

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-282 of 2025

Petitioner : Through M/s. Badar Alam,
M/s. Universal Express (Pvt.) Ltd Muhammad Kashif Badar, Sarfraz
Ltd Qadir & Ammar Nazeer, Advocates

Respondent No.1 : Through M/s. Ahmed Khan Lund,
Karachi Properties Investment Yasir Hussain Malik & Muhammad
Company (Pvt.) Ltd Ayaz Mari, Advocates

Dates of Hearing : 27.04.2026 & 11.05.2026

Date of Judgment : 16.06.2026

Date of Announcement : 19.06.2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioner has challenged Judgment dated 24.02.2025 passed by learned XII-Additional District Judge / Model Civil Appellate Court, Karachi South in First Rent Appeal No.291 of 2024 filed by the petitioner / tenant, whereby he has upheld the eviction order dated 08.10.2024 passed by 1st Senior Civil Judge / Rent Controller, Karachi South vide Rent Application No.289 of 2018 filed by Respondent No.1 / landlord, with certain modifications.

2. Brief facts of the case, relevant for purpose of deciding this constitutional petition, are; that the applicant/landlord viz. respondent No.1 herein filed Rent Case No. 289 of 2018 against the opponent i.e. the petitioner in instant petition, stating therein that the applicant being a limited liability Company, incorporated under the Companies Act, 1984, is owner/landlord of the building, commonly known as "The Hotel Metropole Building", situated at Plot No. 23/1, CL-5, Civil Lines, Club Road, Karachi. Initially in 2006, M/s. Akbar Group were inducted as tenants in the premises / Shop No. 28 admeasuring 680 square ft. and Offices No. 150 and 151 admeasuring 1024

square ft. situated in the said building (hereinafter referred to as 'demised premises'). It was further stated that after vacation of the demised premises by M/s. Akbar Group, the same was handed over to the opponent / petitioner namely, M/s. Universal Express Pvt. Limited on the same terms and conditions stipulated in the tenancy agreement. However, due to violations, alterations, default and delay / short payment in monthly rent etc. by the petitioner / tenant, the substance of the agreement ceased to operate and the opponent was carrying on business in violation of the terms, conditions and circulations settled by the respondent / landlord. It was further averred that monthly rent of the demised premises at the time of filing rent case was Rs.256,654/. It was grievance of the applicant / landlord that; the normal practice of the opponent / tenant had been that he never paid/tendered rent within the stipulated time. The opponent was in the habit of delaying the payment of rent deliberately and intentionally, thereby causing mental torture to the applicant / landlord. It was further asserted that, the opponent was under legal obligation to pay the maintenance charges including water charges etc. but he failed and/or willfully neglected to pay the same despite repeated oral and written demands made by the applicant. In the circumstances, the opponent / petitioner committed default in payment of maintenance charges. Apart from above, the opponent / tenant has also committed such unlawful acts which have seriously impaired the material value and utility of the building. Besides, the tenant was in the habit of not receiving the bills, therefore, the applicant / landlord had to send the same via courier. It was further stated that the opponent / tenant has also committed encroachment from the back side of the Hotel Building and has affixed a staircase without written permission of the applicant. Apart from this, a board is welded at the shop on the parapets of the building which has weakened the parapet further. It was further stated that Air-conditioners are installed in such a manner that the outers thereof are placed on the parapets of the building without any adequate arrangement for drainage of water. This has not only damaged the immediate walls and structure of the building but has also ruined the beauty and prestige of the building. The opponent / tenant has also displayed hoardings and boards of unauthorized / prohibited size on the parapets of the building without obtaining oral or written permission from the landlord which has also impaired material value and utility of the Building and substantially diminished the appeal of the Building's façade. It was

further stated that the opponent has extended his area by constructing small portion in the building without permission of the landlord which has not only de-shaped the structure of the building but it also amounts to encroaching upon the area of the building. Besides, the opponent has placed heavy industrial generator at the open space, which has no nexus whatsoever with the tenement in question. Its deep sonorous voice disrupts the normal functions of other occupiers of the building as well as the applicant / landlord, and despite repeated verbal and written requests, the opponent has willfully failed and/or neglected to remove the same. It was further stated that the opponent has arranged a valet parking on the outer premises of the building, without permission of the applicant. Despite warning and letters issued, the shop and offices remain open for late hours which increases the cost and security threats of building. It was further stated that in order to harass the applicant / landlord, frivolous and baseless complaints are made by the opponent very frequently and such complaints, threats and frivolous criminal litigation have to be defended by the applicant, which has made life of the applicant / landlord miserable; besides, such acts have also created havoc and nuisance for the landlord. It was further stated that, as per management policy, none is allowed to disfigure the doors/outlooks of the building without seeking permission from the landlord, but the opponent has changed the color of the doors of the premises in complete violation of the management policy, which is hazardous for the applicant / landlord. It was also averred in the rent application that, the opponents instead of behaving and acting in a civilized manner, have acted in an uncanny and derogatory manner and have always tried to maneuver their way against the interest and policy of the owner / landlord in an unlawful manner; however, the applicant earnestly tried to resolve all reasonable complaints at all times as and when communicated by the concerned tenants. However, despite notices by the owner / landlord in respect of illegal and unlawful practices and violations on the part of opponents, willfully failed and/or neglected to redress the same. According to the applicant / landlord, the acts of the opponent have conclusively diminished the material value or utility of the demised premises and have a tendency to repeat and continue the same which will further endanger the tenement being 70 years old structure. The opponent was served with notice/letter dated 1st February 2018, to pay his remaining amount of rent, which he miserably failed to comply with.

3. Upon service of notice, the opponent / petitioner filed written statement, stating therein that the applicant / landlord has filed present application through so called authorized representative without filing any power of attorney or authorization letter, that no cause of action accrued for filing the rent application as the applicant has not come before the Court with clean hands therefore, the rent application is liable to be dismissed. However, the opponent admitted the relationship of landlord and tenant between the parties. It was sated that initially an agreement of lease was executed between applicant / landlord and M/s. Akbar Enterprise in respect of demised premises and later on such lease agreement was transferred to the opponent viz. Universal Express vide Addendum dated 21-08-2006, which was renewed on 05-03-2007 and, thereafter on 15-02-2008 another addendum was executed between the parties which was on perpetuity basis. It was further averred that, the opponent is running its business in Shop No. 28 while in Office No. 150 M/s. Fazal-e-Rabbi Enterprises and in Office No. 151 Fazal-e-Rabbi Limousine Service are running their business and separate addendums were executed between the applicant and the said companies. It was further stated that the opponent is paying rent in respect of Shop No. 28 and Offices No. 150 and 151 at the rate of Rs.2,33,322/- per month without any default or delay in payment of monthly rent. It was further asserted that since the inception of tenancy, all the tenants used to maintain their tenements themselves and there was no question of maintenance charges. It was also stated that the opponent / tenant never encroached upon any area of the building, and all the construction, renovation or any alteration have been made with the written permission of the applicant / landlord. It was further stated that no display board is fixed on parapets, rather the same is fixed on the shed. Likewise, the outers of the air conditioners are not installed on parapets but the same are installed on an iron stand on the roof for which the opponent has already obtained written permission of the applicant / landlord. The opponent was also allowed by the applicant itself to install the generators. It was further asserted that the tenement is situated at a busy road and there is no arrangement of parking in the building or adjacent area to accommodate the respectable clients and customers of the opponent, therefore, he arranged a valet parking to accommodate his valuable clients and customers and also in order to avoid any obstruction in the flow of smooth traffic. In the circumstances, the rent application is not maintainable and prayer was made for its dismissal.

4. On the pleadings of the parties, 1st Rent Controller, Karachi South framed the issues relating to willful default in payment of rent, subletting the demised premises as well as impairing the material value and utility of the premises in question.

5. After recording evidence of the parties, hearing the arguments of their respective advocates, Rent Controller allowed the Rent Case vide Judgment dated 08-10-2024. The opponent / tenant assailed the said judgment by means of filing First Rent Appeal. After full-fledged hearing, the appeal was dismissed, hence the tenant / petitioner has filed instant constitutional petition.

6. I have heard learned counsel for the parties and have gone through the material made available before me on the record.

7. Learned counsel for the petitioner submitted that the courts below have not properly appreciated the evidence adduced by the parties and have passed the order/judgment in a hasty and mechanical manner, thus the same are liable to be set aside. It was further submitted that the rent application was not maintainable as the landlord had filed rent application through his attorney without filing any power of attorney or authorization letter.

