

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitution Petition No. S- 494 of 2023

Petitioners : Mustafa & another
through Mr. Iftikhar Hussain,
advocate

Respondents No.1 : Afzal Kothari
through Mr. Amir Saleem,
advocate

The State
Through Mr. Jan Muhammad
Khuhro, Additional Advocate
General

Date of hearing: 27.02.2025

Date of judgment: 17.03.2025

J U D G M E N T

Jan Ali Junejo, J:-- This Constitution Petition is directed against the Judgment dated 13-05-2023 passed by the Court of learned XIIth Additional District Judge, Karachi-South (hereinafter referred to as the "Appellate Court"), whereby First Rent Appeal No. 259 of 2022, preferred by the Petitioners, was dismissed. The said Appeal arose from the Order dated 27.09.2022 passed by Court of learned XVth Rent Controller, Karachi-South (hereinafter referred to as the "Rent Controller") in Rent Case No. 910 of 2019, which allowed eviction application against the Petitioners.

2. The dispute arises from Shop No.2, Ground Floor of Mahroom Aisha Bai Trust, located at Plot No.R-B-6/101 & R.B-6/94, Gari Khata, Aram Bagh, Karachi. The Appellants, Mustafa and Hyder, sons of the late Hussain Bhai, were occupying the shop as tenants. Their father had originally

rented the premises in 1978 at Rs.100 per month and deposited the rent with the Nazir of the District & Sessions Court, Karachi, under a Court order. Respondent No.1, Afzal Kothari, was appointed trustee of the Mahroom Aisha Bai Trust through an order dated 20.04.2016 in Trust Suit No.2 of 1983. Upon his appointment, he demanded rent directly from the Appellants, which they refused, continuing to deposit rent with the Nazir. On 19.04.2019, a legal notice was issued to the Petitioners' deceased father, which they did not respond to. Consequently, a Rent Case No.910/2019 was filed against them, citing wilful default in rent payment and the Trust's bona fide need for the premises to establish a computer literacy centre. The learned Rent Controller, Karachi South, after considering the evidence, held that there existed a landlord-tenant relationship, that the Petitioners had committed wilful default, and that the Trust required the premises for its bona fide need. The Petitioners were directed to vacate the premises within 30 days via an order dated 27.09.2022. Aggrieved, the Appellants filed First Rent Appeal No.259 of 2022 before the Appellate Court, which was transferred to the Court of learned Additional District & Sessions Judge-XII (Model Civil Appellate Court), Karachi South, contending that they were not in default as they had been depositing rent in compliance with court orders. They also challenged the maintainability of the rent case, asserting that the trustee could not file an eviction application in his personal capacity. The Appellate Court upheld the findings of the Rent Controller regarding default and the landlord-tenant relationship but modified the finding on bona fide need, holding that the Trust's claimed purpose of a computer literacy centre was not within its original objectives.

3. The petitioners' counsel contends that the impugned judgments suffer from irregularity, illegality, non-reading and

misreading of evidence, and non-application of a judicious mind. He further contends that the learned courts below failed to consider that rent should be deposited in the Trust's account, from which the authorized trustee can withdraw funds for the Trust's objectives. He asserts that despite the Petitioners' compliance, Respondent No.1, with mala fide intent, manipulated the order dated 20.04.2016 in Trust Case No.2 of 1983, issuing a legal notice in 2019 to create a false default. He maintains that the Petitioners, however, continued depositing rent in the Trust's account, making the basis of the ejectment application unjustified. He avers that the Petitioners have never defaulted on rent, having deposited it under court orders since 1978, in compliance with the Hon'ble District Judge, Karachi (South), in Trust Case No.2 of 1983. He submits that the Trust is maintained under court supervision, and Respondent No.1 was only appointed trustee in 2016 with limited powers. He argues that the only income of the Trust is the rental revenue, yet not a single penny has been withdrawn since 1978, exposing Respondent No.1's intent to misuse the Trust property rather than serve its purpose. He emphasizes that the Petitioners have established their business goodwill over decades, and their eviction would cause severe losses. He highlights that Respondent No.1's actions are contradictory as he simultaneously seeks rent enhancement and eviction for alleged non-payment. He points out that the ejectment application is legally defective since the Trust is a legal entity and Respondent No.1 filed the application in his personal capacity. He finally contends that the learned lower court hastily passed the judgment on 27.09.2022 without allowing the Petitioners a fair opportunity for final arguments, violating their fundamental rights. He concludes that the impugned judgments contradict the evidence on record and the provisions of law, resulting in a grave miscarriage of justice. Lastly, the

learned counsel prays for allowing the Constitution Petition and setting aside the Impugned Judgment.

