who are the landlords, filed three distinct Rent Applications, specifically No.08, 10 and 12 of 2014. These applications, which are crucial to the case, were filed under Section 15 of the Sindh Rented Premises Ordinance, 1979 (**S.R.P.O 1979**) against the Petitioners, who are the tenants, in C.Ps No.37, 38 & 39 of 2024. The applications pertain to shops erected on C.S Nos.2877 and 2982, located at Bhutta Gali, Shahi Bazar, Sukkur (the “**demised shops**”). The grounds for these applications are the tenants’ alleged default in rent payments, a matter of significant concern.

5. In Rent Application No.10 of 2014, which is implicated in C.P No.S-37 of 2024, it was asserted that Respondent No.1 rented the shop located on C.S No.B-2982 to the Petitioner, Haroon-u-Rasheed vide rental agreement dated 31.01.2002. The rent of the shop was initially fixed at a rate of Rs.700/- per month, and an amount of Rs.40,000/- was deposited as an advance towards security. The rent was subsequently escalated periodically, and until the year 2004, the Petitioner/tenant remitted rent at a rate of Rs.1400/- per month to Respondent No.1. Subsequent to this, the Petitioner/tenant commenced depositing the rent in Court at a rate of Rs.770/- per month without any stated justification, commencing from August 2007. This resulted in a willful default in the payment of rent for an approximate period of six years.

6. In Rent Application No.12 of 2014, associated with C.P No.S-38 of 2024, it was alleged that respondent No.1 rented out a shop located at C.S No.B-2877 to the petitioner/tenant, Tahir Hussain. This was done through a rental agreement dated 16.02.2002, with the monthly rent fixed at Rs.880/-. In 2004, when respondent No.1 demanded a rent increase, the petitioner/tenant ceased payment of rent, thereby committing a willful default. The petitioner/tenant then began depositing rent directly into the Court without any stated reason. In August 2013, respondent No.1 discovered that the petitioner/tenant had also failed to deposit the rent into the Court from August 2006 onwards. Consequently, the petitioner/tenant has committed a willful default in the rent payment for approximately six to seven years. This constitutes a willful default in payment of monthly rent.

7. In Rent Application No.08 of 2014, associated with C.P No.S-39 of 2024, respondent No.1 claimed that he rented out the ground floor shop at C.S No.B-2877 to the petitioner/tenant, Shamshad Ali. This agreement was made approximately fifteen years before the filing of

the ejectment application, and the monthly rent was initially set at Rs.180/-. The rental agreement was subsequently extended through a new agreement dated 26.11.2001 until 26.10.2002 and the rent was increased to Rs.350/- per month. The petitioner/tenant allegedly paid the rent until 2004, after which he ceased payment and began depositing the rent directly into the Court without any given reason. In August 2013, respondent No.1 discovered that the petitioner/tenant had stopped depositing rent into the Court after August 2007. As a result, the petitioner/tenant has committed a willful default in the rent payment for approximately six years.

8. The Petitioners/tenants contested the ejectment applications by submitting their Written Replies. In these replies, they advanced legal pleas asserting that the rent applications are not sustainable and also disputed the ownership claims of respondent No.1/landlord. Despite these disputes, they conceded to having entered into a tenancy agreement with respondent No.1 and acknowledged depositing the monthly rent into his bank account. They further alleged that a subsequent dispute emerged among the co-owners/co-sharers of the demised premises and other properties concerning the distribution of shares inherited from their father. As a consequence of this dispute, respondent No.1 communicated to them his decision to relinquish his right to claim rent from them regarding the demised shops due to the ongoing litigation. He consequently ceased to receive rent and closed his bank account in 2004. It was additionally alleged that respondent No.3 counselled them to enter into an agreement with his brother, Shabbir Ahmed (the Petitioner in C.Ps No.S-44, 45 & 46 of 2024). As a result, they executed a rent agreement with him on 06.09.2007 and have since been regularly remitting rent to Petitioner Shabbir Ahmed.

9. In relation to the claim of Petitioner Shabbir Ahmed, during the course of the ejectment applications, he made an appearance and

submitted an application under Order I Rule 10 C.P.C, to implead him as a party in the ejectment applications. His application was allowed by consent, as per the Order dated 07.6.2014. Consequently, he was designated as applicant No.3 in all three ejectment applications.