8. It was further submitted that the landlord / owner of the same Building viz. Metropole Hotel had filed rent case against one of their tenants namely, Habib Carpets on similar grounds and the courts below had decided the case in favour of the landlord and the tenant was ordered to vacate the shop occupied by them; however, while hearing the constitutional petition filed by the tenant, this Court in the case of **Habib Carpets (PVT.) Limited Vs. Karachi Properties Investment Company (PVT.) Limited (KPICPL)**, reported in **2022 MLD 1754 [Sindh]** reversed the concurrent findings of the courts below and ultimately decided the case in favour of the tenant and against the landlord viz. respondent No.1 in the present case. Not only this, but even Honourable Supreme Court in the case of **Karachi Properties Investment Company (PVT.) LTD Vs. Habib Carpets (PVT.) Limited**, reported in **2024 SCMR 1354**, upheld the said judgment passed by this Court, therefore, following the dictum laid down by this Court and the Apex Court, instant petition may be allowed and the impugned order / judgment of the courts below may be set aside in this case too. It was further submitted

that the petitioner / tenant had been paying monthly rent without any default / delay on his part; however, the trial court as well as the appellate court have given their findings on this point on technical basis. It was further submitted that no date was fixed for tendering the rent and the landlord used to accept the rent whenever tendered by the petitioner, as such, by his conduct, he waived his right of filing ejectment application on the ground of default / delay in payment of rent. Learned counsel also attacked the schedule of default filed by the landlord available at page 437 of the Court file as the same does not relate to the premises occupied by the petitioner but the same relates to other three shops. It was further submitted that so far as alleged default in payment of rent for the months of February and March, 2018 is concerned, the courts below did not take into consideration that by virtue of Section 15(2)(ii) of SRPO, 1979 sixty days grace time was available to the petitioner / tenant and he could have tendered the rent for these two months in May and June, 2018 respectively, as such the finding of the courts below relating to the said default was contrary to legal position. It was further submitted that the Rent Controller in excess of his jurisdiction, allowed the ejectment application by considering the alleged default / delay in payment of rent for the months of May, June and July, 2020 i.e. during proceedings of rent application although there was no pleading or prayer in the rent application to this effect.

9. It was further submitted that since the inception of tenancy, all the tenants used to maintain their tenements themselves, therefore no question arose for payment of maintenance charges. It was further submitted that the petitioner / tenant never encroached upon any area of the building, and all the construction, renovation or alteration had been made with the written permission of the respondent / landlord. It was further submitted that no display board was affixed on parapets, rather the same was affixed on the shed. It was further submitted that the outers of the air conditioners were not installed on parapets but the same were installed on an iron stand on the roof and all such works were carried out with written permission of the respondent / landlord and even the generator was installed / placed after obtaining permission of the landlord. It was further submitted that as there was no arrangement of parking inside the hotel building or adjacent area to accommodate the respectable clients and customers of the petitioner, therefore, a valet parking was arranged. It was further submitted that the petitioner viz. M/s. Universal Express Limited has no concern with M/s.

Fazal-e-Rabbi Enterprises and Fazal-e-Rabbi Limousine Service who are running their independent business in office No. 150 & 151 respectively, therefore the courts below have wrongly held that the petitioner has sublet the demised premises to aforesaid two companies / firms. According to learned counsel, the courts below did not take into consideration above aspects of the case and their findings are based on misreading / non-reading of the evidence adduced by the parties. Lastly, he prayed that by allowing instant petition, the order / judgment passed by the courts below may be set aside.

10. Conversely, it was submitted by learned counsel for the respondent No. 1 / landlord that the Rent Controller had passed the order / judgment in accordance with the law after properly evaluating / appraising the evidence brought on record and likewise the Appellate Court affirmed the findings of the Rent Controller by applying judicious mind to such findings, therefore the order/ judgment passed by the courts below do not require any interference by this court in exercise of its constitutional jurisdiction. It was further submitted that M/s. Fazl-e-Rabi and Fazal-e-Rabbi Limousine Service are sister concerns of the petitioner company namely, Universal Express which fact has been admitted by the petitioner, therefore the findings of the courts below regarding subletting is in accordance with the law and the evidence brought on record. It was further submitted that the petitioner / tenant not only committed default in the payment of monthly rent but also made short payment in respect of the rent for the month of February, 2018 & March, 2018. It was further submitted that the courts below have also properly appraised the evidence in respect of the issue of impairment of the material value and utility of the demised premises and their findings on the said issue / point are well reasoned and is in accordance with the law, thus the same are not required to be interfered by this court. It was further submitted that it is settled principal of law that concurrent findings of facts of the courts below cannot be interfered with by this court in exercise of extra-ordinary constitutional jurisdiction. Lastly it was prayed that the petition being devoid of merit is not maintainable hence it may be dismissed.

11. In the first instance, I would like to deal with the point of default in payment of monthly rent. The case of respondent No.1 / landlord is that the petitioner / tenant has defaulted in the payment of rent for the months of August, 2017 to January, 2018. It was also pleaded that the petitioner / tenant

has made short payment while tendering the rent for the months of February, 2018 and March, 2018 and onward. According to respondent / landlord, the petitioner / tenant had been paying rent from August, 2017 to December, 2018 at the rate of Rs.233,322/- per month and has paid rent of Rs. 256,654/- for the month of January, 2018 while paid Rs. 149,828/- for the month of February, 2018 instead of Rs.256,654/- and Rs.203,240/- for the month of March, 2018 instead of Rs.256,654/-, thereby made short payment of Rs. 106,828/- and Rs. 53,414/- respectively and total short payment was accumulated to the tune of Rs.160,243/-. In Para 15 of his affidavit-in-evidence, authorized person of the respondent / landlord deposed that the opponent has made partial payment on 01.02.2018 towards the rent for the month of February, 2018 and accordingly, the opponent was intimated through notice regarding such short payment, but the remaining amount was not paid. Even during cross-examination, Respondent's authorized person remained consistent on his statement and his statement could not be shattered / shaken.

12. In this context, the stand taken by the petitioner / tenant is; that no fixed date was stipulated in the tenancy agreement for payment of monthly rent, therefore, rent for the months of February, 2018 and March, 2018 could be paid by 10th of March, 2018 and 10th of April, 2018 respectively, and as the tenant is entitled to avail a grace period of 60 days under Section 15(2)(ii) of SRPO, 1979 for deposit of rent after the rent has become due, as such the rent for the months of February, 2018 and March, 2018 could have been paid by petitioner / tenant by 10th May, 2018 and 10th June, 2018 respectively. In the circumstances, no default was committed by the petitioner in payment of rent for the months of February and March, 2018.

13. There is no cavil to such submission; however, perusal of Clause-3 of the Agreement of Lease dated 01-05-2006 executed between the parties, reveals that rental of the demised premises (One shop and two offices) was fixed at the rate of Rs. 173,250/- per month, which was payable in advance for 11 months. Besides, as per Clause 16(c) of the Agreement of Lease dated 01.05.2006, the tenant had agreed to pay the rent regularly to the landlord on the days and in the manner as agreed in Clause-3. It is also evident from the record that the petitioner / tenant was consistently paying monthly rent in advance before 5th of each calendar month from August 2017 to January 2018, however, he discontinued such practice from February, 2018.

14. It is also significant to point out that apart from the allegation of delay in payment of rent for the months prior to 08.03.2018, when the ejectment application was filed, the respondent / landlord also claims short payment of rent for the months of February and March, 2018 by the petitioner / tenant. According to the respondent / landlord, the petitioner paid Rs. 149,828/- and Rs. 203,240/- for the months of February, 2018 and March, 2018 respectively, although in the year 2017 the petitioner had been paying rent of Rs.233,322/- per month. Although the authorized person of the petitioner / tenant, in his cross-examination, denied the suggestion that the petitioner had not paid full rent of Rs.233,322/- but had paid Rs.53,414/- for the month of March, 2018; however, in the same breath, he categorically admitted that he has not produced receipt of payment of full rent of Rs.233,322/- for the month of March, 2018.

15. It seems that in his affidavit-in-evidence, so also during his cross-examination the authorized person of the applicant / respondent No.1 deposed in categorical terms that the opponent / tenant had committed default in payment of monthly rent and also made short payments, as stated above. In the circumstances, as per settled law, after such statement having been made on oath by the landlord, the burden was shifted upon the shoulders of the petitioner / tenant to prove that he has committed no default and / or made any short payment towards monthly rent.

16. In this context, reference may be made to a decision given by a Full Bench of Honourable Supreme Court in the case of *ALLAH DIN Vs. HABIB*, reported in **PLD 1982 SC 465**, wherein it was held as under:

“It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him, as required by section 13 (2) (i) of the Sind Urban Rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question.”

