

IN THE HIGH COURT OF SINDH, KARACHI
IIInd Appeal No. 66 of 2022

Appellants : **Saleemuddin Qureshi and others**
Through Mr. Jamroz Khan Afridi,
Advocate.

Respondent No.1 : **Bakhtiar S/o Ameer Sultan**
(Nemo)

Date of Hearing : **24.09.2026**

Date of Judgment : **09.10.2026**

J U D G M E N T

Saman Rafat Imtiaz, J : Through the instant appeal the Appellants have challenged the impugned Judgment dated 15.12.2021 and Decree dated 21.12.2021 passed by the learned Vth Additional District Judge, Karachi West dismissing the Civil Appeal No.172 of 2020 filed by the Appellants and the impugned Judgment dated 17.02.2020 and Decree dated 19.02.2020 passed by the Ist Senior Civil Judge, Karachi West allowing the Suit No.140/2018 filed by the Plaintiff/Respondent.

2. Precisely stated, according to the memo of appeal, the facts alleged by the Respondent/Plaintiff [Bakhtiar] in Suit No.140/2018 are that the Respondent/Plaintiff is the tenant of Appellants/Defendants [Saleemuddin Qureshi, Mst. Fehmida, Bilal, Mst. Nazeen and Mst. Nazia] in respect of Shop No. K-37/40, Chattagang Colony, Opposite Jama Masjid Bengali, Old Golimar, Manghopir Road, Karachi vide Tenancy Agreement dated 23.06.2009 on monthly rent of Rs.3300/- with security deposit of Rs.25,000/-. The Respondent/Plaintiff was running a business of marble in the said shop since long and spent huge amount on the establishment of business but the Appellants/Defendants with mala fide intentions and ulterior motives caused disconnection of the electricity of the premises on 12.11.2015 due to non-payment of electric bill. Allegedly it was settled between the

Respondent/Plaintiff and Appellants/Defendants that the Appellants/Defendants will collect the amount from the Respondent/Plaintiff and will pay the bill of the premises and that the Respondent/Plaintiff without default paid the electricity bill each and every month as per sub-meter but the Appellants/Defendants did not pay the same to the concerned department which caused disconnection of electricity. The Respondent/Plaintiff has also approached the Ombudsman for redress of his grievance as the Appellants/Defendants were harassing the Respondent/Plaintiff in this regard. The Ombudsman directed the Appellants/Defendants to deposit the 55% dues of the electricity in shape of easy instalments of Rs.12,000/- per month but the Appellants/Defendants did not pay the dues. Later on, the electricity department waived 45% dues. It was alleged that due to the disconnection of the electricity from the month of November 2015 the Respondent/Plaintiff is suffering loss to the tune of at least Rs.2000/- per day which comes to Rs.1,620,000/- as of January 2018. It was further alleged that in the tenement four lathe machines were lying and each is worth Rs.60,000/- while four small machines worth Rs.20,000/- as well as the spare parts of the machines have been damaged and were not in working condition. The Respondent/Plaintiff has also suffered loss of Rs.25,000/- to repair each machine, further the Respondent/Plaintiff also suffered damage of the lathe machines which will cost Rs.100,000/- for its repair and Rs.40,000/- for miscellaneous repair in the machines which aggregates to Rs.140,000/-. The Appellants/Defendants also lodged a false and frivolous FIR No.89/2015 against the son of Respondent/Plaintiff and Rent Case No.205/2015 was also filed by the Appellants/Defendants against the Respondent/Plaintiff without any default on his part and due to these malicious prosecution by the Appellants/Defendants the peaceful life of Respondent/Plaintiff was affected and he suffered mental agony and the Respondent/Plaintiff spent an amount of Rs.60,000/- till quashing of FIR lodged by the Appellants/Defendants against the

