

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-953 of 2023

'Abdullah S/o Muhammad Iqbal vs. Samra W/o Muhammad Amir Memon and others'

Petitioner : Through Mr. Iftikhar Javaid Qazi,
Advocate

Respondent No.1 : Through M/s Irshad Ali & Ghulam
Shabbir Advocates

Date of Hearing : 23.04.2026

Date of Announcement : 25.05.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been preferred against the concurrent decisions passed by two Courts below, i.e. Judgment dated 11.09.2023 passed by the learned IX Additional District Judge, Karachi East in First Rent Appeal No.86 of 2023 [**impugned Judgment**] and the ejectment Order dated 15.04.2023 passed by the learned IV Rent Controller, Karachi East in Rent Case No.35 of 2020 [**impugned Order**] with respect to Flat No.301, Al-Bushra Heights, 3rd Floor, Plot No.89/L, Block-2, P.E.C.H.S, District East, Karachi [**demised premises**].

2. Succinct facts of the case are that Respondent No.1/ Mst. Samra is the registered owner of the demised premises. She executed a special power of attorney in favour of her father-in-law, Muhammad Siddiq son of Abdul Habib, authorising him to let out the premises, collect rent, and hand over possession. Acting through her attorney, Respondent No.1 entered into a Tenancy Agreement with the Petitioner on 30.10.2013 for a period of eleven months against a monthly rent of Rs.40,000/- with 10% annual increase in case of extension. The Petitioner paid six months' advance rent amounting to Rs.2,40,000/- through six cheques for the period from 01.10.2013 to 31.03.2014 and also deposited Security amount of Rs.2,00,000/- in the shape of two cheques of Rs.1,00,000/- each.

3. According to Respondent No.1, after the initial advance rent was paid, the petitioner routinely delayed monthly payments and used to pay rent in lump sums covering five to seven months at a time. A cheque issued by the Petitioner for Rs.2,80,000/- towards six months' rent of the year 2014 was also dishonoured. Subsequently, the Petitioner issued two further cheques for Rs.2,00,000/- and Rs.2,80,000/- dated 10.03.2017 and 15.04.2017 respectively, drawn on Bank Al-Habib, Karachi, purportedly for the year 2015. The Respondent No.1 alleged that the Petitioner, thereafter, completely failed to pay rent and committed willful default in payment of rent. In October 2019, a legal notice was issued through counsel and in December 2019, Respondent No.1 sent her brother-in-law, Khurram Memon, to collect the outstanding rent, but the Petitioner allegedly issued threats of dire consequences. Resultantly, Khurram Memon filed a complaint at Police Station Ferozabad dated 04.12.2019 in this regard and finally, the Rent Case No.35 of 2020 was filed against the petitioner on 09.01.2020 on the grounds of willful default and personal *bona fide* need.

4. The Petitioner, in his written statement, denied all adverse averments. His principal defence before the Courts below was that in the month of March 2020, during the pendency of the rent case, Respondent No.1 herself entered into a Sale Agreement with him in respect of the demised premises for a total consideration of Rs.1,82,00,000/-, and that he paid a total of Rs.45,65,000/- through various cheques and online transfers towards the sale price. He contended that by virtue of the sale agreement, the relationship of landlord and tenant had come to an end, that he was now the lawful purchaser of the premises, and therefore the ejectment application was not maintainable. The Petitioner also claimed that he had paid rent regularly up to December 2019 and thereafter deposited rent before the Court in MRC No.17 of 2020 from January 2020 to April 2020, as Respondent No.1 had refused to accept rent through money order.