10. At the outset, the learned counsel representing the Petitioners in all the aforementioned petitions argued that the default alleged by respondent No.1 in the ejectment applications pertained to the period from August 2006 to August 2007. Yet, the ejectment applications were not filed until 2014. The counsel maintained that the Petitioners/tenants initially paid the due rent to respondent No.1 by depositing it into his bank account. However, in 2004, when respondent No.1 closed his account, the Petitioners/tenants had no alternative but to deposit the monthly rent in Court. The counsel asserted that the Petitioners/tenants had not defaulted on rent payments, and a dispute had arisen among the co-sharers. Petitioner Shabbir Ahmed, a co-sharer, claimed rent for the disputed premises, leading the Petitioners/tenants to enter into new rent agreements with him and pay him the monthly rent regularly without any default. According to the learned counsel, the landlord-tenant relationship was established with Petitioner Shabbir Ahmed, and the Rent Controller lacks jurisdiction to resolve the controversy/dispute among the co-sharers, which is not within their purview to decide the *lis* and the controversy involved in the ejectment applications. Counsel also contended that respondent No.1 & 2 did not deny the relationship of the Petitioners/tenant with Petitioner Shabbir Ahmed, even though they did not avail the opportunity of cross-examination during the trial before the Rent Controller. The counsel further argued that Petitioner Shabbir Ahmed had filed a suit for partition concerning the properties and the demised premises. A Preliminary Decree dated 01.02.2011 has been passed by the Civil Court, and further proceedings for passing the final decree are underway. Per the learned counsel, once the preliminary decree is passed with respect

to partition, the Rent Controller lacks jurisdiction to decide the dispute between the co-sharers or co-landlords under the S.R.P.O, 1979.

11. Conversely, learned counsel for respondents No.1 & 2 argued that the Petitioners/tenants were initially inducted into the demised shops through rental agreements. These agreements are not disputed but rather acknowledged by the Petitioners/tenants, establishing the landlord-tenant relationship. The Petitioners cannot unilaterally terminate or enter into a new agreement with another co-sharer, Petitioner Shabbir Ahmed, without the consent of Respondents No.1 & 2. Counsel contends that Respondents No.1 & 2 transferred physical possession of the vacant demised shops to the Petitioners/tenants. Therefore, they were obligated first to vacate the rented shops and return them to the Respondents. The alleged rental agreements executed by Petitioner Shabbir Ahmed with the Petitioners/tenants were neither presented as evidence nor were any documentary proofs of alleged receipt payments brought on record through evidence by either the Petitioners/tenants or Petitioner Shabbir Ahmed. Furthermore, the counsel argues that the alleged new rental agreements are void and do not affect the established landlord-tenant relationship between Respondents No.1 & 2 and the Petitioners/tenants. He also argued that, as per Article 115 of the Qanun-e-Shahadat Order, 1984, the Petitioners/tenants are legally barred from disputing the ownership rights of the landlord. Finally, he concluded that the Petitioners/tenants have willfully defaulted on rent payments and that the concurrent findings of both lower courts do not suffer from any material illegality, irregularity, or jurisdictional error warranting interference by this Court under its Constitutional jurisdiction.

12. In agreement with the arguments the learned counsel for Respondents No.1 & 2 put forth, the learned Assistant Advocate

General (A.A.G) supports the contested Orders and Judgments issued by both lower courts. The A.A.G submits that there is no apparent material illegality or irregularity in the concurrent findings of both the lower courts below.

13. I have heard the learned counsel for the parties and perused the material available on record with their assistance.

14. Before proceeding further, it is imperative to elucidate that this Court does not typically operate as an appellate court in matters pertaining to rent. Rather, its jurisdiction is primarily confined to addressing those decisions which, prima facie, appear to have engendered significant legal errors, culminating in a miscarriage of justice. The appellate Court retains the ultimate authority in the hierarchy of rent-related matters, and when both rent authorities have concurrent findings, the scope for intervention is considerably circumscribed.

