

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No.S-272 of 2020

(Nisar Ahmed and another v. Amarnath Motumal and others)

Const. Petition S-273 of 2020

(Noor Mohammad v. Amarnath Motumal and others)

Const. Petition S-274 of 2020

(Abdul Rehman v. Amarnath Motumal and others)

Const. Petition S-287 of 2020

(Badaruddin v. Amarnath Motumal and others)

Date of Hearing and order: 08.12.2025

Mr. Fayyaz Aslam Dar, advocate for the petitioners

M/s. Ali Asghar Buriro and Sibtain M.Ali, advocates for the intervener

Mr. Muhammad Sakhi Ghazali, advocate for the respondent No.2

ORDER

Nisar Ahmed Bhanbhro, J. I propose to decide the fate of the captioned petitions through this single order as in all the petitions common questions of law and facts are involved.

2. All the captioned petitions have been filed against the concurrent findings of the courts below wherein the Rent Case No.121/2018 (re: Amarnath Motumal-Hindu -v- Nisar Ahmed & Ors.), Rent Case No.118/2018 (re: Amarnath Motumal-Hindu -v- Noor Muhammad), Rent Case No.120/2018 (re: Amarnath Motumal-Hindu -v- Abdul Rehman) and 119/2018 (re: Amarnath Motumal-Hindu -v- Badaruddin) filed by the respondent Vado Akharo Trust through its authorized person Amarnath Motumal-Hindu were allowed vide orders dated 20.12.2018 passed by the Court of learned Vth Rent Controller Karachi-South (Trial Court) and F.R.A Nos.43/2019 (re: Nisar Ahmed & Ors. -v- Amarnath Motumal-Hindu) 44/2019 (re: Noor Muhammad -v- Amarnath Motumal-Hindu), 45/2019 (re: Abdul Rehman -v- Amarnath Motumal-Hindu) and 42/2019 (re: Badaruddin -v- Amarnath Motumal-Hindu) filed by the tenant/petitioner were dismissed vide orders dated 21.01.2020 passed by the Court of learned VIIth Additional District Judge Karachi-East (Appellate Court).

3. Learned counsel for the petitioners submits that the petitioners never defaulted in payment of rent, there was a dispute as to the Trustship of the Trust between the different persons therefore the petitioners paid the rent amount of alleged default period viz years 2016, 2017 & 2018 to the Trust directly, receipts of such payments were produced before the courts below but were not considered on the ground that the rent which was payable to Mr. Amarnath Motumal has been paid to another person without any information or proof regarding the change of Trustship of Vado Akharo Trust. He argued that misreading and non-reading of evidence by courts below resulted in miscarriage of justice. He lastly

prayed to set aside impugned orders and judgments of courts below by allowing these petitions.

4. Mr. Muhammad Sakhi Ghazali, learned counsel representing Ashok Kumar, who claims to be the Chairman of Vado Akharo Trust. Learned counsel admits the contention of the petitioners/tenants that the amount was deposited with Trust directly. He further submits that Mr. Amarnath Motumal was not the trustee but he was allowed to collect the rent as Manager. He argued that Amarnath Motumal was no more representative of trust. He raised no objection if petitions were allowed.

5. Mr. Ali Asghar Buriro, learned counsel representing Dr. Raj Ashok Motwani who claims to be the co-managing trustee of the Vado Akharo Trust argued that he has filed an application under Order I Rule 10 CPC to implead new management as party to the proceedings. His contention is that the Ashok Kumar as claimed himself Chairman of the Vado Akharo Trust on the basis of managed and fake documents and Dr. Raj Ashok Motwani co-managing trustee. He prayed that the petitioners be directed to deposit rent before Nazir of this Court.

6. Heard arguments and perused the material available on record.

7. Admittedly the petitioners are tenants. There is no denial to the fact that petitioners paid the rent to Amarnath Motumal which was discontinued in the year 2016 and thereafter rent was paid to the Vado Akharo Trust directly itself, and such receipt have also been placed on record, available at page Nos.57, 59 & 61 produced on record in the evidence adduced by the parties before trial Court. Petitioners were directed to vacate the demised premises on the ground that they paid the rent to a person who was not authorized by the Trust. The appellate Court while declining the appeal observed in the operative paragraph as follows:

“It is an admitted position that the appellants is a tenant in the demised premises and it was the case of respondent Amarnath that the appellants failed to pay rent since January 2016 onward It is a settled law that once a tenant it always a tenant and the tenant has no right to challenge the title of the landlord. It is evident from the record that the tenant failed to pay rent to the respondent Amarnath and had paid the rent to a stranger on his own accord. In such circumstances and in absence of any notice for change of management of the Trust the payment of rent to one other than the respondent Amarnath cannot be said as a valid tender of rent and amounts to default.”

8. From the pleadings of the parties so also applications filed by different persons claiming trustee of the trust seeking impleading as party to the proceedings it appears that there was a dispute between the parties as to the Trustship of Trust, therefore, the petitioners were constrained to pay the rent to the trust directly. Such findings of the facts rendered by the courts below too

established that the petitioners being caught into embarrassing situation paid rent to trust itself and sought receipt of payments. In presence of such dispute, petitioners rightly deposited rent with trust directly. Until the dispute is settled and put at rest the petitioners cannot be accused of default in payment of rent. Since the ejectment application was allowed on the sole ground of payment of rent to another person, which was not stranger but trust itself, the Courts below committed serious misreading and non-reading of evidence, this Court under its supervisory and corrective jurisdiction is empowered to take judicial review of the same.

9. Since the judgment passed by the courts below are result of misreading and non-reading of the evidence, a case for indulgence is made out, consequently all the petitions are allowed and order dated 20.12.2018 passed in Rent Case No.121/2018 (re: Amarnath Motumal-Hindu -v- Nisar Ahmed & Ors.), Rent Case No.118/2018 (re: Amarnath Motumal-Hindu -v- Noor Muhammad), Rent Case No.120/2018 (re: Amarnath Motumal-Hindu -v- Abdul Rehman) and 119/2018 (re: Amarnath Motumal-Hindu -v- Badaruddin) filed by the respondent Vado Akharo Trust through its authorized person Amarnath Motumal-Hindu all were allowed vide orders dated 20.12.2018 passed by the Courts of Vth Rent Controller Karachi-South and F.R.A Nos.43/2019 (re: Nisar Ahmed & Ors. -v- Amarnath Motumal-Hindu) 44/2019 (re: Noor Muhammad -v- Amarnath Motumal-Hindu), 45/2019 (re: Abdul Rehman -v- Amarnath Motumal-Hindu) and 42/2019 (re: Badaruddin -v- Amarnath Motumal-Hindu) filed by the tenant/petitioner were dismissed vide orders dated 21.01.2020 passed by the VIIth Additional District Judge Karachi-East, are set aside. The rent cases mentioned supra are dismissed. The petitioners shall continue depositing the rent with the trust or if any order regarding depositing of rent is passed by the Court, the same shall be deposited in the manner as directed by the Court.

All the above captioned petitions are disposed of in the above terms.
Office to place signed copy of this order in all connected matters.

JUDGE

Approved for reporting
Dated: 08.12.2025