17. Reliance, in this connection, can also be placed upon the case of *Mrs. Asma Makhdoom Vs. Mrs. Yasmeen Azam* (2018 MLD 976).

18. However, perusal of the record shows that the opponent / tenant, in response to the allegation of default made on oath by the respondent / landlord, in para 6 of the written statement made a general and vague statement that *he always used to pay the rent in time without any default and delay*. Similarly, in para 7 of the written statement, he stated that *he always paid the rent in time and never committed any default*.

19. In this view of the matter, it is apparent that the petitioner / tenant miserably failed to fulfill his obligation to prove that he has not committed any default in payment of rent, nor made any short payment towards monthly rent and has paid full rent for the months of February and March, 2018.

20. A plea was also raised on behalf of the petitioner / tenant that the Rent Controller, in excess of his jurisdiction, took into consideration the default / delay in payment of monthly rent for the months of May, June and July, 2020 allegedly occurred during proceedings of rent case, although there was no such pleading, nor was there any such prayer in the ejectment application.

21. The stand taken on behalf of the petitioner / tenant in this respect is; that the Rent Controller has exceeded its jurisdiction, as without amendment in the pleading under Order VI Rule 17 C.P.C. and without making any prayer for future rent by the respondent / landlord, the Rent Controller could not allow the rent application on the basis of non-pleaded factor.

22. From perusal of judgment dated 08-10-2024 passed by the Rent Controller, it seems that the Rent Controller has declared the petitioner to have committed default in payment of rent for the months of May, June, and July, 2020, which was apparently an event occurring after filing of ejectment application on 08.03.2018. In this connection, suffice it to observe that filing of an ejectment application by the landlord, does not absolve the tenant of his obligation to pay monthly rent regularly. The law does not permit a tenant to withhold payment of rent on the ground that the landlord has filed an ejectment application. Even, if default in payment of rent, which occurred subsequent to filing of ejectment application, has not been pleaded or prayed for in the rent application, the same would be fatal to the case of the tenant.

23. It is now well settled that the Rent Controller can take notice of the events taking place during the course of rent proceedings, after the institution

of an ejectment application by suitably molding the relief on the basis of altered circumstances / subsequent events in order to avoid multiplicity of litigation and shorten the litigation.

24. The Rent Controller by invoking aforesaid principle of molding the relief, has also found the petitioner / tenant to have committed default in payment of rent for the months of May, June and July, 2020. Besides, from perusal of the record, it seems that petitioner's authorized officer admitted in his cross examination that petitioner / tenant has not produced any document showing that the petitioner has paid the rent to Respondent / landlord even for the months of January, 2020 to April, 2020.

25. In this connection, reference may be made to the case of **Muhammad Farooq Vs. Mst.Khairun Nisa (1994 CLC 322 Karachi)**, wherein this Court held:

"6. It was pointed out by the learned counsel for the respondent that apart from the default in the payment of rent for the period June 1989 to November 1989, which was made a ground for the eviction of the respondent as per para 2 of the ejectment application, the appellant had also committed default for the subsequent period commencing from December 1989 and up to May 1990. Learned counsel for the appellant had no answer to this assertion of the learned counsel for the respondent/landlady and conceded that the rent for this period had not been either paid or tendered to the respondent/landlady but he argued that rent for this period had been deposited in Court in furtherance of the order dated 14.5. 1990 passed by the learned Rent Controller under section 16(1) of the Ordinance. In my view, deposit of rent in Court in furtherance of the order passed under section 16(1) of the Ordinance is no defence. The appellant/tenant was not supposed to remain idle and await the passing of the order under section 16(1) of the Ordinance. Notwithstanding the filing of the rent case, it was the duty of the appellant/tenant to tender rent in accordance with law, i.e., in terms of Section 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979. The appellant is, therefore, liable to be evicted on the ground of default for this period as well."

26. In another case reported as **Muhammad Asif and another Vs. The Vth Additional District Judge and 2 others (2017 CLC Note 201)**, it was held as under:

"13. The learned counsel submitted that the learned Appellate Court has given a verdict regarding non-pleaded default, which is not lawful. He contended that if the

respondent did not take the ground of default in pleadings and there is no prayer on this account, then no relief could be granted. In this respect, he took reliance from the case reported as Muhammad Yousuf v. Muhammad Hassan (1980 CLC 1414) and Abdul Rasheed v. Muhammad Akhter (1980 CLC 1141). On the other hand, the contention of learned counsel for the respondent is that the default has taken place after filing of rent case as after rent case, they stopped payment of rent. According to him, this fact has come on the record as such an order for ejection can be passed on this score also. It is an admitted position that in the rent application there was no allegation of default as such, there was no prayer of eviction on account of default. It is not deniable that at least after the institution of rent case, the petitioners did not pay or deposit the rent. It is also a fact that they did not deposit rent in the court even under protest. They might do so to substantiate their claim of ownership. In such a situation, not only technically but also actually a default has taken place, and a court can take judicial notice of the same especially when the tenant willfully denied the relationship and his denial could not sustain under the law."

27. This question also came before learned Bench of Islamabad High Court in the case of **Shahab-ud-Din Vs. Zubair Alam and 3 others (2012 MLD 1002 Islamabad)**, wherein it was held as under:

"12. Admitted position in the present case is that the petitioner has not paid rent w.e.f. 2008. The contention of learned counsel for the petitioner is that prior to filing of the ejection petition, rent was paid and there was no default. It was however, admitted that since 2008 the rent has not been paid, as the case had been filed in the High Court and there was no order regarding deposit of rent. This contention is not correct, because even if there was no order from the Court for deposit of rent, that did not mean that tenant was absolved of his duty of paying the rent. The tenant/petitioner could send the rent through post or could deposit the same in the Court. Furthermore, there is no evidence regarding payment of rent during the pendency of eviction petition before the learned Rent Controller and appeal before the learned Addl. District Judge. This issue has already been dealt with by the two Courts below and evidence regarding the same cannot be discussed in writ jurisdiction."

28. In the case of **Tariq Niaz Vs. Masood Begum (1991 CLC 1733)**, this Court held as under:

"In the former it was held that the forums acting under the Rent Restriction Law were not, in exercise of discretion vested in them, precluded to take note of events taking place during the course of the proceedings after the institution of an ejection petition so as to suitably mold the relief on the

basis of the altered circumstances in order to avoid multiplicity of litigation and shorten the proceedings."

29. Likewise, in the case of *Mst. Amina Begum vs. Mehar Ghulam Dastgir (PLD 1978 SC 220)*, it was held by Honourable Supreme Court that *compelling the landlord to withdraw ejectment petition, which had already been tried merely on the technical ground of the cause of action not having matured at the time it was filed, so that it may be filed again, would not advance the interests of justice as results on merits were not likely to be different."*

30. In the case of *Syed Asghar Ali Vs. Ali Mohammad Khan* (1986 CLC 735) this Court, while relying upon the case of *Raj Muhammad and others Vs. Mohamad Zareen* (1980 SCMR 339), held that *even if it was assumed that on the date when the application for eviction was filed, 60 days period as contemplated under section 13(2)(i) of the Ordinance had not expired, if within the statutory period of sixty days no rent was tendered by the tenant, the argument about the application for eviction being premature was of academic nature only.*

31. In view of above legal position, the courts below have rightly concluded that ejectment may be granted even on the basis of events occurring after the filing of ejectment application.

32. As regards the alleged tendering of rent for the months of February and March, 2018 to the respondent / landlord through postal money order, it may be observed that preconditions for tendering the rent through postal money order are; that in the first instance the tenant offers the rent to the landlord and only if he refuses to accept the rent, then the tenant shall be entitled to send the same through money order. In instant case, it seems that the petitioner / tenant has categorially admitted that he has not disclosed the name of person who refused to accept the rent when it was allegedly tendered to the Respondent / landlord, as such he failed to prove that rent for the months of February and March, 2018 was tendered to the Respondent in the first instance and that the landlord refused to receive the same. Besides, it has been admitted by the petitioner's authorized person in his cross-examination that *money order receipt produced at Ex-O/20 does not bear the amount which was sent through money order; that all the receipts bear the same date i.e. 03.06.2020; that name of person who had sent the money order has been left blank in the said receipts; that it is not mentioned in these receipts that who had refused to receive the money*

order on behalf of the respondent / landlord; and that the address of applicant does not find mention in these receipts.

