

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitution Petition No.S-1404 of 2024

Petitioner : Noman Saleem
through Mr. Muhammad Javed
Tanoli, advocate

Respondents Nos.1 to 6: Rehmat Elahee & others
through Mr. Amir Saleem,
advocate

Mr. Jan Muhammad Khuhro,
A.A.G. Sindh

Date of hearing: 28.02.2025

Date of judgment: 13.03.2025

J U D G M E N T

Jan Ali Junejo, J:-- This Constitution Petition is directed against the Judgment dated 14-10-2024 passed by the Court of learned VIIth Additional District Judge, Karachi-South (hereinafter referred to as the "Appellate Court"), whereby First Rent Appeal No. 295 of 2023, preferred by the Petitioner, was dismissed. The said Appeal arose from the Order dated 28-09-2023 passed by Court of learned XVth Rent Controller, Karachi-South (hereinafter referred to as the "Rent Controller") in Rent Case No. 519 of 2022, which allowed eviction application against the Petitioner.

2. The Respondents Nos. 1-6 (landlords) acquired ownership of the demised premises through a conveyance deed dated 04.11.2021. They served a notice under Section 18 SRPO on 21.03.2022, informing the Petitioner (tenant) of the ownership transfer. The Petitioner, who had been depositing rent in MRC No. 996/2018 (under the previous owner), shifted

deposits to MRC No. 667/2022 (post-notice) and later to Rent Case No. 519/2022 after the Rent Controller's Order on application under Section 16(1) SRPO. The Respondents Nos.1 to 6 prayed for the following reliefs:

- a. *To vacate Shop No. 6, Ground Floor of building constructed on Plot bearing Survey No. 5, Sheet No. SR-11, Outram Road, Serai Quarters, Near Haqqani Chowk, Karachi under occupation of opponent and hand over peaceful and vacant physical possession of the said shop to the applicants' attorney being co-owner and further be pleased to put the applicants in physical possession of the said shop;*
- b. *Grant costs of the proceedings; AND*
- c. *Any other relief or reliefs which this Hon'ble Court may deem fit and proper under the circumstances of the case.*

3. Upon receiving the summons, the Petitioner appeared before the Rent Controller and submitted a written statement, denying the allegations made in the Rent Application. He asserted that he had not defaulted in rent payments and had been depositing the rent through M.R.C. No. 996 of 2018. Upon learning about the Respondents Nos. 1 to 6 acquiring the property, he began depositing the rent under MRC No. Nil/2022. Ultimately, the Petitioner requested the dismissal of the rent case. The learned Rent Controller examined the evidence presented by both parties and, through a judgment dated 28-09-2023, ruled in favor of the Respondents Nos. 1 to 6, allowing Rent Case No. 519 of 2022. Aggrieved and dissatisfied with this decision, the Petitioner filed Rent Appeal No. 295 of 2023, which was subsequently transferred to the Court of the learned VIIth Additional District Judge, Karachi-South. After

hearing arguments from both sides, the Appellate Court rendered the Impugned Judgment on 14-10-2024.

4. The petitioner's counsel contends that the Impugned Judgment and lower Court order are legally unsustainable, as they were passed without proper appreciation of evidence, ignored critical admissions in the respondents' own rent fixation case (No.866/2022) where no default was alleged, and erroneously shifted the burden of proof onto the tenant despite the respondents' failure to substantiate default claims. He argues that the petitioner lawfully deposited rent in the prior owner's MRC (No.996/2018) until April 2022, later tendered rent through money order to the respondents' attorney after formal notice under Section 18 SRPO, and continued deposits in subsequent MRC No.667/2022 & R.C. No. 519/2022, demonstrating compliance with statutory obligations. The Courts, he asserts, misapplied cross-examination excerpts—where the petitioner admitted no direct tender to respondents but clarified ongoing deposits—to manufacture a “willful default”, violating settled law (PLD 1994 Karachi 209) that landlords must independently prove default and cannot exploit tenant weaknesses. Further, the appellate court's failure to rule on the petitioner's application for additional evidence before final judgment rendered the proceedings procedurally flawed, compounding jurisdictional errors rooted in non-reading/misreading of evidence. Lastly, the learned counsel has prayed for allowing Constitution Petition and setting aside of the Impugned Judgment and Order passed by the learned Courts below.

