HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-539 of 2023

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Akhtar Hussain s/o Maqsood Hussain Qureshi Through Mr.Muhammad Arshad S. Pathan, Advocate
Respondent No.1	:	Mst.Laiqah wd/o Late Muhammad Shafique Through Mr.Arslan Ahmed , Advocate. Nemo.
Respondent No.2	:	II-Senior Civil Judge & Rent Controller, Nawabshah
Respondent No.3	:	IV-Additional District Judge, Shaheed Benazirabad
		Mr.Wali Muhammad Jamari, Assistant Advocate General, Sindh
Date of hearing & short Order	:	**13.11.2025**
Date of reasons	:	**18.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Petitioner/tenant, Akhtar Hussain, s/o Maqsood Hussain Qureshi, is aggrieved by the judgment dated 25.11.2023 passed by the IVth Additional District Judge, Shaheed Benazirabad ("Appellate Court"), in First Rent Appeal No. 3 of 2023, filed by the Respondent No. 1/landlady, Musammat Laiqah, wd/o late Muhammad Shafiq. The above-mentioned impugned judgment of the Appellate Court partially set aside the order passed by the Senior Civil Judge/IInd Rent Controller, Nawabshah ("the trial Court"), in Rent Application No.19 of 2021, filed by Respondent No. 1/landlady, wherein the trial Court dismissed the ejectment application of the respondent no.1/landlady on two grounds. First, she had failed to make out a case of ejectment on personal use, and second, no default in payment of rent could be proved. While the Appellate Court upheld the trial Court's

dismissal on the first ground, i.e., personal use, it set aside the trial Court's Order on the second ground of default in payment of rent.

2. Counsel for the petitioner/tenant has argued that the Appellate Court has failed to appreciate that the petitioner/tenant has never committed any default in payment of rent and has misread the evidence. He submitted a statement on the last date of hearing, 13.11.2025, attaching a bundle of money order receipts, mostly dated 03.09.2025, a few dated 30.08.2025, and some illegible, in support of his contention that no monthly rent was outstanding and/or payable to the respondent no.1/landlady. Therefore, Counsel argued the impugned appellate judgment is liable to be set aside, and the respondent No.1/landlady's rent application is liable to be dismissed.

3. The respondent no.1/landlady has not preferred any challenge to the impugned appellate judgment dated 25.11.2023, which implies that she has accepted the said judgment, in terms of the Appellate Court, rejecting her ground that a case for ejectment based on personal use was made out. Therefore, while dealing with this petition in writ jurisdiction as a Regular Bench of the High Court under the 1973 Constitution as amended by the 26th Amendment, I have examined the sole issue of whether or not the Appellate Court's impugned judgment concerning its finding that the respondent no.1/landlady ground for ejectment of the petitioner/tenant, based on default of monthly rent, is/was "without lawful authority" and/or "of no legal effect".

4. Heard learned Counsel and A.A.G. Sindh as well as perused the record available in the petition.

5. The Appellate Court has observed in its judgment that when the attorney for the petitioner/tenant, his brother, stepped into the witness box and was cross-examined, he admitted that he (his brother-petitioner/tenant) had not produced rent receipts for the years 2018 to

2021 and produced only a rent receipt for the year 2022. Based on this admission, the Appellate Court found the petitioner/tenant to be in default of monthly rent, particularly as Respondent No. 1/landlady, both in her pleading and in her deposition, had already denied receiving it, and the burden was on the petitioner/tenant to prove that there was no default.

6. I have read the evidence of the petitioner/tenant and the respondent no.1/ landlady and re-produce selected excerpts from the same as follows:

A. Evidence of petitioner/tenant, Akhtar Hussain's brother, Muhammad Fayaz

"It is correct that I have not produced any rent agreement between my brother and the applicant pertaining to the years 2019, 2020 and 2021."

"It is correct that all the rent receipts produced by me pertain to the payment of rent for the months of the year 2022."

"It is correct that I have not produced the rent receipts for the years 2018, 2019, 2020 and 2021."

B. Evidence of respondent no.1/landlady, Mst. Laiqah Wd/o Late Muhammad Shafique

(a) Affidavit in Evidence
"Para 4. …the opponent is most irregular of the payment of monthly rent…"
"Para 6. …that when opponent failed to vacate the rented shop and on payment default and created troubles for the me with malafide intention for the ulterior reasons, I served him legal notice dated 17.11.2020…and then he did not pay heed and created troubles."
"Para 10 …That since opponent is … also failed to pay rents dues with malafide intention for ulterior reasons and since 2018 after expiration of agreement, the opponent … when I went to the rented shop for getting rent amount on which opponent misbehaved with the me."

(b) Cross-examination

> "I see the rent receipts which are annexed with the written statement under the name and style of Ahmed Centre which are same and correct."
>
> "It is incorrect that the opponent used to pay the monthly rent of the shop."
>
> "It is correct that I have not specifically mentioned in my affidavit in evidence and in my memo of application about the specific months in which the opponent ever committed default in payment of monthly rent in time."
>
> "It is correct that I have not filed any application claiming the arrears of rent against the opponent during the pendency of present rent case."

7. Given the upshot of the evidence brought on record, and indeed that during the course of arguments, the petitioner/tenant also produced certain rent receipts relating to rent paid in 2025, neither the evidence nor the conduct of the petitioner/tenant inspires confidence in his defence that there was and/or has been no default. Indeed, if this was the case (no default), even if he did not produce the receipts evidencing payment of the monthly rent, he could have produced photocopies of the same before the Appellate Court and/or shown his bona fides before this Court. Merely filing a flood of copies of several money orders, all issued in August and September 2025, is neither here nor there. The issue identified by the Appellate Court concerning no data being available to rebut the Respondent No. 1/landlady's claim of default on the part of the petitioner/tenant remains unaddressed and is/was fatal to his defence before the Appellate Court, and once again before the High Court in writ jurisdiction.

8. Given the above, I found no merit in the petition and dismissed the same by my Short Order dated 13.11.2025, and the above are the reasons for the said dismissal.

JUDGE

AHSAN K. ABRO