15. It is noteworthy that the petition under consideration falls within the ambit of the writ of certiorari, which is directed against the judgments and orders rendered by both lower courts in rent jurisdiction. It is a well-entrenched legal principle that these judgments and orders cannot be modified unless substantiated that they result from misinterpretation or oversight of evidence. Reference can aptly be made to the case of Muhammad Lehrasab Khan vs. Mst. Aqeel-un-Nisa and 5 others(2001 SCMR 338) wherein it is held as follows: -

*"4. There is no cavil with the proposition that ordinarily the High Court in its Constitutional jurisdiction would not undertake to reappraise the evidence in rent matters to disturb the finding of facts, but it would certainly interfere if such findings are found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction and arbitrary exercise of powers. In appropriate cases of special jurisdiction, where the District Court is the final Appellate Court, if it reverses the finding of the trial Court on the grounds not supported by material on record, the High Court can interfere with it by issuing writ of certiorari to correct the*

*wrong committed by the Appellate Authority. Reference can be made to Rahim Shah v. Chief Election Commissioner (PLD 1973 SC 24), Lal Din Masih v. Sakina Jan (1985 SCMR 1972), Muhammad Hayat v. Sh. Bashir Ahmad and others (1988 SCMR 193), Abdul Hamid v. Ghulam Rasul (1988 SCMR 401) and Assistant Collector v. Al-Razak Synthetic (Pvt.) Ltd. (1998 SCMR 2514). In Rahim Shah's case, supra, it was held:--*

*"The scope of interference in the High Court is, therefore, limited to the inquiry whether the Tribunal has in doing the act or undertaking the proceedings acted in accordance with law. If the answer be in the affirmative the High Court will stay its hands and will not substitute its own findings for the findings recorded by the Tribunal. Cases of no evidence, bad faith, misdirection or failure to follow judicial procedure, etc. are treated as acts done without lawful authority and vitiate the act done or proceedings undertaken by the Tribunal on this ground. Where the High Court is of opinion that there is no evidence proper to be considered by the inferior Tribunal in support of some point material to the conviction or Order, certiorari will be granted."*

*[Emphasis supplied]*

16. Transitioning my attention to the crux of the matter, it is of paramount importance to acknowledge that the Petitioners/tenants have cast aspersions on the landlord-tenant relationship in the extant Petitions with the Respondent No.1. They contend that due to an ongoing dispute among the legal heirs over the inherited properties, inclusive of the demised shops, they were compelled to enter into new rent agreements dated 06.09.2007, with the Petitioner Shabbir Ahmed, who is also one of the co-owner of the demised premises. They assert that they have consistently remitted rent to him without any default. This narrative of the Petitioners/tenants finds corroboration from the Petitioner Shabbir Ahmed, who admittedly is embroiled in a dispute with his brothers, Respondent No.1 & 2, over the apportionment of the inherited properties.

17. In the case at hand, it is a matter of record that the Petitioners/tenants have conceded to the status of Respondent No.1 as the 'landlord'. Respondent No.1 had inducted them into the



demised shops as tenants. They have even acknowledged that upon refusal of Respondent No.1 to accept the rent, they commenced depositing the rent in Court in the name of Respondent No.1. It is an admitted fact that the Petitioners/tenants are a creation of the agreements entered into between the Respondent No.1 and the tenants. Any dispute between Respondent No.1 & 2 and his brother, Petitioner Shabbir Ahmed, is extraneous to the character of the tenancy relationship between the parties to the tenancy agreements. If it were to be presumed as correct that the Petitioners/tenants entered into fresh rent agreements with the Petitioner Shabbir Ahmed, under such circumstances, the Petitioners/tenants were obligated to first deliver the possession of the demised shops to the Respondent No.1, who inducted them as tenants. However, neither such rent agreements purportedly entered into between the Petitioners/tenants and Petitioner Shabbir Ahmed were brought on record or produced by the Petitioners/tenants or Petitioner Shabbir Ahmed in their evidence before the Rent Controller. It is also an admitted position that Petitioner Shabbir Ahmed, being a co-sharer, was joined as an applicant, being one of the co-sharers and not the opponent in the ejectment applications. Nevertheless, the Petitioners/tenants could not evade eviction simply because one of the co-owners (Petitioner Shabbir Ahmed) came to their rescue to save them. The Petitioners/tenants would not be beneficiaries of the dispute between the co-owners/co-sharers. They remain tenants of respondent No.1/landlord, who made them sit on the demised premises.

