IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-10 of 2008

'State Life Insurance Corporation of Pakistan vs. M/s British Medical Stores and others'

Petitioner:	Through Mr. Zahid Hussain, Advocate
Respondents:	Nemo
Date of hearing:	27.04.2026
Date of announcement:	25.05.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Judgment dated 20.09.2007 passed by the learned Additional District & Sessions Judge-V, Karachi South, in First Rent Appeal No. 1244 of 2001 [**Impugned Judgment**] and the Order dated 17.10.1995 passed by the learned VIII Senior Civil Judge/ Rent Controller, Karachi (South) [**impugned Order**] passed in Rent Case No.933 of 1987 have been assailed in this petition, whereby both the Courts concurrently dismissed the ejectment application filed by the Petitioner against Respondent No.1, under Section 15 of the Sindh Rented Premises Ordinance, 1979 [**SRPO**].

2. Tersely, the Petitioner is a statutory corporation constituted under the Life Insurance (Nationalization) Order X of 1972 and is the owner and landlord of the building known as State Life Building No. 5-A, Zaibunissa Street, Saddar, Karachi. Respondent No. 1 is the tenant of the Petitioner in respect of Shop No.9, situated at the Ground Floor of the said building, admeasuring 2000 square feet [**demised premises**], at a monthly rent of Rs. 411.50, payable in advance each month, with electricity charges payable separately. Rent Case No.933 of 1987 was filed by petitioner on three grounds: (a) alleged subletting by Respondent No.1 to an unauthorized person without the written consent of the Petitioner; (b) unauthorized construction in the shop by Respondent No.1, including building a mezzanine floor and extending the front portion of the premises, thereby impairing the material value and utility of the demised premises; and (c) default in payment of rent for February and March 1985. The Respondent No.1 denied all three allegations in his written statement, while admitting the relationship of landlord and tenant and the rate of rent. It stated that the rent for February and March 1985 was paid on time, and that the rent paid after March 1985 was also accepted by the Petitioner. The allegation

of subletting the premises to any unauthorised person was also denied, and carrying out unauthorised construction was denied by stating that whatever minor work was done in the shop with the knowledge and consent of the relevant authority and within the permission granted to the tenant by the Honourable High Court of Sindh in Civil Suit No. 483 of 1987.

3. Out of the pleadings of the parties, the learned Rent Controller framed following four issues:

1. Whether the opponent has committed default in payment of rent for February & March 1985?

2. Whether the opponent without written consent of the applicant has caused substantial damage to the premises in question?

3. Whether the opponent has handed over the possession to some other person?

4. What the Order should be?

4. After considering the evidence and written arguments from both sides, the learned Rent Controller pronounced its Findings on all three substantive issues in the NEGATIVE and dismissed the ejectment application vide Judgment dated 17.10.1995. The Petitioner's First Rent Appeal was also dismissed on 20.09.2007, concurrently upholding the Order of the learned Rent Controller. Both these decisions have been assailed in this petition.

5. Heard and perused the record.

6. On the question of alleged unauthorised construction and damage to the premises, the burden to prove this ground lay squarely upon the Petitioner as the applicant for ejectment. The Petitioner relied on the affidavit-in-evidence of its Executive Officer, Mahmood Ahmed, and the inspection report and affidavit-in-evidence of its Civil Engineer, Hassan Wahaj Bilgrami, who inspected the premises on 17.06.1987. However, on a careful reading of the record, both Courts below have correctly found that the Petitioner failed to discharge this burden. The Executive Officer of the Petitioner admitted in cross-examination that he had no knowledge about any addition or alteration in the shop, since the Civil Engineer would know about it and would depose on the point. The Civil Engineer, who was an employee of the Petitioner and therefore not an independent witness, inspected the premises at the direction of the Petitioner itself. Even so, neither his affidavit in evidence nor his inspection report disclosed that the alleged construction had caused any actual damage to the premises or impaired the material value or utility of the rented shop, which is the precise requirement of Section 15(1)(iv) SRPO. The law is settled that the landlord seeking ejectment on the ground of unauthorised alteration or construction must prove that the act of the tenant is likely to impair the material value or utility of the premises. This essential element was not established through any credible or independent evidence. The Respondent No. 1, on his part, produced evidence through the affidavit of Javaid Hameed as well as the inspection report of Ghulam Mohiuddin, both of which indicated that no structural changes of the kind alleged had been made. On the point of construction, the record also showed that the High Court of Sindh in Civil Suit No.483 of 1987 had allowed certain fittings and alterations within the demised premises.

