

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-72 of 2011

Petitioner	:	Trustees of Haji Sir Abdullah Haroon Waqf No.1, through Mr. Abdul Moiz Jafferri, Advocate
Respondent No. 1	:	Nemo
Respondent No. 2	:	Nazir Muhammad S/o Noor Muhammad, through Mr. Adnan Ahmed, Advocate
Respondents No. 3 & 4	:	Through Mr. Shariq Mubashir, AAG
Date of Hearing	:	16.04.2026
Date of Announcement	:	18.07.2026

JUDGMENT

MUHAMMAD HASAN AKBER J.- This writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the Judgment dated 08.11.2010 passed by the learned Additional District Judge-VI, Karachi South in First Rent Appeal No.86 of 2010 [**impugned Judgment**] and the Order dated 15.01.2010 passed by the learned Rent Controller-X, Karachi (South) in Rent Case No. 445 of 2006 [**impugned Order**] whereby the ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979 [**SRPO**] filed by the Petitioner on the grounds of default in payment of rent, and sub-letting, was dismissed.

2. Heard learned counsel for the parties and perused the record with their able assistance. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

3. Pithy facts of the case are that petitioner '*Haji Sir Abdullah Haroon Waqf No.1*' is a registered Trust [**landlord**] of which, 'M/s Express Block'/ Respondent No.1 was/is the tenant [**tenant**] since 1968, with respect to Tenement No.19, Plot No.1-SR-5, Sarai Quarters, Hasrat Mohani Road, Karachi [**demised premises**] against monthly rent of Rs. 243/-. The petitioner claims that Nazir Muhammad/ Respondent No.2 was put in unauthorised possession of the demised premises as a *sublettee* by Express Block/ tenant, without consent of the petitioner/ Trust.

4. On 21.12.1994, Express Block filed a Miscellaneous Rent Case No.1953/1994 under section 10 of the Sidh Rented Premises Ordinance 1979 [**SRPO**], wherein Express Block was allowed to deposit rent by the Rent Controller.

5. On 20.02.2001, a Civil Suit No.157/2001 was filed by the Respondent No.2/ alleged *sublettee*, against the Petitioner Trust (as Defendant No.1) and the Express Block (as Defendant No.2). The Suit was contested by the Petitioner Trust. Vide order dated 31.03.2003 passed by the learned Civil Judge, the suit was rejected/ dismissed under Order VII Rule 11 CPC. The Respondent No.2/ alleged *sub-lettee* preferred Civil Appeal No.115/2003 before the learned Additional District and Sessions Judge-I Karachi South, which was also dismissed vide Judgment dated 09.03.2004. Counsel for both parties present in Court confirm that the said Order was not challenged and it has attained finality.

6. On 20.06.2001, a fresh Miscellaneous Rent Application under section 10 SRPO MRC No.1411/2001 was filed by Respondent No.2/ alleged *sub-lettee* and he is depositing rent therein since then. Per learned counsel for the Petitioner/ Trust, no rent has been withdrawn by the Petitioner from this MRC.

7. On 30.03.2006, the petitioner/ Trust filed Rent Case 445/2006 before learned Rent Controller-VI Karachi South, wherein 'M/s. Express Block' was arrayed (as Opponent No.1) as tenant, and Nazir Muhammad (Opponent No.2) as the alleged *sublettee*. It was alleged in the Rent Case that Express Block had committed default in payment of rent, and Nazir Muhammad was put in unauthorised possession of the demised premises by Express Block without permission of the petitioner/landlord; hence, ejectment of both opponents was prayed in the rent case. After recording evidence, the Rent Case was rejected on 15.01.2010, while holding that the ground of subletting was not proved and that the question of default by Respondent No.1 did not arise as Respondent No.1 was no longer the tenant of the petitioner. In First Rent Appeal No.86/2010 the learned appellate Court upheld the same Order, vide Judgment dated 08.11.2010, which has been assailed in the instant petition.

8. The preliminary argument by the Respondent side, as to whether the ejectment application was filed by a duly authorised person, is plainly rebutted by the record which shows that the Petitioner's witness produced the General Power of Attorney as Exh-A/2 before the learned Rent Controller, a plain reading whereof shows that explicit authority was given to the attorney by the Trustees of the Petitioner. Such an objection was therefore rightly rejected by the learned Rent Controller, and I find no reason to disturb such finding.