5. Per contra, the learned counsel for Respondents Nos.1 to 6 argues that the petitioner's failure to redirect rent payments after the respondents acquired ownership in November 2021 —

despite formal notice under Section 18 SRPO in March 2022—constituted default, as the tenant’s obligation to pay the new owners arose automatically upon transfer of title, irrespective of procedural delays. He emphasizes the petitioner’s admission during cross-examination of non-deposit for the period November 2021–July 2022 and refusal to pay the respondents directly, confirming willful default under SRPO. The burden, he asserts, shifted to the tenant once ownership was proven, and the petitioner’s reliance on prior MRCs (e.g., No.996/2018) was irrelevant post-transfer. The Courts validly exercised discretion in prioritizing substantive compliance with SRPO over hypertechnical objections, as the tenant’s inconsistent deposits and admissions justified eviction. He distinguishes PLD 1994 Karachi 209, contending the respondents Nos.1 to 6 discharged their initial burden by proving ownership and non-payment, after which the petitioner’s inability to rebut shifted the onus. The judgments, he concludes, align with SRPO’s intent to protect landlords from tenants who exploit procedural gaps to withhold rent unlawfully.

6. I have carefully examined the arguments put forth by the learned counsel for both parties and thoroughly reviewed the material available on record with the utmost diligence and caution. A detailed analysis of the record establishes that Respondents Nos. 1 to 6 have successfully substantiated their ownership of the demised premises, as well as the existence of a landlord-tenant relationship, through the following:

- Presenting the conveyance deed dated 04.11.2021 as conclusive proof of ownership.
- Establishing that, despite the transfer of title, the Petitioner continued to make rent payments to the

previous owner until April 2022, thereby acknowledging the change in ownership.

- Demonstrating non-payment of rent for the period from November 2021 to July 2022, which was further corroborated by the Petitioner's admission during cross-examination:

"I cannot say if the rent of August, September and October 2021 has been paid after default on 10-02-2022. It is correct to suggest that in MRC No. 667/2022, it has been prayed that permission may be given to deposit the rent from August 2022 at the rate of Rs.600/-. It is correct to suggest that no rent was directly offered to the applicants of this case or their attorney before filing MRC. I do not remember the date of sending the money order to the applicants or their attorney in this case. I do not remember the date and the month when I presented MRC for depositing rent in favor of applicants in this case. It is correct to suggest that according to the conveyance deed, the applicants become the owner of the premises on 28-10-2021. Vol. says that however, I only come to know about the same conveyance deed after service of notice of this case."

The cross-examination of the Petitioner establishes two key facts: first, that no direct tender of rent was made to Respondents Nos. 1 to 6, and second, that there is no plausible explanation for the non-payment of rent from November 2021 to July 2022. Under Section 10 of the Sindh Rented Premises Ordinance (SRPO), 1979, before resorting to alternative modes of rent payment—such as remittance via postal money order or deposit in court—the tenant must first make a direct effort to

tender the rent to the landlord. The practice of bypassing this requirement and directly opting for alternative payment methods has been disapproved by the Superior Courts. In support of this, reliance is placed on the authoritative rulings of the Apex Court of Pakistan in the following cases:

- *Muhammad Amin Lasania v. Messrs Ilyas Marine and Associates and others (PLD 2015 SC 33)*
- *Muhammad Asif Khan v. Sheikh Israr (2006 SCMR 1872)*
- *Abdul Malik v. Mrs. Qaisar Jehan (1995 SCMR 204)*

In the present case, it is an undisputed fact that the Petitioner never made a direct tender of rent to Respondents Nos. 1 to 6. This remains an admitted position throughout the cross-examination. Furthermore, the Petitioner failed to provide any justification for the non-payment of rent for the period from November 2021 to July 2022. These factors collectively establish that the Petitioner wilfully defaulted in the payment of rent.