33. Apart from above, Senior Post Master namely, Nisar Ahmed Soomro was also examined as CW-2/A, who in his examination in chief deposed that Exhibit No. O/19 was not issued from his office and also deposed that 12 money orders for each month were issued from his office in favor of Karachi Properties Investment which money orders were issued for 15 months i.e. from January, 2019 to May 2019 and July, 2019 to April, 2020. From above, it is crystal clear that even Senior Post Master in his evidence has not affirmed the tender of rent for the month of February, 2018 through Postal Money Orders, therefore, it was rightly held by the Courts below that the petitioner / tenant could not prove that payment of full rent for the months of February, 2018 and March, 2018 was remitted even through Postal Money Order.

34. In this connection, reference may be made to the case of **Muhammad Younus and another Vs. Mansoor Ali (deceased) through LRs and others (2022 CLC 1787 Sindh)**, wherein, this Court held:

“8. There is another aspect of this case viz. whether or not petitioner No.2 was entitled or justified in law to tender the rent to respondent No.1 through money order and / or to deposit the same in Court. Subsections (1) and (3) of Section 10 of the Ordinance prescribe the time and mode, respectively, of payment / tender of the monthly rent by the tenant. Under Subsection (3) ibid, the tenant would be entitled to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller only when the landlord had refused or avoided to accept such rent from him. A plain reading of Subsection (3) ibid shows that the refusal or avoidance by the landlord in accepting the monthly rent from the tenant is a condition precedent for entitling the tenant or justifying him to tender the monthly rent to the landlord through a postal money order or to deposit the same with the Rent Controller. It is well-settled that the tenant shall not be entitled in law to deposit the rent with the Rent Controller without first offering / tendering the same directly to the landlord and only when, upon such offer / tender, the landlord had refused or avoided to accept the rent from him; and the burden to prove the tender of rent to the landlord and the refusal or avoidance by the landlord in accepting the rent from him shall lie upon the tenant.”

35. Another plea raised on behalf of the petitioner / tenant is; that the respondent / landlord had waived his right of filing ejectment application, as

he had received the payment of rent allegedly tendered by the petitioner / tenant with delay.

36. In this context, it may be observed that although authorized person of the respondent / landlord in his cross examination did not deny that petitioner had paid rent from February, 2018 until filing of MRC **through money orders**, yet, admission of the respondent and acceptance of rent by the landlord/respondent from the petitioner / tenant through the mode other than the one as prescribed in the law / relevant rules viz. under Section 10 of SRPO, 1979, does not validate the payment of rent **nor it amounts to waiver in respect of default** in payment of rent. It may be reiterated that payment of rent through postal money order would be of no consequence if the same has been sent after the default has already been committed, and / or without first offering the rent personally to the landlord and his refusal to receive the same, because it is now well settled that once default has been committed, the same cannot be wiped out by subsequent payment as the penalty, incurred by reason of such default, cannot be staged off by subsequent payment as laid down by Honourable Supreme Court in the case reported as *Reckitt & Colman of Pakistan Ltd., Vs. Saifuddin G. Lotia and 3 others* (2000 SCMR 1924).

37. In this context, reference may also be made to the case of *George Chou Vs. Fehmida Zaidi*, reported in 2015 YLR 2543, where this Court held as under:

“The perusal of above referred section reveals that under the Sindh Rented Premises Ordinance, 1979, either the rent could be paid in person to the landlord on receipt, or in case of refusal it could be sent through postal money order, or could be deposited with the rent Controller of the area. It will be pertinent to mention here that the above provision of law does not provide payment of rent through cheques. Thus in the present case, no mode for payment of rent as provided under the above referred section was adopted by the petitioner. It is, therefore, an admitted position that even after filing of the rent case No.277/2012 on 10-11-2012 no serious efforts were made by the petitioner for payment of rent and as per case record when the respondents moved an application under section 16 of the Ordinance, 1979, thereafter vide order dated 5-4-2013 the learned Rent Controller ordered for deposit of rent in Court along with arrears. The contention of the petitioner regarding payment of rent through cheques is also belied from the contents of last tenancy agreement between him and the predecessor-in-

interest of the respondents, which provides for payment of advance rent on or before 10th of the month and a receipt duly acknowledging such payment issued by the landlord and does not contain any stipulation for payment of rent through cheque. In the above circumstances, the default in the payment of rent is fully proved from all corners, therefore, learned Rent Controller and thereafter learned First Appellate Court have rightly decided this issue in favour of the respondents."

38. In the case of **Wasif Ahmed Jalali Vs. Ghazala Iqbal (1996 MLD 1733 Karachi)**, this Court held as under:

"In the instant case there is no evidence from the side of appellant that the respondent waived abandoned his right to file ejectment application against him either expressly or by his conduct. It would appear that soon after the acceptance of cheques in respect of the rent, the respondent filed eviction application against the appellant, and therefore, there could not be waiver on the part of the respondent in favour of the appellant so far his right to file eviction application under the law. Accordingly, the said contention of learned counsel has no merit and substance."

39. In view of above, I am of the firm opinion that the courts below have rightly decided the issue of default in payment of rent in favour of the respondent / landlord and I find no justification to interfere with such concurrent findings of the Courts below in exercise of constitutional jurisdiction of this Court.

40. Adverting to the claim of respondent / landlord regarding subletting the Offices No.150 and 151 by the petitioner / tenant, it seems that although in the ejectment application no such plea was taken; however, in his affidavit-in-evidence, the authorized representative of the respondent / landlord took such plea that the petitioner / tenant had handed over premises No. 150 and 151 to M/s Fazal-e-Rabbi Enterprises and M/s Fazal-e-Rabbi Limousine Service respectively, in violation of Clause-6 of the Agreement of Lease dated 01-05-2006, which amounts to subletting the said premises. From perusal of the judgment dated 08.10.2024 passed by the Rent Controller, it reveals that while allowing ejectment application, he recorded finding in respect of subletting in favour of respondent / landlord on the basis of doctrine of 'judicial notice of subsequent events'. The stand taken on behalf of the petitioner / tenant in this context is; that the Rent Controller has exceeded his jurisdiction by allowing recording of evidence on un-pleaded facts and cause

of action, although there was no proof of subletting of Offices No.150 and 151 to M/s. Fazal-e-Rabbi Enterprises and M/s Fazal-e-Rabbi Limousine Service respectively by the petitioner, because the said premises were directly let out by the Respondent to the said two companies through separate addendums.

41. It seems that the Rent Controller decided the issue / point in favour of the respondent/applicant / landlord. The reason assigned by the Rent Controller for such finding were; that though the applicant had not pleaded the said point in the ejectment application; however, the opponent / tenant in Para-3 of the written statement stated that Universal Express is running its business in Shop No. 28 while in Office No. 150 M/s. Fazl-e Rabi Enterprises and in Office No.151 M/s. Fazl-e-Rabi Limousine Service are running their business and that separate addendums were executed by the applicant with the said two companies. Consequently, the authorized representative of the applicant / landlord while filing his affidavit in evidence, raised such plea. According to learned Rent Controller, since the opponent / tenant had mentioned such fact in the written statement, therefore, the applicant / landlord had a right to respond to the same in their affidavit in evidence. The Rent Controller observed that under the law a party is entitled to address all relevant issues which arise during the proceedings and even with respect to subsequent events. The Rent Controller in support of his view, referred to the case of *Mst. Ameena Begum and others Vs. Mehar Ghulam Dastaghir*, reported in **PLD 1978 Supreme Court 220**.

42. However, the Appellate Court reversed such finding of the Rent Controller and decided the issue / point in favour of the petitioner / tenant on the ground that the respondent / landlord had not pleaded ground of subletting of premises in the ejectment application, therefore, neither evidence could have been led by the Respondent nor learned Rent Controller could have allowed ejectment application on such un-pleaded ground, without any such amendment in the ejectment application. According to Appellate Court, absence of material fact from pleading is fatal to the cause of the landlord / Respondent and evidence beyond pleading would be inconsistent with the case setup by him. To fortify such view, the Appellate Court referred to the cases reported as **Muhammad Hafeez Vs. District Judge Karachi-East (2008 SCMR 398)** and **Taj Ikram Samiullah Vs. Ghulam Jillani Dossul (1999 CLC 239 Karachi)**.