9. Turning to the issue of landlord-tenant relationship between the Petitioner/Trust and '**Express Block**', the record reflects that none of the parties has ever denied existence of such relationship between the landlord Trust and Respondent No.1/ Express Block. However, the core dispute as raised by Respondent No.2/ Nazir Muhammad is with respect to his claim that he is also a tenant of the Petitioner Trust, which is being denied by the Trust. The primary burden to establish such a relationship is on the claimant, as held in the two Judgments of this Court, in '**Muhammad Hussain v. Messrs Zafar Ahmed and another**' (1985 CLC 2295) and '**Nasim Ahmed Bhatti v. Riazuddin Ahmed and another**' (1987 MLD 1412), which claimant in the present case is the alleged *sublettee*/ Nazir Muhammad. Primarily, the following pleadings of the parties would be the first and most relevant documents to ascertain the genesis of this landlord-tenant relationship dispute, as raised by Nazir Muhammad:

(i). The first proceeding in this dispute was initiated by M/s. Express Block/ original tenant, on 21.12.1994, when it filed Miscellaneous Rent Case No.1953/1994 [**MRC**

1953/1994] under section 10 SRPO, wherein Express Block was allowed to deposit rent by the Rent Controller. The title of MRC 1953/1994 is reproduced below for ready reference:

**“IN THE COURT OF SENIOR CIVIL JUDGE KARACHI SOUTH
Miscellaneous Rent Application No.**

**M/s. Express Block
Tenant of premises No.18-A, 19
Ground floor, constructed on
A lot of land bearing No.SR-5/1
Hazrat Mohan Road,
Karachi.....Applicants**

Versus

Trustee of Haji Sir Abdullah Haroon
Wakf No.1 through Mr. Faquir Muhammad
Khan son of Mansoor Khan office at
Gulshan-e-Nusrat,
Abdullah Haroon Road, Karachi.....Opponent.”

- (ii). The second relevant proceeding is the **Civil Suit No.157/2001**, which was filed after seven years of the above MRC by Nazir Muhammad on 20.02.2001. The Petitioner/ Trust was impleaded as **Defendant No.1**, whereas Mr. M. A. Qureshi (who was the sole proprietor of Express Block) was impleaded as **Defendant No.2** by his personal name. Suit 157/2001 was duly contested by the Trust/ Defendant No.1. At paragraphs 1, 2 and 4 of its plaint, Nazir Muhammad himself pleaded that:

- “1. That the plaintiff is a tenant at the premises..... from the last 11 years and running a business of hotel....
2. **That the premises in question is the property of Defendant No.1 i.e. Haji Sir Abdullah Haroon Wakf No.1 whereby the Plaintiff is the tenant of Express Block No.19, at the rate of monthly rent Rs.243 per month.**
3. ...
4. **That the plaintiff was put as a tenant in the demise premises by Defendant No.2 after getting sufficient/handsome goodwill in the year of 1991 since the date Plaintiff is running a hotel in the demised premises.”**

[emphasis added]

- (iii). Next in relevance is the **Order dated 31.03.2003** passed by the learned Senior Civil Judge, whereby the plaint of the said Suit was rejected under Order VII Rule 11 CPC. In the same Order, it was specifically recorded by the learned Judge that:

“The plaintiff has claimed himself to be the tenant in the suit premises being the tenant of Defendant No.2 who allegedly induct him after getting handsome goodwill. He is further claiming that he is in possession since last 11 years. He also claimed that he is depositing rent in court in the name of Defendant No.1 jointly with Defendant No.2 in MRC No.1953/94. But the plaintiff has failed to produce any document evidence in support of his contention to make on the prima facie case in his favour that is establish that he is tenant in the premises. On one hand he states that he is tenant in premises of defendantNo.2 who induct him after taking handsome Goodwill on the other hand he states that he is depositing rent jointly along with Defendnt No.2 in Court in the name of Defendant No.1.