7. Once the initial burden of relationship of the landlord and tenant and non-payment of the rent were established, the burden shifted to the Petitioner to prove lawful payment. The Petitioner's reliance on MRC No. 996/2018 (prior owner's account) was irrelevant post-transfer. The belated deposits in MRC No. 667/2022 (after March 2022 notice) and Rent Case No. 519/2022 (post-Section 16 order) did not cure the default for the period preceding these actions. The Petitioner's obligation to pay rent to the Respondents arose automatically upon transfer of ownership (04.11.2021). The Section 18 SRPO notice (21.03.2022) merely formalized this obligation. The Petitioner's

failure to redirect payments immediately – despite knowledge of the transfer – constituted default. The belated money order tender (post-March 2022) and subsequent MRC deposits were insufficient to offset the prior arrears. The Petitioner’s explicit admission of non-deposit for the critical period (November 2021–July 2022) is fatal to his case. The Petitioner’s grievance about the Appellate Court’s failure to decide his application for additional evidence is hypertechnical. The application sought to introduce peripheral documents (e.g., prior rent receipts), which could not remedy the admitted default. The case of *Messrs Habib Bank Limited v. Sultan Ahmad and Another* (2001 SCMR 678) [wrongly mentioned as Page-679 on **Pakistanlawsite**) may also be referenced, wherein the Supreme Court of Pakistan ruled as follows: In its concluding remarks, the Apex Court emphasized that a tenant lacks the legal authority to demand title documents from a landlord upon receiving a notice under Section 18 of the Ordinance. The Apex Court clarified that once a tenant is formally notified of a change in ownership – whether through judicial proceedings, direct service of notice, or another credible means – he/she is legally obligated to recognize and accept the new owner as his/her landlord. This principle aligns with prior rulings in *Muhammad Ashraf v. Abdul Hameed and Others* (1982 SCMR 237(2)) and *Suleman and Another v. M.A. Mallick* (1988 SCMR 775), which affirmed the tenant’s duty to comply with such transitions in ownership without contesting the landlord’s title. The Petitioner’s reliance on *Mst. Zohra Bai and another v. Messrs Standard Industries Ltd. through Managing Director* (PLD 1994 Karachi 209) is misplaced. In that case, landlords failed to discharge their initial burden. Here, the Respondents proved ownership, relationship of the landlord and tenant and non-payment, shifting the onus to the Petitioner. Weaknesses in the tenant’s case become material only if the landlord’s initial

burden remains undischarged. It was held by this Court that: “*In the present case, it is stand of the appellants that they had been collecting the rent yearly and not monthly. In the circumstances the Rent Controller rightly exercised his discretion in favour of the tenant. In such cases the Rent Controller has a discretion not to order eviction even where default in payment of rent is proved, as per the view taken in the case of Najmuddin v. Zamir Ahmed PLD 1982 Kar. 188. I am, therefore, not inclined to disturb finding of the trial Court on the point of default*”.

8. Interference under constitutional jurisdiction is unwarranted unless findings are perverse, arbitrary, or based on no evidence. No such infirmity exists here. The Petitioner failed to demonstrate jurisdictional errors, or manifest injustice—thresholds for upsetting concurrent findings of the facts recorded by the learned Courts below. It is a well-established legal principle that jurisdiction under Article 199 of the Constitution cannot be invoked as a substitute for an appeal against the order of the Appellate Court. Therefore, the mere fact that this Court, upon re-examining the evidence, may reach a different conclusion does not provide a valid basis for interfering with the Appellate Court’s order. The Appellate Court serves as the final authority within the hierarchy of rent laws, as governed by the Sindh Rented Premises Ordinance, 1979. In this regard, reliance is placed on the authoritative judgment of the Apex Court of Pakistan in *Shakeel Ahmed and another v. Muhammad Tariq Farogh and others (2010 SCMR 1925)*.

9. For the reasons delineated here-in-above, the Constitution Petition, lacking substantive merit, is hereby dismissed. Consequently, the judgments rendered by both the Rent Controller and the Appellate Court are affirmed. The Petitioner

is directed to vacate Shop No. 6 and deliver its possession to the Respondents within 90 days, without exception, subject to the payment of rent as determined by the learned Rent Controller and the settlement of utility charges. In case of non-compliance, the Rent Controller shall have the authority to proceed with the Petitioner's eviction in accordance with the law, without the requirement of any further notice. Each party shall bear its own costs for these proceedings.

JUDGE