

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-513 of 2024

(Muhammad Sadiq @ Alam – v – Abdul Sattar & Ors.)

Date Order with signature(s) of Judge(s)

Hg: / Priority.

1. For orders on Misc. No.4488/24
2. For hearing of main case.

04.12.2025.

Ms. Irum Rasheed, Advocate for the Petitioner.

Mr. Jehan Zaib, Advocate for the Respondent.

Mr. Ali Zardari, Assistant Advocate General Sindh.

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, petitioner has challenged the concurrent findings of the courts below whereby the ejectment application filed by deceased Abdul Sattar was allowed vide order dated 24.08.2022 passed by the IXth Rent Controller Karachi-Central in rent case No.72 of 2019 (re: Abdul Sattar– v – Muhammad Sadiq @ Alam) and appeal filed by the petitioner was dismissed vide judgment dated 17.04.2024 passed by the IV-Additional District & Sessions Judge Karachi-Central in F.R.A. No.184 of 2022 (re: Muhammad Sadiq @ Alam – v – Abdul Sattar & Ors.)

2. Ms. Irum Rasheed, learned counsel for the petitioner submits that the petitioner was not defaulter in payment of rent and he regularly paid rent sometimes even in advance which fact very much reflects in the order of the trial Court. She further contends that the case was filed on the personal bona fide need and the default as such the determination of courts below regarding default in payment of rent is based on misreading and non-reading of evidence. She further submits that personal bona fide need was even not established. She prays to allow this petition.

3. Mr. Jehan Zaib, learned counsel for the respondent submits that the courts below after proper appraisal of the evidence available on record rightly allowed the ejectment application and there is no misreading and non-reading of the evidence, therefore, the petition may be dismissed.

4. Heard arguments, perused the material available on record.

5. Scanning of the record reveals that the rent case was filed by the deceased Abdul Sattar. He filed his affidavit-in-evidence alongwith rent application and upon the death of Abdul Sattar his legal heirs were impleaded as party to the proceedings. Point for determination were framed and the affidavit-in-evidence

was filed which from the record reflects that it was the same affidavit-in-evidence which was filed by Abdul Sattar and only the names of Muhammad Danish and Muhammad Zeeshan were replaced and substituted without making any changes, which reflects from para -7 & 10 of affidavit-in-evidence of Muhammad Zeeshan wherein it is written that the demised premises were required for the business of his sons Muhammad Danish and Muhammad Zeeshan. The same is the position of affidavit-in-evidence of Muhammad Danish. For the sake of convenience para-6 of affidavit-in-evidence of Muhammad Danish is reproduced below:

“6. That I say that in the month of May 2018 the applicant decided to start his business of spare parts of motorcycle and other vehicles for his two sons namely Muhammad Danish and Muhammad Zeshan in the above said tenement/shop No. 32 so also to extend his business of mobile oil and LPG Cylinder by conversation of both his shops the above said tenement and his another shop adjacent of tenement shop NO. 32. into one shop as the adjacent shop wherein the applicant is running the present business in small in space for required purpose therefore the underground portion available n tenement shop No. 32 will be used for store and godown whereas after conversion the upper portion of both the shops will be used for sale area and for that reasons the applicant approached to the tenant and stated him about his need and purpose for which the shop No. 32 was required, and also requested to the opponent for vacating the shop No. 32 whereupon the opponent under took for vacating the same within two months thereafter upon expiry of period of two months the applicant approached to the opponent but the opponent betrayed and failed to vacate the rental premises on one and other pretext but finally refused to vacate the same.”

6. From the perusal of above piece of evidence it reflects that this case was decided on the basis of improper piece of evidence which was not admissible. On the death of the applicant Abdul Sattar his legal heirs were impleaded as party to the proceedings, it was incumbent upon the parties to file the fresh affidavit-in-evidence showing their own personal bona fide need. Article 162 of Qanoon-e-Shahadat Order, 1984 requires a denovo trial when improper piece of evidence is admitted and relied upon to decide the fate of the case. Since the affidavit-in-evidence of the applicant and his witnesses were not in accordance with law, same were required to file fresh as such the decision on the basis of improper evidence by the courts below became nullity.

7. For the above reasons, the case for indulgence of this court under its writ jurisdiction is made out. In order to provide proper chance of trial it would be appropriate that matter be remanded back to the learned trial Court for recording evidence of the applicant afresh. Consequently this petition is allowed. Order dated 17.04.2024 passed by the IV-Additional District & Sessions Judge Karachi-Central in F.R.A. No.184 of 2022 and order dated 24.08.2022 passed by the IXth Rent Controller Karachi-Central stand set-aside. This case is remanded to the learned trial Court where the applicant and his other witnesses shall file fresh

affidavit-in-evidence and if the respondent side also intend to file fresh affidavit-in-evidence they may do so, after affording the right of cross examination to either side, the rent case shall be decided on merits.

8. Since the rent case was filed in the year 2019 it is expected that the trial Court shall decide the same expeditiously. Office is directed to send copy of this order to the concerned learned trial Court.

JUDGE

Karachi.
Dated:04.12.2025
Approve for reporting.