.....When no permanent injunction in shape of decree has been claimed no interim relief can be granted. As such the suit is barred by law, accordingly the application is allowed, and the plaint is rejected under Order VII Rule CPC with no order as to cost.”

[emphasis added]

- (iv). Against the above order, Civil Appeal No.115/2003 was filed by Nazir Muhammad before the learned Additional District and Sessions Judge-I Karachi South, which was also dismissed vide Judgment dated 09.03.2004. In the same Judgment, it was specifically recorded by the learned appellate Judge that:

“..... on factual aspect of the present case, I manually examine the content of the memo of appeal, the plaint so also impugned Order. The appellant in the memo of Appeal himself admitted that he was put into the tenement in question as tenant by Respondent No.2. Similarly he in para 2 of his memo of Appeal asserted that the premises in question is the property of the Respondent No.1. This admission on the part of appellant shows him as illegal/tenant sub tenant of the actual tenant, which is not warranted by section 15(2)(iii)(a) of Sindh Rented Premises Ordinance, 1979 which reads as under:

“.....the tenant has, without the written consent of the landlord handed over the position of the premises to some other person.”

Admittedly, the applicant had failed to seek declaration to his right, title or interest in respect of the subject property..... from the referred facts, it appears to me that the learned trial Court has rightly observed that the suit is barred under sections 42 and 56 of the Specific Relief Act.

Thus, the upshot of this discussion is that I do not find any merit in the present application, hence **appeal is dismissed, with cost of Rs.5000/- to each Respondent as the present appeal is frivolous in nature to drag the Respondent unnecessary in litigation.** The cost must be deposited in Court within 30 days from the date of passing of this Order.

Announced in Court.

Given under my hand and a seal of the court, this 9th day of March 2004.

Sd/-

Syed Saeed Hasan

1st Adl. District and sessions judge Karachi (S)”

[emphasis added]

Both learned counsel confirm that the said Judgment was not challenged by Nazir Muhammad any further, and it has attained finality.

- (v). Interestingly, on 20.06.2001, just four months after filing his Civil Suit 157/2001, Nazir Muhammad himself filed a Miscellaneous Rent Application MRC No.1411/2001 [**MRC 1411/2001**] against the Trust, which is the next relevant proceeding in this matter, at para 2 whereof it was prayed by Nazir Muhammad:

“IN THE COURT OF SENIOR CIVIL JUDGE AND RENT CONTROLLER KARACHI SOUTH

Miscellaneous Rent Case No.1411 of 2001
Nazeer MUHAMMAD vs. Trustee of Abdullah Haroon Wakaf No.1

1. That the applicant is tenant and is in occupation and/or possession of premises No.19, on the ground floor of the building known as Haroon Chamber on plot No. S.R. 5/1, Hasrat Mohan Road Karachi.

2. That the rent of the above-mentioned premises was tendered to opponent through its rent collector who refused to accept and therefore applicant bags permission to deposit the rent in court at the rate of. Rs.328/- per month which is rate of rent.”

[emphasis added]

(vi). The sixth relevant document is the written statement filed by Nazir Muhammad in Rent Case 445/2006, wherein at paras 2 and 6, he claimed that:

“1. That the contents of paragraph one of the ejectment application is denied for want of knowledge. In fact the opponent number one was a tenant in respect of the tender at the rate of Rs.243/- per month which was subsequently increased to Rs.328 per month.

2. That, the opponent number one has handed over the demise premises after getting huge amount of Goodwill in year 1993 and since that the opponent number two is running business of hotel in the name and style of mess Nazeer tea stall and restaurant.

3. That refusal of the applicant the opponent has started to deposit monthly event in the court of law through MRC jointly _____ MRC No.1411/2001 at the rate of Rs.328/- per month, hence this written statement.

.....