5. After recording evidence, the learned Rent Controller found the relationship of landlord and tenant to be existing in view of Petitioner's acknowledgment in his written statement that he was a tenant at Rs.40,000/- per month and had paid rent up to December 2019. The learned Rent Controller also found that the Petitioner had himself admitted during cross-examination that he had stopped paying rent from the date of the Sale Agreement dated 23.03.2020. The learned Rent Controller further found that the Petitioner was in clear default of rent since mere execution of a sale agreement does not extinguish the tenancy or transfer title of the property. The learned Rent Controller also observed that the power of attorney, authorised Muhammad Siddiq to manage the entire affairs of the residential flat in question, and even on the assumption that it was defective, the case on merits disclosed a clear default. Accordingly, the ejectment application was allowed.

6. The learned First Appellate Court, concurrently upheld the Order after re-appreciating the evidence and dismissed the First Rent Appeal filed by the Petitioner. It found that the Petitioner's own admission in cross-examination clinched the matter, in that he had stopped paying rent from the date of the sale agreement and conceded that at the time the rent case was filed, he was a tenant. The appellate Court further found that the

four cheques of Rs.1,00,000/- each given by the Petitioner in the year 2017 had been dishonoured and were not reflected as credited amounts in his bank statement. The appellate Court also dealt with the objection regarding the power of attorney and found that Respondent No.1 had subsequently executed a special general power of attorney dated 26.11.2020 in favour of the same attorney Muhammad Siddiq, thereby ratifying all previous acts, and that this contention of the Petitioner was therefore without merit.

7. Heard learned counsel for the parties and perused all the material available on record carefully.

8. The first argument is that the sale agreement dated 23.03.2020 transformed the Petitioner from a tenant into a purchaser and that the landlord and tenant relationship therefore came to an end. This argument has no merit in law and has been consistently and categorically rejected by the superior Courts of Pakistan. It has been consistently held by Courts in Pakistan in *Rabia Bibi* and *numerous other cases*¹ that an ejectment application could not be stayed or stalled on such ground, nor could pendency of a suit for specific performance of agreement be a valid ground to bar eviction proceedings of such a tenant. And in such circumstances, the landlord would be fully entitled to recover rent from the tenant until the civil Court passes a decree in favour of the tenant, as held in the case of *Kassim and others*.² A sale agreement is merely an agreement which does not transfer title, whereas title in immovable property passes only upon execution of a registered sale deed. In the present case, the sale agreement remained unregistered, the balance sale consideration was not paid in full, several cheques issued by the Petitioner were dishonoured, and no registered sale deed was ever executed. The Petitioner has not filed any suit for specific performance of the agreement. In law, the Petitioner therefore remains a tenant of Respondent No.1 who remains the registered title holder of the premises. The law is settled that in proceedings for ejectment, the tenant cannot resist eviction by setting up a claim of ownership based on an unregistered and incomplete sale agreement. If the Petitioner genuinely believes he has a right to enforce the sale agreement, the law provides a remedy through a suit for specific performance. That remedy does not entitle him to continue in possession of the rented premises as a tenant while simultaneously denying the landlord's title and refusing to pay rent. Both the Courts below correctly applied this well-settled legal principle.

9. The Petitioner has also contended that both the Courts below failed to take into account the large amounts paid by him towards the sale consideration, which total approximately Rs.45,65,000/-. This argument misunderstands the nature of the proceedings. The rent case was filed on 09.01.2020. The sale agreement came into

1. *Iqbal v. Rabia Bibi* (PLD 1991 SC 242), 2008 CLC 1134, *Baboo Din v. Nasroo* (1995 MLD 1460), *Shahzada Gulzar v. Bashir Baig* (1996 CLC 1293), *Muhammad Yaqoob v. Mohsin Ali* (1999 CLC 1173), *Saeed Khan Gul zad Gul v. Muhammad Ibrahim* (1986 CLC 2577), *Abdul Kareem Khan v. Mst. Zahida Khan* (2008 YLR 2434)

2. *Kassim & others v. S. Raheem Shah & others* (1990 SCMR 647)

existence on 23.03.2020 during the pendency of the rent case. Any payments made under the sale agreement are in the nature of advance or token payments towards an unexecuted and incomplete transaction of sale and have no bearing on the question of whether the Petitioner was in default of rent. Indeed, the very fact that the Petitioner was making payments towards a sale agreement while simultaneously depositing rent before the Court only for the period January to April 2020 and thereafter stopping all payments confirms that he treated the sale agreement as a ground to cease paying rent. That is precisely what constitutes willful default in the circumstances of this case. The Courts below were correct in not allowing these sale-related payments to be treated as discharging the rental liability.