43. Now coming to the merits touching the issue / point of subletting, it seems that the petitioner / tenant in Para-3 of written statement stated that in Office No. 150 M/s. Fazal-e-Rabbi Enterprises and in Office No. 151 Fazal-e-Rabbi Limousine Services are running their business and separate addendums were executed by the applicant / landlord with the above mentioned two companies. However, the applicant has denied the execution of such addendum. It appears that although the petitioner / tenant based such plea on a separate addendum, but no such addendum was produced before the Rent Controller in order to substantiate such plea. The authorized person of the petitioner in his cross examination made admission that the *letter*, relied upon by the petitioner, *does not mention the names of sister concerns Fazal-e-Rabi Enterprises and Fazal-e-Rabi Limousine Services Pvt. Ltd.* It was further admitted that *agreement dated 01.05.2006 produced by applicant at Exhibit A/2, was between applicant-company and opponent-company* and that *this agreement was executed for shop No. 28 and offices No. 150 and 151.* From such admissions, it is apparent that the agreement dated 01.05.2006 was executed between the applicant / landlord and opponent / tenant not only in respect of Shop No. 28, but also in respect of Offices No. 150 and 151 and it was the opponent who used to pay monthly rent in respect of the said shop as well as two offices. During proceedings before the Rent Controller, no rent receipt was produced by the petitioner showing that M/s. Fazal-e-Rabbi Enterprises and M/s. Fazal-e-Rabbi Limousine Services Pvt. Ltd. ever tendered monthly rent directly to the respondent / landlord in respect of the aforesaid two offices.

44. From perusal of the record, it is also obvious that monthly rent in respect of Shop No. 28 and Offices No.150 and 151, was used to be paid by the petitioner which fact is evident from the letters, cheques, payment vouchers as well as bank statement produced by the petitioner's authorized representative in his evidence vide Exhibit No. O/4 to O/8, O/10 and O/11, O/13 to O/18 and O/23 to O/24. There is also admission coming out from the mouth of authorized representative of the petitioner in his cross examination dated 10.09.2022 to the effect that *opponent has been paying rent for itself and on behalf of its sister concerns namely, Fazal-e-Rabbi Enterprises and M/s. Fazal-e-Rabbi Limousine Service Private Limited and that opponent has also sought permission from the respondent to get Shop No.28 and Offices No. 150 & 151 repaired and renovated.* Besides, petitioner's authorized representative in his cross examination also

admitted that in Para-5 of the written statement it has been mentioned that the opponent is paying rent for all, viz. Shop No.28 and Offices No. 150 and 151.

45. From above, it is crystal clear that the petitioner during the course of recording of evidence could not succeed in establishing that the respondent / landlord had rented out Office No.150 to M/s. Fazal-e-Rabbi Enterprises Pvt. Ltd and Office No.151 to M/s. Fazal-e-Rabbi Enterprises Pvt. Limited, nor the petitioner could produce any tangible material in order to establish that the said two Companies ever paid any rent directly to the respondent / landlord. In this view of the mater, I am of the opinion that the respondent has proved the factum of subletting Offices No.150 and 151 to M/s. Fazal-e-Rabbi Enterprises (Pvt.) Limited and M/s Fazal-e-Rabbi Limousine Services (Pvt.) Limited respectively by the petitioner without permission of the respondent / landlord.

46. It is significant to point out at this stage, that while elaborately discussing the merits and factual aspects relating to the issue / point of subletting, the Appellate Court held that it is proved that the petitioner / tenant had sublet Offices No.150 and 151 to M/s. Fazal-e-Rabbi Enterprises (Pvt.) Limited and M/s Fazal-e-Rabbi Limousine Services (Pvt.) Limited respectively; however, only on aforesaid legal ground, finding of the Rent Controller on this issue / point was reversed. For the sake of convenience and ready reference, it would be advantageous to reproduce hereunder the relevant portion from the judgment of the Appellate Court:

*“Therefore, I am of the view that **it is proved** from the own disclosure of the Appellant that Office No.150 & 151 are in possession of M/s Fazal-e-Rabbi Enterprises (Pvt.) Limited and M/s Fazal-e-Rabbi Limousine Services (Pvt.) Limited and Appellant has failed to prove that office Nos. 150 & 151 were separately & independently let out to M/s Fazal-e-Rabbi Enterprises (Pvt.) Limited and M/s Fazal-e-Rabbi Limousine Services (Pvt.) Limited by the Respondent, thus, occupation of office No.150 & 151 by said juridical persons **amounts to handing over possession of portion of the rented premises to them by Appellant without permission of the Respondent.**”*

47. It is also note-worthy that while adjudicating upon the point of default / delay in payment of monthly rent for the months of May, June and July, 2020 i.e. during proceedings of ejection application, the Appellate Court observed that *if default in payment of rent, which occurred subsequent to filing of ejection application, even not pleaded or prayed for in the application under Section*

15(2)(ii) of SRPO-1979 or even in absence of filing of application under Section 16(1) of SRPO-1979 would be fatal to the case of Appellant / tenant. Very strangely, on the one hand the Appellate Court made aforesaid observations while dealing with the point of default and, on the other hand, while dealing with the point of subletting, by taking contrary view, reversed the finding of Rent Controller merely on the ground that such fact of subletting was not pleaded in the ejectment application, although, as stated above, on merits it was held that the factum of subletting has been proved against the petitioner / tenant.

48. Adverting to the legal aspect relating to this issue / point, it is reiterated that the Rent Controller decided the said point in favour of the respondent / landlord on the ground that subsequent events can also be taken into consideration during the proceedings of a case and that if facts and circumstances of the case require, the relief could be moulded taking into consideration the subsequent events in order to avoid multiplicity of litigation and shorten the proceedings. In support of this view, he referred to the case of *Mst. Ameena Begum and others* (supra). On the other hand, the Appellate Court reversed such finding of Rent Controller on the ground that without getting amendment in the rent application, the respondent / landlord was not entitled to lead evidence on this point and the Rent Controller acted in excess of his jurisdiction while permitting the respondent to lead such evidence and allowing the ejectment application on the ground of subletting. To fortify this view, he referred to the cases of **Muhammad Hafeez** (supra) and **Taj Ikram Samiullah** (supra).

49. After perusal of the case-law referred to by the Appellate Court, I am of the view that the judgments are distinguishable. So far as the case of **Muhammad Hafeez** (supra) decided by Honourable Supreme Court is concerned, it seems that in said case, certain factual aspect of the case was neither disclosed in **the eviction application nor in the affidavit-in-evidence** of the witness, therefore, it was held as under:

“It was noticed by the Appellate Court that instead of three rooms there were seven rooms in the building in dispute as admitted by petitioner Ghulam Rasool. He, however, attempted to explain that widows of his brothers were residing on the 2nd, 3rd and top floors of the building. It may be observed that this factual aspect of the case was neither disclosed in the eviction application nor in the affidavit-in-evidence of the witness. This piece of evidence would

therefore, be considered to be inconsistent with the case setup in the pleadings."

50. From above, it is clear that the aforesaid factual aspect was not disclosed by the landlord not only in the ejectment application **but also in the affidavit-in-evidence** of the witness, whereas in the instant case although in the ejectment application the fact relating to subletting was not mentioned but the said fact was surely stated by the respondent / landlord in the **affidavit-in-evidence** of his authorized representative. In this view of the matter, the judgment delivered in the case of **Muhammad Hafeez** (supra) is distinguishable to the facts of instant case.

51. So far as the case of **Taj Ikram Samiullah** (supra) is concerned, it seems that the facts in said case were quite different viz.a.viz. the facts of instant case.

52. On the other hand, Rent Controller, in support of his view and finding, referred to the case reported as *Mst. Ameena Begum and others Vs. Mehar Ghulam Dastaghir*, (PLD 1978 Supreme Court 220), wherein it was held by Honourable Supreme Court as under:

".....relief could suitably be moulded taking into consideration the subsequent development in order to avoid multiplicity of litigation and shorten the proceedings in the interest of justice."

53. Besides, in the case of **Muhammad Asif and another** (supra), it was held:

"It is an admitted position that in the rent application there was no allegation of default as such, there was no prayer of eviction on account of default. It is not deniable that at least after the institution of rent case, the petitioners did not pay or deposit the rent. It is also a fact that they did not deposit rent in the court even under protest. They might do so to substantiate their claim of ownership. In such a situation, not only technically but also actually a default has taken place, and a court can take judicial notice of the same especially when the tenant willfully denied the relationship and his denial could not sustain under the law."

54. It is also a well settled principle of law that *mere omission to make specific prayer could not disentitle the affected person to such relief, if otherwise he was entitled thereto on the facts and circumstances of the case*. In the instant case, it seems, that although the respondent / landlord was entitled to ejectment

order even on the ground of subletting too, as elaborately discussed by the courts below, therefore, he cannot be deprived of such relief merely for the reason that he had not raised such plea in the ejectment application, as concluded by the Appellate Court.

