

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. S-133 of 2025

SHAIKH FAISAL HABIB

VERSUS

YASIR AHMED AWAN & ANOTHER

Date of hearing : 21st March, 2025.
Date of announcement : 26th March 2025
Petitioner through : Mr. Shahzad Mehmood, Advocate
Respondent No.1 through : Mr. Rehman Aziz Malik, Advocate
Respondent No.2 through : Mr. Ahmed Khan Khaskheli, A.A.G.
Sindh.

JUDGMENT

Muhammad Jaffer Raza, J. - Instant petition has been filed impugning the Judgment dated 18.01.2025 passed in FRA No. 115/2024. Facts of the case are summarized as follows:

2. That Respondent No.1 filed Rent Application bearing No. 29/2023 before learned Rent Controller on the ground of default, personal need and misuse. Ejectment application under Section 15(2) of the Sindh Rented Premises Ordinance, 1979 (**SRPO**) of Respondent No.1 was allowed on 27.04.2024. It is pertinent to note that the rent application was allowed on the ground of default and misuse of tenement **only** and ejectment on the ground of personal bonafide need of Respondent No.1 was disallowed. Thereafter, Petitioner filed FRA No. 115 of 2024. Same was dismissed vide Impugned Judgment and thereafter Petitioner has filed instant petition impugning the concurrent findings of courts below.

2. At the very outset, learned counsel for the Petitioner has stated that if agreeable to Respondent No.1, he shall vacate the tenement in question after six months from today. Learned counsel for Respondent No.1 after consulting with the Respondent, who was present in court, has refused the offer extended and requested that matter may be heard and decided on merits.

3. Learned counsel for the Petitioner has firstly argued that the Rent Application filed by Respondent No.1 is “tainted” and has been filed only to extort higher rent and the contents of said application do not warrant the said application to be allowed. He has firstly referred to Eviction Notice dated 10.12.2022 and has argued that the grounds taken in the Eviction Notice are absent in the pleadings instituted by the said Respondent. He has further argued that a party is not permitted to go beyond the pleadings. He has argued that tenancy agreement between the parties was renewed several times and in the year 2022 the Petitioner became statutory tenant as there was no subsequent renewal. He has further argued that as per terms of agreement rent was to be enhanced at the rate of 10% each year. He admitted that tenement in question was earlier used as saloon, however, it has not been used for said purpose since many years. Lastly he has contended that learned courts below have erred in the findings and instant petition is liable to be allowed and impugned judgments are liable to be set aside. Learned counsel for the Petitioner has relied upon the following cases:

- i. Mst. Qamarunnisa V/S Muhammad Hanif¹*
- ii. Danish Azhar V/S The Consumer Protection Court (South) Karachi & others²*
- iii. Sohail V/S Kamran Siddiqui & another³*
- iv. Muhammad Aslam & others V/S Muhammad Anwar⁴*
- v. Mst. Siddiqa Begum & others V/S Irshad Ali Shah⁵*
- vi. Haji Abdullah & 10 others V/S Yahya Bakhtiar⁶*
- vii. Allies Book Corporation through L.Rs. V/S Sultan Ahmed & others⁷*
- viii. Javed Khalique V/S Muhammad Irfan⁸*

4. Conversely, learned counsel for the Respondent has stated that impugned orders do not require interference of this court as they are legally sound and well reasoned. He has stated that misuse of property is apparent and also admitted by

¹ 1984 CLC 1013

² 2022 CLC 1203

³ 2019 CLC 2008

⁴ 2023 SCMR 1371

⁵ PLD 1999 Karachi 311

⁶ PLD 2001 SC 158

⁷ 2006 SCMR 152

⁸ 2008 SCMR 28

the Petitioner. In respect of ground of default, learned counsel has stated that it was agreed between the parties that the rent will be increased at the rate of 10% each year. However, the Petitioner by his own admission has failed to increase the rent and therefore committed default. He has also stated that even as a statutory tenant he was duty bound to increase the rent as per the earlier tenancy agreement and past practice between the parties. Lastly, learned counsel has argued that ground of personal bonafide need was not appreciated by the trial court and in this respect, he has submitted that his court in writ jurisdiction can consider the said ground as there is no requirement under the rent law of filing cross appeals. He has relied upon the following cases:

- i. Ismail V/S Mst. Sher Bano through her Legal Heirs⁹*
- ii. Messrs Pearl Leather Product (Pvt) Ltd V/S Mst. Feroza Khatoon¹⁰*
- iii. Caltex Oil Pakistan Limited V/S Mst. Yasmin¹¹*
- iv. Shezan Limited V/S Abdul Ghaffar & others¹²*
- v. Mrs. Zarina Khawaja V/S Agha Mahboob Shah¹³*
- vi. Khalifa Fateh Muhammad V/S Ahmad Nasir Khan¹⁴*

5. Heard the learned counsel and perused the record.

6. It is pertinent at this juncture to reiterate that the rent application under 15 SRPO was filed on three grounds, each of those grounds shall be dealt with respectively.

Default in payment of rent.

7. The execution of tenancy agreement between the parties has not been denied. It is also an admitted position that the first rent agreement was executed between the parties on 10.08.2018 and thereafter same was renewed with an increment of 10% each year. Lastly, the agreement was renewed on 16.07.2021. It has been admitted by the Petitioner/opponent in the cross examination that the

⁹ 1988 SCMR 772

¹⁰ 2001 YLR 2604

¹¹ 1993 CLC 1978

¹² 1992 SCMR 2400

¹³ 1988 SCMR 190

¹⁴ 1988 SCMR 689

agreement was renewed from time to time with an increase of 10%. The Learned counsel for the Petitioner during the course of arguments and Petitioner in his cross examination has also admitted that the rent which is being paid after the expiry of last tenancy agreement is Rs. 140,000/- and no increase has been made after the year 2021. In this regard it is contended by learned counsel for the Petitioner that enhancement was not made due to fact that there was no agreement between the parties. The above contention does not find favour with me, as it is a settled proposition of law that after the expiry of the tenancy agreement the statutory tenancy continues on same terms and conditions. During the course of my own research, I came across a judgment of this court in the case of **Dr. Sunil Ahmed Hotwani versus Abdul Wakeel**¹⁵ in almost identical circumstances. It was held in paragraph number 4 as follows: -

“It is well-settled that a tenant becomes a statutory tenant if the agreement between him and the landlord expires but he still continues to retain the possession of the rented premises even after expiration of the agreement; and, in such an event, the rights and obligations of the parties are governed on the same terms and conditions as stipulated in the agreement. It was held by the Hon’ble Supreme Court in Mrs. Zarina Khawaja V/S Agha Mahboob Shah (PLD 1988 SC 190) that the terms and conditions of an expired agreement continue in operation to the extent that are not repugnant to the rent law, and the same shall be enforceable whenever it is so required under the law. Similarly, in Abdul Latif and another V/S Messrs Parmacie Plus (2019 SCMR 627), the Hon’ble Supreme Court was pleased to hold that where the tenant continues to occupy the tenement after the expiry of the term mentioned in the agreement, covenants of the agreement continue to apply except such covenants that conflict with the provisions of the applicable rent law. It may be noted that the stipulation in the agreement regarding renewal of tenancy with 10% increase in the monthly rent at the time of each renewal is not disputed by the petitioner nor was it denied by him in his written statement before the Rent Controller. It is not his case that upon expiration of the agreement the tenancy stood terminated or some other terms and conditions were agreed by the parties. Thus, upon expiration of the agreement the status of the petitioner became admittedly that of a statutory tenant and the parties were bound by the terms and conditions of the agreement. In view of the above, the contention that the 10% increase was only subject to fresh renewal by mutual consent of the parties is not tenable.” (Emphasis added)

¹⁵ 2023 CLC 1279

8. Therefore, in light of what has been held above, it is held that the Petitioner has committed default in payment of rent and is liable to be evicted from the tenement in question. In this regard the findings of both the learned Rent Controller as well as Appellate Court are sound and require no interference.

Misuse of tenement.

9. In regard to this ground I have examined the tenancy agreement and relevant clause pertaining to use of tenement is reproduced below: -

“To use the premises for undertaking RESIDENTIAL ONLY and ensure that no unsocial or subversive activities be carried therein.”