Plaintiff/Respondent's son. The Respondent/Plaintiff also suffered business losses due to these acts of the Appellants/Defendants and sustained mental torture and agony. The particulars of special damages allegedly suffered by the Respondent/Plaintiff were given as follows:-

1. Fees paid to the advocate	Rs.100,000/-
ii. Loss of the Business during Trial	Rs.1,620,000/-
ii. Loss in damaging the article	Rs.167,000/-
iv. Expenses accrued on litigations	Rs.125,000/-
v. Expenses paid on various.....apprx.	Rs.200,000/-

3. In evidence the Respondent/Plaintiff produced his affidavit-in-evidence as Exh.P/1. He produced photocopy of tenancy agreement as Mark-X, photocopies of rent receipts as Mark-X/1 and Mark-X/2, photocopy of FIR as Mark-X/3, photocopy of certified copy of judgment of acquittal as Mark-X/4, memo of Rent Case No.194/2015 as Mark-X/5 and order under section 11 of Sindh Rented Premises Ordinance, 1979 as Mark-X/6. He produced medical reports total in number 96 as Exh.P/2 to Exh.P/97. He produced photocopy of memo of plaint of Suit No.2013/2015 which was withdrawn by him as Mark-X/7. Respondent/Plaintiff examined witness Salahuddin at Exh.P/98. He produced his affidavit-in-evidence at Exh.P/99. Respondent/Plaintiff also examined witness Adil Hussain at Exh.P/100. He produced his affidavit-in-evidence at Exh.P/101. Thereafter, learned counsel for Plaintiff/Respondent closed his side of evidence. Appellant No.1/Defendant No.2 [Saleem Uddin] examined himself at Exh.D. He produced his affidavit-in-evidence at Exh.D/1. Thereafter, learned counsel for Appellants/Defendants closed their side of evidence.

4. The Trial Court framed the following issues:

1. Whether plaintiff was liable to pay electricity bill as per terms and conditions of rent agreement. And bill amount

was paid by him to defendant as per settlement in between them and defendant paid same to department?

2. Whether defendant failed to deposit electricity bill payment to department and due to such failure electricity disconnected and plaintiff suffered loss in business up to Rs.16,20,000/-, rupees 2,000/- per month from November, 2015 to January, 2018?

3. Whether machine and equipment installed at premises became out of order and required repair due to disconnection of electricity and other acts of defendants causing loss to plaintiff up to Rs.1,40,000/-(one lac forty thousand only)?

4. Whether defendants lodged false cases against plaintiff and his son and due to malicious prosecution plaintiff sustained physical, mental torture and agony and loss of reputation in society at large?

5. Whether plaintiff is entitled for damages as claimed by him?

6. What should the order be?

5. The Trial Court after recording of evidence decided Issue Nos.1, 2 & 3 in the affirmative while Issue No.4 in the negative and decreed the Respondent/Plaintiff's Suit in the amount of Rs.17,60,000/- (Rupees Seventeen Lac Sixty Thousand only). The Appellate Court reduced the quantum of damages from Rs.2,000/- to Rs.1,000/- per day from November, 2015 till January, 2018 and likewise, quantum of repair charges was reduced from Rs.140,000/- to Rs.100,000/- by finding that that the Respondent/Plaintiff did not make effort for alternate arrangements.

6. The learned counsel for the appellants submitted that both the Courts below have erroneously found that the electricity was disconnected at the demised premises on account of failure of the Appellants/Defendants to pay the electricity bill by erroneously finding that the bill was paid by the Respondent/Plaintiff to the Appellants/Defendants who collected the same for onwards payment to the concerned department but failed to do so and as

such held that the Appellants/Defendants are liable for the disconnection. He submitted that both the Courts below have overlooked the terms of the rent agreement, whereby according to clause 4, it was the Respondent/Plaintiff, who was responsible for payment of utility bills and in case of failure to so pay if the utility is disconnected it will be the responsibility of the Respondent/Plaintiff, who will also be responsible for its restoration.