55. In this connection, reference may be made to the case of **AHMAD NAWAZ KHAN Vs. MUHAMMAD JAFFAR KHAN and others**, reported in **2010 SCMR 984**. In the said case grievance of the petitioner was that the courts below had **granted more relief as claimed by respondents Nos.1 and 2 / plaintiffs in the plaint**. A Full Bench of Honourable Supreme Court held as under:

“It is settled law that courts have power to grant an effective or ancillary relief even if not prayed for.”

56. In the case of *Saiyyid ABUL A'LA MAUDOUDI and others Vs. Government of West Pakistan and others*, reported in **PLD 1964 SC 673**, a Full Bench, consisting of 5 Members of Honourable Supreme Court, held as under:

“I also find no difficulty in granting relief because of any defect, in the form of the prayer in the petition. The prayer as framed in the petition is sufficiently wide and, in any event, the Court is not powerless to grant the relief that the justice of the cause requires to the same extent as if it had been asked for.”

57. In the case of **Dr. Mrs. NASIM QURESHI Vs. DEPUTY ADMINISTRATOR, EVACUEE TRUST PROPERTY, KARACHI and another**, reported in **CLC 1987 213 [Karachi]**, it was held:

“In these circumstances, mere omission on the part of the petitioner to make a specific prayer in the prayer clause could not disentitle him to the relief if otherwise, he is entitled to it on the facts and circumstances of the case.”

58. In the case of *Tayyab and others Vs. Mohammad Siddique and 10 others*, reported in **YLR 2006 111 [Karachi]**, a Division Bench of this Court held as under:

“There is no dearth of law on the point that technicalities should be avoided as far as possible and the substantial justice be done to the parties and for that purpose even if there is no prayer made by a party, the Court can itself mould the prayer and allow the relief if deemed fit in the facts and circumstances of a case.”

59. In view of this legal position, I am of the firm view that the Appellate Court gravely erred in reversing the finding recorded by Rent Controller on the issue / point of subletting, despite holding that on merits it was proved that the petitioner had sublet Offices No.150 and 151 to to M/s. Fazal-e-Rabbi Enterprises and M/s. Fazal-e-Rabbi Limousine Service respectively.

60. The Appellate Court also reversed the finding of Rent Controller on the issue / point of *default in payment of maintenance charges* by the petitioner / tenant.

61. It seems that the Rent Controller decided this point in favour of the respondent / landlord on the basis of Clause-4 of the Agreement of Lease dated 01-05-2006, wherein it was agreed that Lessee, viz. the petitioner, shall pay charges for unit of electrical energy consumed according to the meter-reading shown by the sub-meter installed by the lessee at its own costs or pays costs to the lessor, i.e. respondent / landlord, and such shall be calculated and be payable by the lessee to the lessor on respective due dates and in addition the lessee shall pay to the lessor ten percent above the consumption charges on account of maintenance charges for the utility.

62. The Rent Controller referred to the admission allegedly made by authorized representative of the petitioner / tenant in his cross-examination to the effect, **"It is correct to suggest that as per clause-IV of the agreement Ex-A/2, the lessee shall pay to the lessor 10% above the consumption charges on account of maintenance charges for the utility."**

63. However, the said witness voluntarily added that *this clause was valid when lessor or applicant-company used to provide electricity facility to lessee or opponent-company and that thereafter opponent-company has got installed its separate connection and meter of electricity from KESC*. The assertion made voluntarily by petitioner's authorized representative, seems to have weight in view of the words **"above the consumption charges"** appearing in Clause-4, meaning thereby, 10% maintenance charges towards utility were **conditional upon** the fact that the respondent / landlord provides electricity facility to the petitioner / tenant. However, the stand taken by the petitioner is; that the respondent / landlord failed to provide such facility to the petitioner / tenant, therefore they got installed separate connection and meter of electricity by the KESC.

64. The Rent Controller also laid much emphasis on the definition of 'rent' appearing in Section 2(i) of the SRPO, 1979 to the effect, "*rent*" includes water charges, electricity charges and such other charges which are payable by tenant but are unpaid. On the basis of such definition, he observed that rent includes "other charges", meaning thereby that in the instant case, the rent included enhancement of 10% of maintenance on account of utility and such other charges which were payable by the opponent to the applicant. In the circumstances, it was concluded that the applicant / landlord has established that the opponent / tenant failed to enhance 10% of maintenance on account of utility charges from April, 2018 to April 2020 and onwards.

65. It seems that the case of the Respondent / landlord is that they are incurring Rs. 1,106,420/- per month on maintenance of building and respondent vide their letter dated 05-10-2017 requested the petitioner / tenant to pay fraction of maintenance charges @ Rs. 17.50 per square feet, out of Rs.1,106,420/-.

66. Conversely, case of the petitioner / tenant, as set out in Para-6 of the written statement, was; that the petitioner itself used to maintain the premises hence there was no question of payment of maintenance charges. It is also the plea of the petitioner that there is no specific agreement between the parties regarding payment of maintenance by the petitioner / tenant to the respondent / landlord.

67. A minute scrutiny of the Agreement of Lease dated 01.05.2006 would reflect that it does not contain any clause for payment of fraction of charges towards salaries of Plumbers, Electrician, Sweepers, Security Guards, Telephone Technician, Water, cost of lift maintenance, water motor charges and related electricity bill, garbage lifting etc., as mentioned by respondent / landlord in the Letter dated 05-10-2017. The only reference in this context in the Lease Agreement dated 01-05-2006 is that of Clause-4, whereby parties agreed to the terms, as stated above. As per contents of Clause-4, the petitioner / tenant was liable to pay electricity charges according to meter-reading shown by the sub-meter installed either by the lessee or lessor. It may be reiterated that the words "**above the consumption charges**" appearing in Clause-4, denote that payment of 10% maintenance charges towards utility was subject to the condition that the respondent / landlord shall provide

electricity facility to the petitioner / tenant. However, no tangible material has been placed on record or exhibited during the evidence to prove that electricity bills were used to be generated and delivered to the petitioner / tenant or that any amount of electricity charges remained unpaid and was outstanding in terms of clause-4 of the Agreement of Lease dated 01-05-2006. Surely, electricity charges, falls within the definition of 'rent' as provided in Section 2(i) of SRPO-1979, however, to allege default in payment of other charges, the landlord/Respondent has to establish/prove that the petitioner / tenant has defaulted in payment of electricity charges as stipulated in clause-4 of Agreement of Lease dated 01-05-2006 and in the case in hand there is nothing on record of evidence that the petitioner has failed to pay the electricity charges. Apart from above, the question of payment of additional 10% above the consumption charges in term of clause-3 of the Agreement to lease dated 01-05-2005 would have arisen only if electricity bill was generated by the Respondent and same was not paid, hence, learned Rent Controller fell in error in holding that enhancement of 10% of maintenance on account of utility and such other charges were payable by the Appellant as discussed in Para-14 & 15 of the impugned judgment dated 08-10-2024, as such, the reasons assigned and conclusion drawn by the learned Rent Controller are not sustainable in law.

68. So far as clause 2(i) of the SRPO, 1979 is concerned, such legal aspect of the case has been dealt with by this Court in the case of *Habib Carpets* (supra), wherein it was held as under:

"...it was held by the Rent Controller that the petitioner had failed to pay the maintenance charges and had committed default in terms of Section 2(i) of the Ordinance according to which the definition of "rent" included water and electricity charges and such other charges that are payable by the tenant but are unpaid. It appears that the Rent Controller was of the view that the maintenance charges fall within the purview of "other charges" mentioned in Section 2(i) ibid as it was not the case of respondent No.1 that the petitioner had committed default in paying the water and electricity charges and it was already held by him that the petitioner had not committed default in paying the monthly rent. The Rent Controller failed to appreciate that under Section 2(i) ibid the tenant would be liable to pay only such other charges that are payable by him but are unpaid. In the instant case, the petitioner had specifically and consistently denied that it was liable to pay the maintenance charges in addition to

the agreed monthly rent, and admittedly there was no agreement to this effect between the parties. Such stance was reiterated by the petitioner's witness in his cross-examination through a voluntary statement which was noted by the Rent Controller in the impugned judgment. Therefore, it could not be assumed or held that the maintenance charges fell within the purview of "other charges" mentioned in Section 2(i) ibid or that the petitioner was liable to pay the maintenance charges in terms thereof.....