18. To circumvent the repercussions of default, a tenant cannot refute the landlord's ownership. Given that the Petitioners/tenants have acknowledged their induction as tenants in the demised shops, they are under Article 115 of the Qanun-e-Shahadat Order, 1984, estopped from denying Respondent No. 1's title. A tenant is only permitted to dispute the title/relationship of the landlord of the

individual who inducted him as a tenant by first relinquishing possession of the premises to the landlord. Consequently, the Petitioners/tenants are obligated to return possession of the premises to Respondent No.1. In the case referenced as 1992 SCMR C 1170, the Supreme Court of Pakistan ruled that in instances of obstinate denial of relationship, the tenant is subject to immediate eviction without the necessity of recording evidence on other grounds such as default, property damage, or personal need. This ruling aligns with the findings in the case reported as 1997 SCMR 567.

19. Notwithstanding, the legal maxim "**once a tenant, always a tenant**" is a well-established principle in the realm of landlord-tenant law. This principle underscores the enduring nature of the tenant's status, even in the face of various changes that may occur during the tenancy period. It implies that once recognized as such, a tenant continues to be a tenant until a specific event or action legally terminates the tenancy. Such events could include the expiration of the lease term, a breach of the lease conditions, or a mutual agreement between the landlord and tenant to end the lease. It is important to note that this principle does not suggest that the tenant has an indefinite right to the property, but rather emphasizes the continuity of their legal status as a tenant until adequately terminated.

20. In the context of the claim put forth by Petitioner Shabbir Ahmed, it is a recognized fact that his involvement in the rent proceedings was as an applicant, not as an adversary. Despite the opportunity being presented to amend the rent application, only an amended title was submitted, with no explicit request for sole possession made by Petitioner Shabbir Ahmed. When questioned, the counsel representing the Petitioners remained reticent regarding the rationale behind Shabbir Ahmed's decision to join the ejectment proceedings as an applicant. This silence was maintained despite the

availability of the option of transposition of parties, an opportunity that was not seized.

21. Moreover, the evidence put forth by the Petitioner, Shabbir Ahmed, does not dispute the relationship between the Petitioners/tenant and respondent No.1 & 2/landlords. This relationship remains unchallenged, reinforcing the landlord-tenant dynamic that exists between the parties involved. The actions and decisions made by Shabbir Ahmed throughout these proceedings, coupled with the evidence he has presented, do not contradict or challenge the established relationship between the Petitioners/tenants and respondent No.1 & 2 as landlord and tenant.

22. It is acknowledged that Petitioner Shabbir Ahmed and others filed suit for Partition, Separate Possession and Permanent Injunction against respondents No.1 & 2, and others have been decreed through a preliminary decree. This decree ensures that Shabbir Ahmed will receive his rightful share regarding properties, including the demised shops. Upon receipt of these properties, Shabbir Ahmed will have the autonomy to retain, dispose of, or rent out the same to any party of his choosing. This freedom, however, does not grant him the authority to dispute the existing relationship of respondent No.1 & 2 with the Petitioners/tenants as landlord and tenant by providing undue support to the Petitioners/tenants. It is also a fact that the Petitioner, Shabbir Ahmed, has not filed a suit for Rendition or Settlement of Account. Instead, his legal action was directed towards filing a suit for partition, as discussed above.

23. Addressing the issue of default in payment of rent, it has been asserted by Respondent No.1 that the Petitioners/tenants fulfilled their rental obligations to him until 2004. Subsequently, they ceased direct payments to him and instead began depositing rent in Court. However, this practice was discontinued in August 2006 and 2007, respectively. It is a well-established legal principle that the burden of

proof for rent default, initially placed on the landlord, is deemed sufficiently discharged when the landlord attests under oath that the tenant has failed to remit rent for a specified period. In the present case, Respondent No.1 has unequivocally stated in his affidavit-in-evidence that the Petitioners/tenants defaulted on their rent payments as alleged in his ejectment applications. This shifted the onus onto the Petitioners/tenants to conclusively demonstrate that they had paid or tendered the rent for the disputed period. In their written responses to the eviction applications, the Petitioners/tenants denied any default in rent payment. However, during cross-examination, they explicitly conceded in their respective testimonies that they had not paid monthly rent to Respondent No.1 post-2004, nor had they deposited rent in Court since 2007. Given these circumstances, the conclusions reached by both the lower Courts are predicated on the Petitioners/tenants' admission of willful default in payment of rent. These findings were thoroughly examined by the learned Rent Controller and do not necessitate any intervention by this Court in its Constitutional jurisdiction.

24. For what has been discussed above, Petitioners have failed to make out his case to interfere in the findings recorded by both the courts below. Resultantly, the instant Petitions are **dismissed**.

**JUDGE**

*Faisal Mumtaz/PS*