6. That the applicant has well knowledge that **the opponent No.2 has a physical possession of the premises which was handed over by the opponent No.1**

[emphasis added]

10. I have considered the above relevant pleadings of the parties to ascertain the landlord-tenant relationship between the parties. Firstly, the title of the first MRC 1953/2024 leaves no room for doubt that the only applicant in the said MRC was **Express Block**. Contents of the MRC were also perused to find out if anything about Nazir Muhammad/ *sub-lettee* was mentioned in the said MRC, but not a single word in the said MRC could be found by Express Block about Nazir Muhammad or his possession, or any of his rights, or claim of tenancy in favour of Nazir Muhammad. Secondly, perusal of the contents of the said MRC reflects that not a single word in the said MRC was mentioned by the applicant Express Block with respect to any existence or right or tenancy or possession in favour of Nazir Muhammad. Had the claim of Nazir Muhammad/ alleged sub-lettee been correct, there was nothing which prevented Express Block from having mentioned a few words with respect to the existence of any tenancy right in favour of Nazir Muhammad in this said MRC. Thirdly, no precedent or Judgment was cited in support of the argument that mere deposit of rent by a third person in a Miscellaneous Rent Application (on behalf of an actual tenant in MRC) would create any right in favour of such third person or would automatically make such third person entitled to tenancy rights of the subject premises for which the rent is being deposited. Fourthly, the record reflects that no rent has been withdrawn from the MRC filed by Nazir Muhammad in 2001. Fifthly, the Statement that the said MRC was filed by both Express Block and Nazir Muhammad was not claimed earlier at all, but was unilaterally coined for the first time by

Nazir Muhammad himself in his own suit. Such a unilateral claim, raised by Nazir Muhammad himself in his own Suit for the first time, could not create any tenancy rights in his own favour, especially when the petitioner has been consistently denying any such relationship since the beginning of the dispute. It is settled that contradiction or improvement from its earlier pleadings by a party is hit by the principle of *estoppel*. I am therefore unable to agree with the claim raised by Nazir Muhammad and the arguments of his learned counsel that the said MRC was filed by both Express Block and Respondent No.1. Sixthly, from the above pleadings, it is interesting to note that in none of his earlier pleadings Nazir Muhammad never claimed that he was in possession of the demised premises with the consent of the Trust. However, surprisingly, for the first time in para 6 of his affidavit-in-evidence in the present rent proceedings, Nazir Muhammad improved his stance by claiming that:

“6. That, I say that after getting peaceful and physical position from the opponent No.1 **with the consent of the applicant**, I got installed the electricity, gas and telephone connection and paying taxes to the city government etc.”

[emphasis added]

11. The above claim in his affidavit in evidence is contradicted by his own earlier pleadings which completely demolish his claim of tenancy against the Trust. **In his plaint in Suit No.157 of 2001, Respondent No. 2 himself stated that he was put as a tenant in the demised premises by Respondent No.1 after getting sufficient goodwill in the year 1991** and that since that date he has been running a hotel in the demised premises. Paras 2 and 4 of the plaint are reproduced for ready reference:

“2. That the premises in question is the property of Defendant No.1 i.e. Haji Sir Abdullah Haroon Wakf No.1 whereby the Plaintiff is the tenant of Express Block No.19, at the rate of monthly rent Rs.243 per month.
3. ...
4. That the plaintiff was put as a tenant in the demise premises by Defendant No.2 after getting sufficient/handsome goodwill in the year of 1991 since the date Plaintiff is running a hotel in the demised premises.”

[emphasis added]

12. Even in his written statement in this very Rent Case, Nazir Muhammad has admitted that:

“2.That, the opponent number one has handed over the demise premises after getting huge amount of Goodwill in year 1993 and since that the opponent number two is running business of hotel in the name and style of mess Nazeer tea stall and restaurant.
3. That refusal of the applicant the opponent has started to deposit monthly event in the court of law through MRC jointly MRC No.1411/2001 at the rate of Rs.328/- per month, hence this written statement.
.....
6. That the applicant has well knowledge that **the opponent No.2 has a physical possession of the premises which was handed over by the opponent No.1**”

[emphasis added]

13. This is an unambiguous admission by Respondent No. 2 himself that he was placed in the premises by the original tenant and not by the landlord. It is settled law that admissions made in pleadings in earlier litigation are binding on the party and carry significant evidentiary weight. Both Courts below failed to give proper weight to such crucial repeated admissions.