10. Relevant provision under the SRPO in relation to this ground is Section 15(2)(iii)(b)(c) and the same is reproduced below for the sake of convenience: -

*“the tenant has, without the written consent of the land:
(b) used the premises for the purpose other than that for which it was let out;
(c) infringed the conditions on which the premises was let out;”*

11. It is evident from the bare perusal of the tenancy agreement that the tenement in question was only rented out for residential purposes and any use contrary to the same will have implications under the provisions reproduced above. Learned counsel for the Respondent No.1 has invited my attention to several social media posts and online navigation systems/maps which reflect that a saloon was being operated in the tenement contrary to the purpose for which the same was rented out.

12. Learned counsel for the Petitioner has very categorically stated that the saloon in question used to operate from the said property; however, same was not operational since many years and hence this ground is not available to the Respondent No.1. Further the opponent in his cross examination has admitted as follows:

“It is fact that the list of living persons are living with me at demised premises. Vol. says daughter Maba Faisal is not living with me since November, 2021 as she has been married and shifted to Lahore. It is fact that in Para No.6 of my affidavit in evidence it is mentioned that “ say that my daughter. Maba Faisal was well known and reputed Beautician who works from home before her marriage in Lahore in November 2021. It is incorrect to suggest that my daughter Maba Faisal used to run Beauty Parlor from the year 2018 to Year 2021 at the demised premises. It is correct to suggest that my daughter is well known and reputed Beautician. It is correct to suggest that my daughter used to work of Beautician from her home i.e. demised premises. Vol. says that it is her hobby and she was not running it as a business. It is correct to suggest that I have not specifically mentioned in my affidavit in evidence that beautician work of my daughter was as her hobby. It is correct to suggest that my daughter used to charge payments of make-up of her clients/friends. It is incorrect to suggest that my wife Shazia Faisal and my daughter Imaan Faisal are also beauticians. Vol. says that my daughter Imaan Faisal is a teacher of make-up/foundation. It is incorrect to suggest that beauty parlor is being done since the year 2018 to till date at the demised premises. It is correct to suggest that I have not intimated the landlord about beauty parlor work at the demised premises. Vol. says that no such work on commercial basis was being done at the demised premises. Maha Shaikh Make-up is an Instagram Page. The Maha Shaikh Makeup Instagram Page is exists on Instagram and being run by my daughter Maha Faisal for advertisement purpose for makeup and beautician. It is Incorrect to suggest that Maha Shaikh Makeup is a Saloon being run from the demised premises. It is correct to suggest that Maha Shaikh Makeup Instagram Page bears its address as 39-, Block-8, Gulshan-e-Iqbal, Karachi. It is correct to suggest that till today the Google Map shown the address of Maha Shaikh Makeup Instagram page as address of demised premises. Vol. Says that it also shows the address of Lahore.

It is correct to suggest that “Maha” name is still exists at main door of the demised premises.

Whenever my daughter Maba Faisal used to visit at Karachi, she provides services of makeup to her friends and other acquaintances. It is correct to suggest that Maha Shaikh Makeup instagram page shows the address of Karachi and Lahore. It is not into my knowledge that till to day slots are being booked for Maha Shaikh Makeup Instagram page.” (Emphasis added)

13. In the case of **Khalifa Fateh Muhammad** (supra) the Honourable Supreme Court held as under:

“Secondly, even if the submission is based on facts, the petitioner would not benefit because, it is the requirement of law that the consent of the landlord should be in writing which, it is admitted was not given by him.” (Emphasis added)

14. Similar views were echoed by the Honourable Court in the case of **S. Pin Liu versus Mrs. Najma Kazmi**¹⁶ and it was held under section 13(2)(ii)(b) of the West Pakistan Urban Rent Restriction Ordinance 1959 as follows:

“But in a case in which a part of residential building has been converted to commercial use, by a tenant without the written consent of the landlord, the case would be covered under the aforesaid express provisions of section 13 of the Ordinance, and consequently he would be liable to eviction. The fact that in this case the petitioner had indeed converted one room of the residential house in his possession for commercial purposes without the written consent of the landlord, evidently he had brought himself within the mischief of the said provision of the Ordinance, and so had been rightly ejected.”