...As noted above, learned counsel for respondent No.1 was unable to show any provision in the agreement, or any other arrangement between the parties, requiring the petitioner to pay the maintenance charges in addition to the agreed monthly rent. It may be observed that the rights and obligations of the landlord and tenant are governed by the agreement between them, whether written or oral, provided the same are not inconsistent with any of the provisions of the Ordinance or any other law for the time being in force. Moreover, the parties to any such agreement cannot be expected or subjected to perform any such act or burdened with any such condition to which they had not agreed, nor can the Court direct any of the parties to do so."

69. Consequently, this Court decided the constitutional petition in favour of the tenant. The landlord filed Leave to Appeal before Honourable Supreme Court which was refused in the case of *Karachi Properties Investment Company (PVT.) Limited* (supra). The relevant portions from the said judgment are reproduced hereunder:

"As presently relevant the ground for consideration for which the leave to appeal is being granted is whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" given in Section 2(i) of the Sindh Rented Premises Ordinance, 1979 and in particular fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid"

...No doubt, the definition of rent includes water charges, electricity charges, and such other charges which are payable by the tenant but are unpaid. Here the foundation of the appellant's ejectment case was on account of default in the payment of maintenance charges taking into consideration the residue fragment of the definition of rent i.e., "and such other charges which are payable by the tenant but are unpaid". At the outset, before invoking any default in the aforesaid residuary segment, there must be something agreed in writing between the landlord and tenant. Had the condition of making payment for any monthly maintenance charges been jotted down and agreed

between the parties, then of course, that could be considered a binding agreement and the tenant/ respondent could not get rid of it without payment and obviously, in the event of default, that cause of action would have been available to the appellant to seek ejectment on the ground of default including the non-payment of maintenance charges; but here the situation is altogether different where no such condition was ever pressed nor incorporated in any lease/tenancy agreement. The expression "such other charges which are payable by the tenant" will not come into field automatically or mechanically to rescue the landlord unless and until the condition of making payment for such charges is itemized in the agreement with proper details. The purpose of this rider is to provide a fair opportunity to the landlord that if, beyond the basic amenities / utilities mentioned in the definition of rent, any facility is made available in the rented premises including the liability to pay maintenance charges, then it should be properly mentioned in the agreement to avoid any doubts or disputes in the future."

70. It may be reiterated that the stand taken by the petitioner/ tenant is that they are themselves maintaining the premises and that there is no specific agreement between the parties regarding payment of maintenance by the petitioner / tenant to the respondent / landlord. It is noteworthy that from perusal of the lease agreement dated 01.05.2006, it seems that as per clause 16 (f), there is covenant on the part of the petitioner / tenant to maintain and keep at its own cost, charge and expense the Premises and every portion thereof in good order and tenantable condition, including but not limited to the electric installations in the Premises including the wires, cases, switches, ceiling roses, plug points, as also the sanitary fittings, apparatus and appliances and other furniture and fixtures installed by the Lessor in or for the Premises. Besides, clause 16 (g) also speaks about tenant's covenant to execute forthwith repairs to the Premises as and when these become necessary. In addition, clause 16 (l) is also relating to the covenant of the tenant with prior written approval of the Lessor, to take at its own cost and responsibility all such security measures as are necessary in respect of the Premises without in any way disturbing or effecting the rest of the building. Carrying of firearms by the security guards employed by the Lessee, with all just and reasonable exceptions, will be allowed by the Lessor inside or near the Premises.

71. The aforesaid clauses of the Lease Agreement also support the plea of the petitioner / tenant that they are themselves maintaining the Premises / Building.

72. In view of above, I am of the view that the Appellate Court rightly reversed the finding recorded by the Rent Controller in respect of the point of *default in payment of maintenance charges*.

73. Now, I advert to the point of impairment of material value and utility of the demised premises by the petitioner / tenant.

74. In this context, in the first instance, I deem it proper to point out that although in the case of M/s. Habib Carpets (supra) relied upon by the petitioner's counsel, this point / issue was decided by the courts below in favour of the landlord, but this Court while deciding the constitutional petition in the reported case, did not agree with the concurrent findings of the courts below on this issue / point. However, from the minute scrutiny of the judgment delivered in the case of Habib Carpets (supra) on this point, it is apparent that only a few factors, which were made the basis in respect of the issue of impairing the value and utility of the premises, were common in both the cases i.e. the instant case and the case of Habib Carpets (supra), whereas, there are certain other factors in the instant case which do not find mention in the case of Habib Carpets (supra). The common factors in both the cases were; affixation of signboards, installation of air-conditioner and installing / placing a Generator by the tenant in open space. In fact, in the case of Habib Carpets (supra) mainly the first two factors were discussed and as regards the installing Generator by the tenant, the only observation made were, "*It may be noted that this point was decided by the Rent Controller against the petitioner for affixing the signboard and installing the air conditioner and not for installing a generator.*"

75. Other factors which were pressed by the respondent / landlord in the instant case but the same did not find mention in the reported case were; (i) the tenant had installed a staircase at the back side of the Hotel Building without written permission of the landlord, (ii) the tenant had extended his area by constructing small portion in the building without permission of the landlord which has de-shaped the structure of the building, (iii) the tenant had arranged for valet parking on the outer premises of building without permission of the landlord and (iv) the tenant had disfigured the doors/outlooks and also changed their colour contrary to the management policy without seeking permission from the landlord. In view of

above, in my opinion, the case of Habib Carpets (supra) is distinguishable to the instant case on the issue / point of impairment of material value and utility of the premises too.

76. It seems that the two courts below while deciding this issue / point in favour of the landlord, have laid much stress on the uncommon factors, narrated above, viz. installing / affixing staircase at the backside of Hotel Building, arranging a valet parking, installation of heavy Generator causing nuisance without permission of the respondent / landlord and extending the area by constructing small portion in the building without permission of the landlord which, according to the landlord, has de-shaped the structure of the building.

77. From scrutiny of the record, it appears that in Paras 8(ii) to (viii) and 10 of ejectment application, the respondent / landlord has specifically stated about such factors. On the other hand, the petitioner / tenant in the written statement has denied such assertions made by the landlord. However, the petitioner admitted to have made certain construction, renovation and alterations. According to the petitioner / tenant, such construction and alterations etc. were made after obtaining written permission of the respondent / landlord. It was further stated that Generator was allowed to be installed by the respondent / landlord. The petitioner / tenant also admitted to have arranged a valet car parking in the Building, however, the reason assigned by the petitioner for such arrangement, was; that there is no arrangement of parking in the building or adjacent area to accommodate the clients / customers of the petitioner.

78. In his cross examination, authorized representative of the petitioner / tenant admitted that *according to Nazir's report Ex-O/27, the generators were placed in the open space.* He further admitted that *it is not specifically mentioned in the letter, referred by him, that opponent-company was allowed to drill hole in the Terrance of the shop and offices for passing the pipes of AC through it.*

79. The stand taken by the petitioner / tenant was; that placing of Generator, installation of AC etc. and carrying out the work of renovation, repair and maintenance, were done with permission of the respondent / landlord. In support, NOCs dated 28.01.2015, 15.11.2012 and 02.10.2012 were annexed with the written statement however, originals of the said NOCs were

not exhibited in evidence. Needless to emphasize that production of photocopies of documents, viz. secondary evidence, is not admissible in evidence unless and until originals thereof are produced or the trial Court allows adducing secondary evidence after fulfilment of prerequisites of the provisions of Articles 76 and 77 of the Qanoon-e-Shahadat Order, 1984, otherwise, production of photo copies of the documents in evidence cannot be termed as valid and admissible piece of evidence.

80. In the case of *Sher Asfandar Khan and 3 others Vs. Neelofar Shah and others*, reported in **2025 CLD 921 [Supreme Court of Pakistan]**, Honourable Supreme Court held that *failure to ensure compliance with Article 76 of Qanoon-e-Shahadat, 1984, vitiates evidentiary basis upon which findings of Courts below were rendered.*

81. In this view of the matter, the courts below rightly observed that the NOCs annexed by the petitioner are not reliable documents.

82. Besides, agreement of lease dated 01-05-2006 does not provide for placing heavy Generator in open space of the Building. It may be reiterated that petitioner's representative had admitted in his cross examination that *as per Nazir's report Ex-O/27, the generators were placed in the open space.* Needless to observe that installation / placing of a heavy generator, that too, at an area / space which was not part of the premises rented out to the petitioner, is apparently breach of the Agreement to Lease dated 01-05-2006. Moreover, installation of Industrial Generator in the premises, may cause tremor and vibration affecting the structure of the hotel building, create noise, smoke and pollution which might be a source of nuisance to other occupants of tenements of the Building and the same may interfere with the normal enjoyment of property by them, thus, surely the same may impair the material value and utility of the building owned by the respondent / landlord. In this view of the matter, I am in agreement with the findings of the courts below that act of installation / placing heavy generator in the open space of the Building by the petitioner / tenant, has impaired the material value and utility of the hotel building.

