IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P. No.S-126 of 2025

Petitioner	Imrana Tabassum w/o Muhammad Sohail through **Mr. Muhammad Sulleman Unar, advocate.**
Respondent No.1	Shams-ul-Arfeen Siddiqui son of Muhammad Deen Siddiqui through **Mr. Autif Ali Hakro, advocate.**
Date of hearing	08.09.2025
Date of Judgment	08.09.2025

J U D G M E N T

TASNEEM SULTANA, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), the petitioner has impugned the judgment dated 13.03.2025 passed by the learned IIIrd Additional District Judge, Hyderabad in First Rent Appeal No.99 of 2024, whereby the appeal of the petitioner was dismissed and the judgment dated 30.05.2024 passed by the learned Vth Rent Controller, Hyderabad in Rent Application No.244 of 2022 was maintained, through which the rent application filed by the respondent under Section 15 of the Sindh Rented Premises Ordinance, 1979 was allowed and ejectment of the petitioner was ordered.

2. Brief facts of the case are that respondent No.1 filed Rent Application No.244 of 2022 under Section 15 of the Sindh Rented Premises Ordinance, 1979, stating therein that he is the owner of Shop No.A-6, situated in Sub-Division No.8/1 of Plot No.8, Civic Centre, Unit No.8, Latifabad, Hyderabad, which is occupied by the petitioner as tenant. The shop was rented out to the petitioner under a registered rent agreement bearing R.D. No.1641, Book No.1, dated 18.11.2020, for a period of three years commencing from 01.11.2020. The premises, measuring 12 x 18 (216 sq. ft.), were rented at Rs.20,000/- per month on certain terms and conditions, where the petitioner has been running a business under the name "Sohail Mumbai Cloth House." The petitioner paid rent for the month of November 2020, amounting to Rs.20,000/-, under receipt No.387 dated 30.11.2020, but thereafter allegedly failed to pay further rent, thereby violating the terms of the registered rent agreement and committing willful default from December 2020 onwards. Respondent No.1 asserted that despite repeated demands, the petitioner neither cleared the arrears of rent nor vacated the

premises, and even after service of notice requiring her to do so within 15 days, she failed to comply. Thereafter, respondent No.1 filed the rent application with the following prayers:-

> *a) To eject the opponent from shop No.A-6 situated on Sub-Division No.8/1 of Plot No.8, Civic Centre Unit No.8 Latifabad Hyderabad and put the applicant in physical vacant possession of the same.*
>
> *b) The cost of the application maybe borne by the opponent.*
>
> *c) Any other relief deemed just and proper may be granted to the applicant.*

3. The petitioner resisted the application, admitting the tenancy but denying default; her defence was that she had been regularly tendering rent but the landlord avoided issuing receipts on the assurance that same would be provided at the end of one year; that when rent was refused she sent the same through money orders, which were declined; that she then deposited rent before Court; that the agreement was cancelled shortly after its execution; that the rent case was filed belatedly after nearly two years which reflected mala fide; and that during the Covid-19 period relaxation was available to tenants with respect to rent obligations.

4. Out of the pleadings of the parties, the learned Rent Controller settled the following points:

> *1. Whether opponent committed willful default in payment of monthly rent regarding demised shop?*
>
> *2. What should the judgment be?*

5. The learned Rent Controller, after hearing learned counsel for the parties passed the impugned judgment and has opined that the petitioner had committed willful default; that no receipts were produced for the crucial period from December 2020 to December 2021; that the solitary money order certificate (Exh.28-B) related only to February 2022; and that deposits commencing from January 2022 could not purge earlier default. Accordingly, ejectment was ordered. The learned IIIrd Additional District Judge, Hyderabad, while deciding First Rent Appeal No.99 of 2024, re-appraised the record and concurred with the findings of the trial Court; it was observed that the petitioner had taken inconsistent stances, first alleging cash payments, later relying upon money orders, and ultimately invoking Covid-19 relaxation in her cross-examination, and that her defence lacked credibility; the appeal was dismissed and the finding of willful default was maintained.

6. Learned counsel for the petitioner contended that the concurrent findings are not sustainable in law; that the Courts below misread and ignored material evidence; that the petitioner never committed default as she had been making regular payment of rent since inception of tenancy; that the landlord, with mala fide intent, avoided issuance of receipts on the pretext that the same would be delivered at the end of one year; that when the landlord refused to receive rent, the petitioner dispatched the same through money orders, which too were not accepted; that in order to safeguard her tenancy rights she thereafter deposited rent before Court and thus any alleged default stood purged; that the registered agreement was subsequently cancelled and reliance placed upon it was misconceived; that the rent application was filed after a lapse of nearly two years which, according to him, demonstrates mala fide and after-thought on the part of the landlord; that during the Covid-19 period relaxation was extended to tenants in payment of rent and, therefore, the petitioner cannot be branded as a willful defaulter; and that the impugned orders are liable to be set aside in exercise of constitutional jurisdiction.