15. The requirement under the noted provision for obtaining written consent of the landlord was elaborated in the case of **Fatima versus Ishaque**¹⁷ wherein it was held as follows: -

*“4. The only ground urged before me by Mr M.S. Khatri, learned counsel for the appellants is that the premises in question were being used for storing the goods of the appellants for business purposes since before 1975 with the consent of the respondents predecessor. The contention is untenable because admittedly the written consent of the landlord was not taken by the appellants as contemplated by section 15(2)(iii) of the Sindh Rented Premises Ordinance. The fact that the premises were originally let out for residential purposes and subsequently the appellants utilized the same for storing the goods for commercial purposes, was admitted by the appellants, both in the written statement filed on their behalf as well as in their evidence. The appellants; A witness Hussain son of Adam further admitted during his cross-examination that the appellants; family was not residing in the demised premises since 1984-85. Even if the contention that objection was not raised by the landlord to the use of the premises. for the purposes of storing of goods of the appellants is accepted, it cannot amount to waiver, as was observed by the Supreme Court in *Khalifa Fateh Muhammad v. Ahmad Nasir Khan* 1988 S C M R 689. (Emphasis added)*

16. It is evident from the admission of the Petitioner above that the property was used for the purposes other than the purpose for which the property was rented out. On this score also I believe that Petitioner is liable to be evicted and I see no infirmity with the orders of the courts below.

¹⁶ 1980 SCMR 983

¹⁷ 1993 MLD 1807

Personal Bonafide Need.

17. It has already been mentioned above that the ground of personal bonafide need was not appreciated by the learned Rent Controller and rent application in that respect was not allowed. Relevant part of cross examination of the Respondent is reproduced below for the said purpose:

"It is correct to suggest that I am residing at C-40 which is situated at adjacent to demised premises, Vol. says that I am residing with my Sister. In the year 2018, I was residing at C-39 along with Maternal Aunty. It is correct to suggest that I shifted at C-40 after renting out the House No, C-39, it is correct to suggest that now I want to go back at house No.C-39 I.e. demised premises on ground of personal bonafide need. It is correct to suggest that House No.C-39 & C-40 have not been purchased by my sister. It is correct to suggest that I have inherited the House No, C-39 from my mother. I do not know whether house No. C-40 has been inherited by my sister or not. I do not know how many times my sister is in possession of House No.C40. It is correct to Suggest that House No.C-40 is consists upon two floors. It is correct to suggest that first floor of House No.C-40 have been rented out by me in the year 2022. House No.C-40 has three bed rooms at Ground floor and 1st floor have also three bed rooms. It is correct to suggest that I, my sister and my Aunt are residing at ground floor of House No, C-40. It is correct to suggest that first floor having three bed rooms of House No.C-40 is presently lying vacant."

18. Learned counsel in this respect has argued that on the basis of judgment in the case of **Caltex** (supra) and **M/s Pearl leather products (Pvt) Ltd. & Ismail** (Supra) that failure to file cross objections will not disentitle the landlord to take ground of ejection in writ petition. Since I have already adjudicated and held that Petitioner is liable to be evicted on the ground of default and misuse of property; therefore, I will refrain from adjudicating on this ground.

19. The Petitioner has during the course of arguments placed heavy reliance on the "eviction notice" and has argued most vehemently that the rent application was beyond the scope of the said notice. His reliance on the judgements in the cases of **Danish Azhar** (supra), **Qamarunnisa** (supra), **Muhammad Aslam** (supra), **Haji Abdullah** (supra), **Javed Khalique** (supra) is misplaced for the

reason that the Respondent has specifically raised all three grounds in his rent application and therefore did not go beyond his “pleadings” as defined under Order VI Rule 1 C.P.C.

20. The reliance of the Petitioner on the judgements passed in the cases of **Sohail** (supra), **Siddiqa Begum** (supra), **Allies Book Corporation** (supra) pertain to the ground of personal bona fide need and need not be deliberated upon for reasons mentioned in paragraph number 18 above.

In the light of what has been discussed above, the instant petition is dismissed with no order as to costs.

Aamir/PS

JUDGE