83. It may be reiterated, that the representative of the petitioner / tenant in his cross-examination had admitted that *it is not specifically mentioned in the letter, allegedly issued by the respondent / landlord, that opponent-company*

was allowed to drill hole in the Terrace of the shop and offices for passing the pipes of AC through it. It is also an admitted position that the petitioner / tenant had arranged a valet car parking in the Building as, according to the petitioner, there was no arrangement of parking in the building or adjacent area to accommodate the clients / customers of the petitioner. Besides, the petitioner also admitted to have made certain construction, renovation and alterations but his plea was that construction etc. were made with permission / NOC of the landlord; however, originals of such alleged permission / NOCs were not produced by the petitioner / tenant during the course of recording evidence, as discussed above.

84. It was submitted on behalf of the petitioner / tenant that the Rent Controller could not decide the issue / point of impairment of material value and utility of the Building in question without having carried out site inspection and without obtaining report from Civil Engineer / Architect in this respect. I am afraid, I do not find myself in agreement on such plea.

85. In this connection, reference was rightly made by the Appellate Court to the case reported as **Messrs. Organon Pakistan (Pvt.) Limited Vs. Rafat Ali Khan (1999 SCMR 54)**, wherein learned Apex Court held:

“It is not a requirement of law that only structural changes shall be construed as giving rise to a case for eviction under the instant provision. No doubt structural additions or alternations may furnish a strong foundation for a case on the above score and yet there may be temporary changes, which could furnish a like cause. For the same reason, examination of an expert may lend support to a plea, if examined from either side, the burden being, in its nature, a shifting one. Still non-examination of a qualified person, such as an architect, may not be requisite in a given case. The evidence of the landlord, supported by the record, may well be sufficient, as was the position here. Likewise, covering of compulsory open space may be condonable if essential ingredients of law are not thereby attracted. But where that is not so, eviction may yet result. It is, therefore, in the given circumstances of each case that a positive or negative finding can be returned, the conclusive factor in every case being whether or not there has actually been or a likelihood of a material impairment, either of the value or utility of the premises or both.”

86. In view of above, I fully agree with the findings of the Courts below that installation of Industrial Generator by the petitioner / tenant; establishing a valet car parking, drilling holes in the structure and erection of staircase

without permission of the respondent / landlord, has impaired the material value and utility of the premises as well as building as provided in Section 15(2)(iv) of SRPO, 1979, thus the same infringed the conditions of tenancy as stipulated in Section 15(2)(iii)(c) of the Sindh Rented Premises Ordinance, 1979.

87. Before paring with the case, it is significant to point out at this stage that learned counsel for the petitioner in support of his case has relied upon the case of *Habib Carpets (PVT.) Limited Vs. Karachi Properties Investment Company (PVT.) Limited (KPICPL)*, reported in **2022 MLD 1754 Sindh** with great vehemence and stress. According to him, the said case pertained to a tenement situated in the same building viz. Metropole Hotel. In the said case, ejectment application was filed by the same landlord, who is respondent No.1 in the instant case, namely, M/s. Karachi Investment Properties Company, almost on the similar grounds as raised in the present case. In the said case, ejectment application was allowed and the First Rent Appeal filed by the tenant against the order of Rent Controller was dismissed by the Appellate Court. The tenant approached this Court by means of filing constitutional petition. Consequently, this Court allowed the petition and decided the case against the landlord and in favour of tenant viz. M/s. Habib Carpets (Pvt.) Limited. Learned counsel further submitted that the matter came up before Honourable Supreme Court wherein Leave was not granted to the landlord, while deciding Petition for Leave to Appeal in the case of *Karachi Properties Investment Company (PVT.) Limited Vs. M/s. Habib Carpets (Pvt.) Limited*, reported in **SCMR 2024 1354**.

88. Needless to emphasize that, I am legally bound to follow the dictum laid down by the Superior Courts; however, after scrutiny of the afore-cited judgments, I am of the firm view that the aforesaid two cases relied upon by learned counsel for the petitioner / tenant are quite distinguishable.

89. The distinguishable features between the case of **Habib Carpets (PVT.) Limited** (supra) and the instant case may be summarized in the following manner:

- i. In the instant case, the main ground for eviction of the tenant was; default and delay in making the payment of monthly rent which finding of the Rent Controller was also upheld by the

Appellate Court after discussing very elaborately each and every factual and legal aspect touching the said point / issue. On the other hand, in the case of Habib Carpets (supra), decided by this Court, the Rent Controller had **not allowed eviction** of the tenant on the ground of default and delay in payment of monthly rent by the tenant, rather the said point **was decided against the landlord and in favour of the tenant**. In support of this assertion, it would be advantageous to reproduce hereunder the relevant portion from the case of Habib Carpets (supra) relied upon by learned counsel for the petitioner:

“While deciding this point, it was held by the Rent Controller that respondent No.1 had failed in proving the delay and or default in payment of rent and as such it was not proved that the petitioner had committed default in payment of rent or had delayed the payment thereof”

- ii. In the instant case eviction was **also** sought by the landlord on the ground of **subletting** the demises premises which was decided by the Rent Controller in favour of landlord, whereas the Appellate Court did not concur with the finding of Rent Controller on this point and reversed the same. However, in the case of Habib Carpets (supra), no issue / point of subletting was involved at all.
- iii. In the case of Habib Carpets (supra) there was also involved an issue / point that; as to whether the tenant had used the premises in question for the purpose other than the one for which the premises in question was rented out to the tenant, whereas no such issue / point is involved in the instant case.
- iv. As regards the issue / point of impairment of material value and utility of the demised premises by the tenant, it seems that although the said issue / point was decided by the two courts below in favour of the landlord, in both the cases, i.e. instant case as well as the case of Habib Carpets (supra), but from the minute scrutiny of the judgment passed by this Court in the case of Habib Carpets (supra) on this point, it is apparent that only a few factors regarding impairing the

material value and utility of the premises were common in both the cases, whereas, there are some other factors in the instant case which do not find mention in the reported case. Such aspect of the case has been discussed elaborately in the preceding paragraphs of this judgment, while dealing with this issue / point.

90. In this view of the matter, afore-cited case-law is distinguishable and not attracted to the facts of the instant case, except to the extent of the issue / point of *default in payment of maintenance*.

91. So far as the judgment delivered by Honourable Supreme Court in the case of **Karachi Properties Investment Company (PVT.) LTD** (supra), relied upon by petitioner's counsel, is concerned, in the said case the landlord filed petition for granting leave to appeal against the judgment passed by this court in the case of Habib Carpets (supra) only to the extent of issue / point of default in the payment of **maintenance**; however, ultimately Honourable Supreme Court refused to grant leave to appeal. The said case, although applies to the instant case only to the extent of the issue / point of *default in payment of maintenance*, but is not helpful to the petitioner / tenant so far as other issues / points are concerned, because in the cited case of Honourable Supreme Court there was only one point involved i.e. *default in payment of maintenance*.

92. So far as other judgments relied upon by learned counsel for the petitioner are concerned, the same are also distinguishable and not attracted to the instant case as the facts of the instant case and the facts of the cited cases are quite different.

93. Even otherwise, it is now well settled that concurrent findings of the Courts below, particularly in rent matter, could be interfered with by this Court in exercise of its extra ordinary constitutional jurisdiction **only in exceptional cases**.

94. In this context, reference may be made to the case of **MUHAMMAD SALIK ATHAR through Attorney Vs. MUHAMMAD OBAID and 3 others**, reported in **PLD 2023 Sindh 411**, wherein it was held as under:

“5. Now, before proceeding further, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appearing to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather tightened. It is pertinent to mention here that captioned petition fall within the writ of certiorari against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence.”

95. The upshot of above discussion is that instant petition merits no consideration, consequently the same is hereby dismissed alongwith all pending Misc. Applications. The petitioner / tenant is directed to vacate the premises in question and hand over its vacant and peaceful physical possession to Respondent No. 1 within 45 days from the date of this judgment positively without fail, subject to deposit of monthly rent with the Nazir of this Court for the said period in lump-sum. The aforesaid deposit should be made by the petitioner/tenant within 15 days positively.

**JUDGE
HEAD OF CONST. BENCHES**

Karachi
Dated. 16.06.2026
Approved for reporting.