7. Conversely, learned counsel for the respondent supported the impugned judgments; that the petitioner failed to produce a single receipt for the crucial period from December 2020 to December 2021; that the only money order certificate available on record pertained merely to February 2022 and no other proof of tender or dispatch was furnished; that no official from the postal department was examined to substantiate alleged remittances; that deposits commencing from January 2022 cannot cure the default of the earlier period which remained unsubstantiated; that the pleas raised by the petitioner were wholly contradictory in nature inasmuch as in her written statement she alleged cash payment without receipts, in her affidavit she shifted to reliance on money orders, and in her cross-examination she took the inconsistent plea of exemption during Covid-19; that such contradictions are fatal to her defence and clearly establish willful default; that both the Rent Controller and the Appellate Court had examined the material evidence, given cogent reasons, and reached concurrent findings of fact; that misreading and non-reading has not been demonstrated; that constitutional jurisdiction under Article 199 of the Constitution does not confer upon this Court the authority to sit as a second appellate forum to re-evaluate evidence; and that the petition, being devoid of merit, is liable to be dismissed.

8. Heard. Record perused.

9. At the very outset learned counsel for petitioner was directed to identify an infirmity in the judgment impugned, however, he failed to do so. He was also confronted as to how a writ petition could be entertained in such matters. He remained at a loss for any cogent reason, thus, at this juncture it emerges whether the concurrent findings of the learned Rent Controller dated 30.05.2024 and the learned IIIrd Additional District Judge, Hyderabad dated 13.03.2025 suffer from misreading or non-reading of material evidence, jurisdictional defect, or perversity so as to warrant interference in constitutional jurisdiction under Article 199 of the Constitution.

10. The jurisdiction of this Court under Article 199 of the Constitution is supervisory in nature; concurrent findings of fact recorded by the Rent Controller and the Appellate Court are ordinarily not to be disturbed unless it is shown that the impugned judgments are coram non judice; tainted by jurisdictional defect; or vitiated by misreading or non-reading of material evidence resulting in perversity or miscarriage of justice; *ubi jus ibi remedium* does not convert constitutional review into a second appeal; this Court, therefore, does not re-appraise evidence merely because another view might be possible.

11. Even otherwise, it is now well settled that concurrent findings of the two Courts below could be interfered with by this Court in exercise of its extra ordinary constitutional jurisdiction only in exceptional cases. In this context, reference may be made to the case of *Muhammad Salik Athar through Attorney Vs. Muhammad Obaid and 3 others*, reported *in P L D 2023 Sindh 411*, wherein it was held as under:

> *"5. Now, before proceeding further, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather tightened. It is pertinent to mention here that captioned petition fall within the writ of certiorari against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence."*

12. Now, adverting to the issue of default in payment of monthly rent by the petitioner / tenant, it seems that the claim of respondent No.1 is that the petitioner has committed default in payment of monthly rent from December 2020 to December 2021. It has been deposed by respondent No.1 before the Rent

Controller that he did not receive rent for the defaulted period from the petitioner. In his affidavit-in-evidence, so also during his cross examination the respondent No.1 deposed in categorical terms that the petitioner had committed default in payment of monthly rent from December, 2020. In such an eventuality, as per settled law, now the burden shifts upon the shoulders of the petitioner /tenant to prove that she had paid rent for the alleged period.

13. In this context, reference may be made to a decision given by a Full Bench of Honourable Supreme Court in the case of **ALLAH DIN Vs. HABIB**, reported in **PLD 1982 SC 465**, wherein it was held as under:

> *"It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him, as required by section 13 (2) (i) of the Sind Urban Rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question."*

Reliance, in this connection, can also be placed upon the case of *Mrs. Asma Makhdoom Vs. Mrs.Yasmeen Azam (2018 MLD 976).*

