

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-417 of 2023

[Muhammad Yahya v. Walia Khatoon Jaffri & others]

Petitioner: Through Mr. Nasrullah Korai, Advocate.
Respondent Mr. M. Zahid Khan, Advocate.
Date of Hearing & order: 06.03.2025

ORDER

ARSHAD HUSSAIN KHAN, J. The petitioner (tenant) through instant constitutional petition has challenged the judgment dated 11.04.2023 passed by IXth Additional District Judge / MCAC, Karachi-East in FRA No.168/2022 whereby judgment dated 16.08.2022 passed by the IXth Rent Controller, Karachi-East in Rent Case No.413/2018 was upheld and FRA was dismissed.

2. Brief facts of the case are that respondent (landlady) being the lawful owner in respect of entire commercial plot No.Z-360, Sharfabad, B.M.C.H.S, Karachi let-out the shops bearing No.1 & 2 on the ground floor through her son-in-law namely Syed Aftab Ahmed s/o Syed Sami Ahmed on 15-09-1986 through a proper rent agreement to Muhammad Shoukat s/o Muhammad Younus who was father of present petitioner and on expiry of Muhammad Shoukat, the petitioner being his son and legal heir become statutory tenant. Initially rate of rent of both demised shops was fixed at Rs.1000/- per month with fixed deposit of Rs.5000/- and it was agreed at the time of letting out the shops that the rate of rent shall be increased after the initial period of the tenancy of 11 months at the rate of 5% of the renewal of the each rent agreement after a year. In the year 1991/1992, the respondent landlady went to USA and since then she is residing at USA with her son-in-law and in their absence, the real brother of respondent namely Hassan Zaidi was introduced to the father of the petitioner with the direction to pay him the rent for the demised shops, who subsequently started to pay rent to Hassan Zaidi. From the month of January-1998, the petitioner/tenant failed to pay rent of demised shops to the respondent/landlady's brother and despite respondent / landlady's requests did not pay rent, as such, the petitioner become defaulter whereupon ejection application was filed, which was allowed by the rent controller on the point of default and the petitioner was directed to vacate and hand over vacant and peaceful possession of the demised shops to the respondent / landlady within a period of thirty days. Thereafter, the petitioner challenged the said judgment by filing FRA, which was also dismissed through impugned judgment. The petitioner has challenged the concurrent findings of the Courts below in the present constitutional petition.

3. Learned counsel for the petitioner contends that impugned judgments passed by both the Courts below are against the law, equity and natural norms of justice; that both the Court below have failed to appreciate evidence, facts and arguments advance on behalf of the petitioner; that both the impugned judgments are suffering from patent illegalities and irregularities and also suffer from conjectures, surmises, assumptions and presumptions, as such, the same are not sustainable in the eyes of law and liable to be set-aside; that the impugned judgments are not based on cogent, convincing and plausible reasons / grounds; that both the courts below have failed to consider the admitted point that the petitioner is old tenant of respondent since the time of his father and running his business in the subject shops, so also he offered rent to the respondent who refused to accept it and the rent was deposited in M.R.C.; that the impugned judgments are void, ab-initio, unjustified, coram-non-judice, having been passed without lawful authority, as such, the same are liable to be set-aside. In support of his contention, he has relied upon the case of *Syed Mehmood Ali Qadri through legal heirs v. Government of N.W.F.P through Collector, D.I. Khan and 9 others* [PLD 2005 Peshawar 238] and *Asghar Ali v. Waqar-uz-Zaman and others* [2004 CLC 1531].

4. Learned counsel for the respondent while supporting the impugned judgments raised question of maintainability of the present proceedings against the Courts below seeks dismissal of the instant constitutional petition. He has relied upon the case of *Muhammad Naveed and 2 others v. VIIIth Additional District Judge, Karachi-South and 2 others* [2021 MLD 1298], *Yousuf Ali v. Muhammad Fayyaz and 2 others* [2019 YLR 1317] and *Messrs Sultan Textile Mills (Pvt) Ltd v. State Life Insurance Corporation of Pakistan and 2 others* [2019 CLC Note 22].

5. Heard learned counsel for the parties and perused the record carefully.

6. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material whereby such findings could be termed as perverse or having a jurisdictional defect or based on misreading of evidence. Keeping in view the above facts, learned counsel for petitioner was asked to satisfy this Court with regard to the maintainability of the present petition against concurrent findings of the Courts below he however, failed to point out any error of law or defect in the procedure while passing the impugned judgment. It is well settled that if no error of law or defect in the procedure has been committed by the Courts below while passing the impugned judgments. It is also well settled law that

concurrent findings of the two courts below are not to be interfered with in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

7. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice¹. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided², and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

8. It is also well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. The Supreme Court of Pakistan in the case of Farhat Jabeen v. Muhammad Safdar and others [2011 SCMR 1073] has held as under:-

"Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious` illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."

9. A perusal of the judgment passed by the Rent Controller shows that the eviction application was filed by respondent on the ground of default and after

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

² Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

examining the evidence of the parties, the Rent Controller observed that the opponent (petitioner) committed willful default in payment of rent and is liable to be ejected from the demised premises i.e. Shop No.1 and 2 situated at Commercial Plot No.Z-360, Sharfabad, B.M.C.H.S., Karachi on the ground of default in payment of monthly and the ejection application was allowed. The evidence produced by the applicant (respondent) before the Rent Controller was not rebutted by the petitioner in its true perspective. The findings of the Rent Controller were upheld by the appellate Court with details and cogent reasoning.