7. No one is in attendance on behalf of the Respondent/Plaintiff, nor any intimation received. Same was the position on the last two dates of hearing, however, it was made clear on 11.08.2026 that in case of non-appearance or failure to proceed, the matter will be proceeded *ex parte*, as such the matter is proceeded accordingly.

8. Heard the learned counsel for the appellant and perused the record of the case.

9. Examination of the impugned judgments passed by both Courts below reveals that in respect of Issue No. 1 the trial Court's conclusion that disconnection of the electricity was on account of the Appellants/Defendant was reached in view of the statement of Respondent/Plaintiff in his affidavit-in-evidence produced as Exh.P/1 that it was settled between the parties that the Respondent/Plaintiff will pay the bill and the Appellant/Defendant would collect the same and also in view of the fact that the Respondent/Plaintiff had previously filed Rent Case No.194/2015 under Section 11 of the Sindh Rented Premises Ordinance, 1979, which was allowed in his favour. The trial Court took judicial notice on the order passed in such rent case, whereby it was the Appellant/Defendant, who was found in default for non-payment of electricity charges which led to the disconnection.

10. It appears that tenancy agreement relied upon by the Appellant/Defendant was not produced in original by either party and the Respondent/Plaintiff only produced its photocopy, which was marked "X". It is well settled principle of law that the marked

copy carries no legal value or sanctity in a Court of law and that has not taken into consideration. Therefore, there was no error in the impugned judgments if the terms of such agreement were not considered by them.

11. Be that as it may, the trial Court decided in respect of Issue No. 2 that since the Respondent/Plaintiff was running a marble shop at the demised premises he was earning Rs.2000/- per day and since the shop remained closed due to disconnection of electricity, he suffered loss of business. Issue No.3 has been decided by finding that there is no doubt that when machinery is not used it will become out of order and will require repairs. The trial Court has cursorily examined Issue No.5 and held that Respondent/Plaintiff is entitled for damages of Rs.1,760,000/- as loss in business and repair of machinery and equipment.

12. The Appellate Court upheld such decision but reduced the amount of damages for loss of business from Rs.2000/- to Rs.1000/- per day for the time period that the shop remained closed due to disconnection of electricity.

13. However, loss of business and repair of machinery fall under the category of special damages, which have to be proved specifically through evidence. The impugned judgments do not shed light on what evidence, if any, the Respondent/Plaintiff produced to establish that he was running a marble business at the demised shop or that he was earning Rs.2000/- from such business per day prior to disconnection of the electricity or even Rs. 1000/- per day as held by the learned Appellate Court. The trial Court has taken the statement of the Respondent/Plaintiff in examination-in-chief as gospel truth and found that Respondent/Plaintiff was earning Rs.2000/- per day from his marble shop at the demised premises without an iota of evidence of such earnings. Similarly, the learned Appellate Court has arbitrarily reduced such amount from Rs.2000/- to Rs.1000/- per day.

14. No evidence has been referred to by either Court that the Respondent/Plaintiff had incurred Rs.140,000/- expenses on repair of machinery so much so that even the list of machinery is not available on the record. Yet the Trial Court has allowed the Respondent/Plaintiff Rs.140,000/- as damages incurred on account of repair of machinery and the Appellant Court has reduced the quantum to Rs.100,000/- without rhyme or reason or reference to any evidence.

15. In view of the foregoing, the instant appeal is partly dismissed and the Impugned Judgments are upheld to the extent of Issues No. 1 and 4 whereas it is partly allowed and the Impugned Judgments are modified to the extent that Issue Nos. 2, 3, and 5 are decided in the negative and the Respondent's suit to the extent of damages for loss of business and repair of machinery is dismissed for want of evidence. Decree sheet to be prepared accordingly.

SAMAN RAFAT IMTIAZ
JUDGE

Announced in open Court on 9th day of October, 2026.

Farhan/PS