14. The petitioner took plea that she had been paying rent regularly but receipts were withheld; that upon refusal she tendered rent through money orders; and that she later deposited the same before Court, is unsupported by evidence; the only money order certificate available on record, Exh.28-B, relates solely to the month of February 2022; for the crucial period from December 2020 to December 2021 not a single receipt, money order slip, or postal acknowledgment was produced; the petitioner admitted during cross-examination that she had not preserved any counterfoils of the alleged money orders, nor could she recall the precise dates of dispatch; even no official of the postal department was examined to prove that any such remittances were tendered and refused; Nazir's report, which forms part of the record, confirms that deposits before Court commenced only from January 2022; such belated deposits cannot, in law, cure an earlier default; *allegans contraria non est audiendus*, a party alleging contradictory facts is not to be heard, aptly applies to the petitioner's stance. Such practice is contrary to the well settled principle enunciated by the Superior Courts. Reliance is placed in the case of *Muhammad Riaz Shaikh and 2 others Vs. Iftikharuddin and 2 others*, reported in *2014 CLC 1695 [Sindh]*, wherein it was held as under:

> *"14. Here in this case, it is an established practice by the tenant to pay rent in advance on every 5th of the calendar month and this fact has admitted by the attorney of the petitioners in his evidence, therefore, under the circumstances, the petitioners were required to pay/tender the rent as admitted practice but here in this case admittedly the tenants have sent rent for the month of January, 1994 to March, 1994 on 24-3-1994 through money order, which was also not received by landlord and thereafter the tenants have started to deposit the rent of the disputed period and onward in M.R.C. No.553 of 1994 on 1-1-1995 after committing willful default."*

15. This point has elaborately been discussed by this Court in an earlier decision given in the case of *Mst. Razia Sultana vs. Mrs. Muhammad Hasan Khan and 9 others, reported in 1991 CLC 632 [Karachi*], wherein it was observed as under:

> *"10. The Rent case was filed by the appellant on the ground of non-payment of rent for the period from the month of March to August 1980. The respondents pleaded that the rent for the months of March and April was sent under money order dated 8-3-1980 which was refused by the appellant. Money order was again sent on 9-3-1980 towards the payment of rent for March 1980. This money order was refused and therefore rent for the months of March and April 1980 was sent under money order dated 6.4.1980 which met the same fate. In these circumstances respondents on 24-8-1980 filed Misc. Rent Case No.4767/80 seeking permission of the Rent Controller to deposit rent in Court which was allowed on 2-9-1980 and rent for the months of March to August 1980 was deposited on 8-9-1980. Money Order coupons sent during March and April 1980 are on record as Ex.0-9.0-10 and 0-11. The authenticity of these Money Orders is highly doubtful. The said Money Orders do not bear round seal of the Post Office or the endorsement of the postman. The respondents failed to produce postal receipts pertaining to the said Money Orders. The first Money Order is alleged to have been sent on 8-3-1980 and second on 9-3-1980 after refusal of the first one by the appellant. The return of first Money Order by the postal authorities on the next day of its dispatch is an act unbelievable and cannot be accepted. Be that as it may, the fact, remains that the said money orders were towards rent for the months of March and April 1980 and thereafter the respondents chose not to pay rent by any of the modes prescribed by law until September 1980 when they deposited rent in the Misc. Rent Case. The payment made in the Misc. Rent Case at a time when the default was already committed cannot save the respondents from the consequence of default in payment of rent. In case the Money Orders were refused by the appellant, as is the case of the respondents, they were under an obligation to immediately avail the alternate mode for legal tender of rent prescribed under section 10 of the Ordinance for enjoyment of the protection provided to tenants by the Ordinance."*

16. The contradictions in the petitioner's stance further demolish her credibility; in her written statement she claimed that rent was paid in cash although receipts were never issued; in her affidavit-in-evidence she departed

from this stance and relied upon alleged money orders; in her cross-examination she went further to state that "*during Covid-19 relaxation was granted and tenants were absolved from making payment of rent*," which is wholly inconsistent with her earlier plea that she was continuously paying rent; if rent was in fact paid regularly there was no occasion for her to invoke Covid-19 relaxation; conversely, if she was relying upon Covid-19 exemption, there was no reason to claim that money orders had been dispatched or cash payments made; these mutually destructive positions show that the defence was an after-thought; such contradictions, emanating from her own deposition, undermine the entire edifice of her case; *falsus in uno, falsus in omnibus,* false in one thing, false in all, though applied with caution, becomes relevant where a party shifts and destroys its own credibility by inconsistent testimony.

17. In view of above, both the Rent Controller and the Appellate Court, after appraisal of the record, reached concurrent findings that the petitioner committed willful default; those findings rest upon sound reasons, therefore, no case for interference is made out in writ jurisdiction.

18. For the foregoing reasons, the instant petition was dismissed vide short order dated 08.09.2025, and these are the detailed reasons in support thereof.

J U D G E

Irfan Ali