10. The cross-examination of Respondent No.1's attorney Muhammad Khurram Memon, which forms part of the record, itself confirms several material facts relied upon by the Courts below. He admitted that the ejectment application was silent about the details of the default, that the amount of Rs.25,50,000/- was acknowledged as received, and that the prayer clause of the application left the amounts blank. However, he also confirmed that the opponent had made some payments through cheque towards a sale agreement which was never completed. These admissions, read together with the admissions of the Petitioner himself in his cross-examination, fully support the findings of default returned by the Courts below. No misreading or non-reading of evidence has been shown to this Court.

11. The next contention urged on behalf of the Petitioner is that the ejectment application was defective on its face because the prayer clause left the amounts of default and arrears blank, and that therefore no default could legally be found against the Petitioner. This argument, though artfully presented, does not withstand scrutiny. The learned Courts below rightly noted that while the blanks in the prayer clause were indeed a deficiency in drafting, the body of the ejectment application did set out the allegations of default with sufficient particularity, and the evidence led during trial more than amply established the default. The Petitioner admitted unequivocally that he had stopped paying rent after the execution of the sale agreement dated 23.03.2020 and that he had no intention of paying rent to the Respondent. This admission, coming from the mouth of the Petitioner himself, is sufficient to sustain the finding of default regardless of any technical deficiency in the drafting of the prayer clause. Nothing in the Sindh Rented Premises Ordinance, 1979 requires that the finding of default must rest solely on the figures set out in the prayer clause of the ejectment application. The Courts below are entitled to look at the evidence as a whole, and the evidence here overwhelmingly establishes willful default on the part of the Petitioner.

12. The last contention relates to the power of attorney. It was argued that the attorney of Respondent No.1 had no authority to file or prosecute the rent case. The Courts below examined this objection in detail. The general power of attorney dated 13.12.2012 authorised Muhammad Siddiq to manage the entire affairs of the flat in question and was broad enough to encompass litigation relating to it. More significantly, Respondent No.1 subsequently executed a further special general power of attorney on 26.11.2020

authorizing the same attorney to deal with the litigation in respect of the tenement flat, thereby ratifying everything that had been done in her name. The Courts below rightly held that the objection regarding the power of attorney was not valid. This Court finds no error of law or jurisdiction in that conclusion.

13. The Petitioner has sought to portray the judgments of both the Courts below as laconic, hasty and arbitrary. This Court has carefully read both judgments and finds that this characterisation is not justified. The judgment of the learned Rent Controller, though concise, addressed each of the three points for determination with reference to the evidence and the relevant law. The judgment of the learned First Appellate Court is detailed, discusses the oral and documentary evidence at length, considers the arguments of both sides, and arrives at well-reasoned conclusions. There is nothing in either judgment that reflects any failure of jurisdiction or denial of justice.

14. 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 or some patent illegality. The 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). In petitions arising out of rent matters under SRPO, it is also settled that 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. 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, as was declared in '*Shamim Akhter v. State Life Insurance Corporation Ltd.*' (PLD 2005 Karachi 554).

15. 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. For these reasons, this petition is therefore dismissed, along with the pending application, with no order as to costs. Considering that a substantial period of six years

has already passed since the filing of the Rent Application, the petitioner is directed to hand over peaceful vacant possession of the demised premises to the landlord within 30 days from the date of this Judgment.

The instant petition, along with the pending application, stands dismissed in the above terms, with no Order as to cost.

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