10. It may be observed that the burden of establishing the timely payment of rent is upon the tenant which, if he fails, has to face the legal consequences. Reference can be made to the case of *Muhammad Amin Lasaia v. M/s Ilyas Marine and Associates and others* [PLD 2015 SC 33].

"8. .. The burden of establishing the timely payment of rent lay upon the tenant which he failed to discharge. The tenant could also have availed of the benefit of subsection (4) of section 10 of the Ordinance by producing receipts of the deposit of rent under the miscellaneous rent case, but this too was not done. Consequently, the case of default stood established against the tenant. In addition, in paragraph seven (7) of the constitution petition filed before the Hon'ble High Court the Company had stated that the tenant had committed a default for 28 months and had not paid the amount of eighty four thousand rupees which worked out to the rent for such period. The petition was filed on 21st May 2007 and the impugned order is dated 28th August 2014, but despite this interregnum no counter affidavit to the petition was filed, thereby the only presumption that can be drawn is that the said allegation was true."

11. Having reiterated the above principles, it is conducive to refer the findings of the Rent Controller on the issue of default are that:-

"15. Now reverting back to the period of default in payment of monthly rent, it has been stated by applicant/landlady that opponent has failed to pay monthly rent from January-1998. It is well settled law that the initial burden of proof lay upon landlord to establish that tenant had not paid or tendered rent but after the landlord has stated in the Court in affidavit that the rent had not been paid to him by tenant; then, the burden is shifted to the tenant to prove affirmatively that he has paid or tendered rent for disputed period. Reference can be made to the case of "Hafizullah V/s Suhail Mehmood and 8 others" reported in PLD 2001 Karachi 165. Furthermore, non-payment of rent is a negative fact and once the landlord stated on oath to have not received the rent for specific period, the burden of proof shifts upon the tenant who has to prove affirmatively to have paid or tendered such rent. Reference can be made to the case of "Syed Arshad Ali Hashura V/s Khursheed Begum" reported in 2001

CLC 690 (Karachi). In the present case, as discussed above, the applicant in his affidavit in evidence at paragraph No. 3 has stated on oath that the opponent has not paid rent from January-1998. After such statement on oath by applicant/landlady, it was obligatory upon the opponent to have proved that he has tendered rent from January-1998 and onwards but the opponent has failed to discharge such burden of Proof rather he has himself admitted during his cross examination that

"It is correct to suggest that I have not produced any document to show that rent from 1998 till filing of MRC No. 05/2014 has been tendered/paid to landlady".

16. In the light of guidelines provided by Hon'ble High Court of Sindh in the case of Hafizullah as well as in the case Arshad Ali Hashimi supra, I do not feel any hesitation to hold that opponent had failed to discharge the burden to prove that he has tendered rent for disputed period. Thus it has been proved on record that opponent has committed willful default in payment of rent from January-1998 till filing of MRC No.05/2014 before learned Rent Controller-II, Karachi East. What has been discussed above, I am of the firm opinion, that opponent has committed default in payment of rent from January-1998 till November-2013. Hence, point No.2 is answered in affirmative.

POINT NO:3

17. In view of above discussion under point No.01 and 02, the opponent has committed willful default in payment of rent and he is liable to be ejected from the demised premises ie Shop No. 1 & 2 situated at commercial plot No.Z-360, Sharfabad, B.M.C.H.S, Karachi on the ground of default in payment of monthly rent, hence the ejectment application is allowed and the opponent is hereby directed to vacate and hand over vacant and peaceful possession of the demised premises to the applicant/landlady within a period of thirty days from today. Parties are left to bear their own costs."

12. Likewise on such issue conclusion of the appellate court is that :-

"11. For alleged default in payment of monthly rent for the premises, appellant/opponent has claimed that different persons used to receive rent on behalf of landlady who was 84 years old and after her departure to USA she remained in contact for three years after which they started paying rent in her bank account. It is established law that when a landlord denies payment of rent by the tenant then burden to prove such payment shifts towards the tenant. Record shows that appellant/opponent has failed to produce any record to prove the positive fact of payment of monthly rent for the premises by him during the alleged period of default rather, he has admitted default in his cross-examination in the following words;

"It is correct to suggest that I have not produced any document to show that rent from 1998 till filing of MRC No.05/2014 has been tendered/paid to the landlady".

12. Thus, default on part of appellant/opponent in payment of monthly rent of premises is clear on the record".

13. Prima facie, there appears no illegality in the concurrent findings of the two Court(s) below while answering the question of default in payment of the rent. Further, learned counsel for the petitioner / tenant has also failed to make out a case for interference into concurrent findings of two Courts below hence, constitutional jurisdiction of this Court cannot be exercised which, otherwise, is not only limited but could only be exercised in exceptional circumstances which are lacking in instant case.

14. Foregoing are the reasons of the short order announced by me on 06.03.2025 whereby this petition was dismissed.

JUDGE