4. Per contra, the learned counsel for Respondent No.1 contends that the Constitution Petition is not maintainable as it challenges concurrent findings of fact recorded by the learned Rent Controller and the Appellate Court, which were based on proper appreciation of evidence and suffer from no jurisdictional defect or illegality. It is a settled principle of law that constitutional jurisdiction under Article 199 of the Constitution cannot be invoked to reappraise evidence or act as a substitute for an appeal. The Petitioners have failed to establish any violation of fundamental rights or jurisdictional errors warranting interference. The findings of default in rent payment are well-founded, as the Petitioners deliberately failed to tender rent to the duly appointed trustee despite being aware of his appointment. Furthermore, the Petitioners' plea regarding the trustee's locus standi is frivolous, as the eviction proceedings were lawfully initiated by Respondent No.1 in his capacity as the sole trustee of the Trust. The Petitioners have engaged in delay tactics to unlawfully retain possession of the premises, despite their eviction being lawfully ordered by the courts below. The Appellate Court serves as the final authority under the Sindh Rented Premises Ordinance, 1979, and the Petitioners have exhausted their statutory remedies. The case does not involve any question of public importance or infringement of constitutional rights, making the petition misconceived. In view of the foregoing, it is respectfully prayed that the Constitution Petition be dismissed as not maintainable, and the concurrent findings of the learned Rent Controller and the Appellate Court be upheld.

5. 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 the Rent Controller found that the case was maintainable since Respondent No.1 was a duly appointed Trustee with legal standing to file the case. The Petitioners' own deposit of rent in the court-established trust account confirmed their status as tenants. The Rent Controller held that after being informed of the new Trustee's appointment, the Petitioners failed to tender rent directly to him, constituting wilful default. The Rent Controller accepted the Trustee's plea that the premises were required for a computer literacy centre. Consequently, the Petitioners were directed to vacate the premises within 30 days. On appeal, the learned Appellate Court upheld the Rent Controller's decision, with the following observations:

1. The Appellate Court confirmed that the rent case was validly filed.
2. The Petitioners' argument that the Trustee lacked locus standi was rejected, as he was the duly appointed sole Trustee empowered to collect rent.
3. The Appellate Court affirmed the finding of default, holding that after being served a legal notice, the Petitioners were legally obligated to tender rent to the Trustee, which they failed to do.
4. The Appellate Court modified the Rent Controller's findings, holding that establishing a computer literacy centre was not within the objectives of the Trust and, therefore, could not serve as a ground for eviction.

The learned Appellate Court observed that the Petitioners had failed to establish any irregularity, illegality, misreading, or misapplication of evidence by the Rent Controller regarding the maintainability of the rent application, the existence of a landlord-tenant relationship between Respondent No.1 and the Petitioners, and the finding of willful default in rent payment. It held that the Rent Controller's conclusions on Points Nos. 1, 2, and 3 were well-reasoned and supported by relevant case law. However, the Appellate Court found that the reasoning and determination on Point No.4, concerning the Trust's alleged personal need for the demised premises, were legally flawed and unsustainable. Consequently, while the judgment dated 27-09-2022 was upheld, the finding on Point No.4 regarding personal bona fide need was partially modified.

6. The scope of constitutional jurisdiction under Article 199 is limited to cases where there is a jurisdictional defect, violation of fundamental rights, or an act of gross injustice. This Court does not act as a substitute for an appellate forum to reappraise evidence or disturb concurrent findings of fact unless they are perverse or based on no evidence. The Petitioners' reliance on prior Court Orders does not absolve them of the obligation to attorn to the new Trustee. The failure to tender rent directly to the duly appointed Trustee, despite receiving legal notice and knowledge of his appointment, constitutes wilful default under the Sindh Rented Premises Ordinance, 1979. While the Appellate Court found that the proposed use for a computer literacy centre was not within the Trust's original objectives, this finding does not affect the core issue of wilful default. The eviction order remains enforceable on this ground alone. Both the Rent Controller and the Appellate Court, after due consideration of evidence, reached a

concurrent conclusion that the Petitioners were in default. In the absence of any jurisdictional defect, misreading of evidence, or violation of fundamental rights, there is no legal basis to interfere.

7. Interference under constitutional jurisdiction is unwarranted unless findings are perverse, arbitrary, or based on no evidence. No such infirmity exists here. The Petitioners 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 perusal of 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).

8. 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 Petitioners are directed to vacate the demised premises and deliver its possession to the Respondents within 90 days, without exception, subject to the payment of rent and the utility charges. In case of non-compliance, the Rent Controller shall have the authority to proceed with the Petitioners' eviction in

accordance with the law, without the requirement of any further notice. Each party shall bear its own costs for these proceedings.

JUDGE