In this state of evidence, both Courts below correctly concluded that the Petitioner had miserably failed to prove this ground, and the issue was rightly decided against it.

7. On the allegation of subletting, the burden to prove unauthorised subletting also lay upon the Petitioner. The Petitioner neither named in its ejectment application any specific person to whom the premises had allegedly been sublet, nor did the affidavit in evidence of its Executive Officer identify any such person. The Petitioner's reliance at the stage of arguments on a letter from the Karachi Metropolitan Corporation, which referred to the premises as belonging to British Departmental Store rather than British Medical Stores, was not sufficient, since this was a correspondence of the municipal authority and any error in the name used therein could not be taken as proof that the premises had been sublet. This plea, which was not taken in the pleadings, cannot be allowed to be raised at the stage of arguments. Moreover, Respondent No.1's witness in his cross-examination that a new partner had been inducted in the firm in the year 1981, but such a mere allegation by itself did not prove subletting. No visiting card nor any proof of activity of the alleged sublettee was also provided in the evidence. The Appellate Court correctly observed that the Petitioner did not even plead in its ejectment application that subletting had occurred on account of the induction of a new partner. It is a well-settled principle of law that a party must establish its own case and cannot benefit from the weakness of the case of the opposing party. The primary burden to prove subletting was on the Petitioner, and it failed to discharge it. This ground was therefore also rightly decided against the Petitioner.

8. On the question of default in payment of rent, it is an admitted position that there was no written tenancy agreement between the parties, and no specific date had been fixed by mutual agreement for the payment of monthly rent. The Petitioner's case was that the rent was payable in advance at the beginning of each month by oral understanding. The Rent Controller correctly examined Section 15(2)(ii) SRPO, which provides that a tenant is in default if he fails to pay rent within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and the landlord, or in the absence of such agreement, within sixty days after the rent has become due for payment. Since there was no written agreement and no fixed date for payment, the tenant was entitled to a grace period of sixty days from the date the rent for each month became due. The rent for February 1985 and March 1985 was paid by the tenant on 15.04.1985 and was accepted by the Petitioner against Receipt No.15533. The Rent Controller as well as the Appellate Court correctly held that this payment, having been made and accepted within the statutory grace period available to the tenant under Section 15(2)(ii), did not amount to default. The Petitioner's argument that the rent was payable in advance by oral understanding could not be accepted as displacing the statutory provision in the absence of any written agreement on the point. The learned Appellate Court rightly noted that the practice of paying rent in advance does not by itself constitute a binding agreement sufficient to override the statutory grace period available to the tenant. The ejectment application on the ground of default was therefore rightly rejected.

9. Lastly, these are not proceedings in appeal, but Constitutional jurisdiction has been invoked under Article 199 of the Constitution, which can only be availed if it is established that the impugned Judgment suffers from some inherent lack of jurisdiction. Such Constitutional jurisdiction cannot be used as a substitute for a second appeal, as was held in ***'Syed Mazhar Imam Rizvi v. Mst. Yasmin Bano and 2 others'*** (2009 MLD 935); and ***'Muhammad Hussain Munir v. Sikandar & others'*** (PLD 1974 SC 139). The settled law is that, in petitions arising out of rent matters under SRPO, this Court does not act as a Court of second appeal, and reappraisal of evidence is uncalled for, even if some other conclusion was also possible based on evidence available on record, as was declared in ***'Shamim Akhter v. State Life Insurance Corporation Ltd.'*** (PLD 2005 Karachi 554). The Constitutional jurisdiction of this Court under Article 199, in matters arising out of rent proceedings is well defined and well settled, being supervisory in nature, cannot be treated as a substitute for appeal and interference therein is warranted only when the impugned Order suffers from a jurisdictional error, or is based on a fundamental misreading of evidence, or discloses a patent legal error which results in miscarriage of justice. Mere re-assessment of evidence or substitution of this Court's view for that of the Courts below is not permissible within this jurisdiction.

10. I have gone through both the impugned Judgment and Order with care. Both Courts below concurrently and correctly identified and applied the relevant provisions of law. Both the Courts below were Courts of competent jurisdiction. They heard the parties, examined the oral and documentary evidence, and recorded their findings. Those findings are based on the record and are supported by reasons. Both learned Courts have correctly assessed the evidence placed before them and recorded well-reasoned findings on all issues. This Court, therefore, cannot disturb such findings. The Petitioner has not been able to point out any jurisdictional error or fundamental legal error, nor has any case for invoking writ jurisdiction against concurrent findings by two Courts below been made out. This petition is therefore dismissed, along with the pending application, with no order as to costs.

J U D G E