14. The next point for consideration was that the said Suit No. 157 of 2001 filed by Respondent No. 2 was dismissed by the learned IIIrd Civil Judge, Karachi (South) vide order dated 31.03.2003 and the appeal preferred against that order was also dismissed by the learned Ist Additional District Judge, Karachi (South) vide order dated 09.03.2004. Both Courts expressly and conclusively declared that Nazir Muhammad was not the lawful tenant inducted by the Petitioner. For ready reference, the relevant observations of the learned appellate Court are emphasised below:

“..... on factual aspect of the present case, I manually examine the content of the memo of appeal, the plaint so also impugned Order. The appellant in the memo of Appeal himself admitted that he was put into the tenement in question as tenant by Respondent No.2. Similarly he in para 2 of his memo of Appeal asserted that the premises in question is the property of the Respondent No.1. This admission on the part of appellant shows him as illegal/tenant sub tenant of the actual tenant, which is not warranted by section 15(2)(iii)(a) of Sindh Rented Premises Ordinance, 1979 which reads as under:

“.....the tenant has, without the written consent of the landlord handed over the position of the premises to some other person.”

Admittedly, the applicant had failed to seek declaration to his right, title or interest in respect of the subject property..... from the referred facts, it appears to me that the learned trial Court has rightly observed that the suit is barred under sections 42 and 56 of the Specific Relief Act.

Thus, the upshot of this discussion is that I do not find any merit in the present application, hence **appeal is dismissed, with cost of Rs.5000/- to each Respondent as the present appeal is frivolous in nature to drag the Respondent unnecessary in litigation.** The cost must be deposited in Court within 30 days from the date of passing of this Order.

15. The above findings of the two civil Courts in prior litigation initiated by Nazir Muhammad himself on the same issue further damage his claim on the question of whether Nazir Muhammad has any lawful tenancy right in the premises. However, both the learned Courts below in these rent proceedings failed to appreciate and apply such conclusive findings of the civil Courts, which is a grave error of law.

16. In addition to the above, the witness of the Petitioner clearly asserted that on change of tenancy a receipt always used to be issued by the applicant Trust in favour of the new tenant and further asserted that Exh-A/3 does not represent a change of tenancy receipt issued by the Trust to Respondent No. 2. No such receipt was ever issued to Nazir Muhammad which is also not denied by the alleged *sublettee*.

17. Considering the above detailed discussion, I am therefore convinced that Nazir Muhammad was inducted by the original tenant Express Block (which fact has clearly and repeatedly been admitted by Nazir Muhammad himself in his earlier suit, appeal, MRC and written statement). I am also convinced that Nazir Muhammad attempted to

artificially create tenancy rights under the smoke of claiming to be a party in the MRC filed by Express Block, which he was not. For this purpose, he also attempted to create layers of litigation by filing his earlier suit and appeal, which were both rejected, with clear declarations that he has no tenancy rights in the subject property. Admittedly, such declarations have attained finality. He then attempted to artificially create rights by filing MRC. I am also convinced that Respondent No.2 deviated and contradicted his own pleadings, which is not permissible under the law. Once *subletting* was established, non-payment of rent by the actual tenant/ **Express Block** also stood proved since it is an admitted position that Express Block has stopped payment of rent at the least since 2001 (as recorded in the Rent Case and the evidence), since when the *sublettee* filed his own MRC. The above detailed discussions recorded in preceding paragraphs shed light on the most material evidence and pleadings, which were completely ignored by both learned forums below; hence the impugned Order and Judgment suffer from clear misreading and non-reading of evidence, warranting interference and exercise of writ jurisdiction under Article 199 of the Constitution. Findings of both the learned Courts below are accordingly unsustainable in law. Hence, this petition is allowed and the impugned Order dated 15.01.2010 and the impugned Judgment dated 08.11.2010 are hereby set aside. The ejectment application filed by the Petitioner under Section 15 of the Sindh Rented Premises Ordinance, 1979 in Rent Case No.445 of 2006 is allowed, and the Respondents 1 & 2 are directed to hand over vacant and peaceful possession of the demised premises to the Petitioner within sixty days from the date of this Judgment.

The petition is allowed in the above terms with no Order as to costs.

Before parting with this Judgment, I appreciate the able assistance provided by Mr. Abdul Moiz Jafferri and Mr. Adnan Ahmad, learned Advocates for the parties, and Mr. Shariq Mubashir learned AAG.

J U D G E