IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-723 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Kikobasd Pastanjee Kakalia and another'

Constitutional Petition No. S-725 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Yaqoob Traders and another'

Constitutional Petition No. S-726 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. F. Rehman & Co. and another'

Constitutional Petition No. S-727 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Behram Kakalia and another'

Constitutional Petition No. S-729 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Qazi Traders and another'

Constitutional Petition No. S-732 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Pak Enterprises and another'

Constitutional Petition No. S-733 of 2019
'Eduljee Dinshaw (Pvt.) Ltd. vs. Muhammad Sarwar and another'

Constitutional Petition No. S-174 of 2019
'Pak Enterprises vs. Eduljee Dinshaw (Pvt.) Ltd. and others'

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Petitioners in C.P. Nos. S-723, S-725, S-726, S-727, S-729, S-732 and S-733 of 2019 and Respondent No.1 in C.P No. S-174 of 2019	:	Through Mr. Altamash Arab, Advocate
Petitioner in C.P No. S-174/2019 and Respondent No.1 in C.P No. S-732 of 2019	:	Through Syed Mukhtar Hussain, Advocate
Respondents in C.P No. S-726, S-729 and S-733 of 2019	:	Through Mr. Zafar Iqbal Dutt, Advocate
Respondent No.1 in C.P No. S-723 of 2019 and S-727 of 2019	:	Through Mr. R. F. Virjee, Advocate
Date of Hearing	:	22.04.2026
Date of Announcement	:	18.07.2026

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this consolidated Judgment, these eight petitions are being decided which are pending for last seven years, raising common questions of law and facts, assailing the Judgments dated 02.10.2018 [**impugned Judgment**] passed in respective First Rent Appeals, concurrently upholding the Order dated 02.10.2018 [**impugned Orders**] passed in the Rent Applications respectively by the learned Rent Controller. The contentions revolve around the parameters provided under section 8 of the Sindh Rented Premises Ordinance 1979 [**SRPO**] for fixation of fair rent.

2. Concisely, seven out of these eight petitions have been initiated by a corporate entity *'M/s. Eduljee Dinshaw (Private) Limited'* [C.P Nos. 723/2019, 725/2019, 726/2019, 727/2019, 729/2019, 732/2019 and 733/2019] the owner/landlord of a Ground plus three floors commercial building known as 'Nadir House situated on Plot No. 8 & 9-C, S.R.1, I.I. Chundrigar Road, Karachi' [**subject building**]. Respondents in each of these petition are old tenants in the subject building occupying different offices, godowns, and tenements. The eighth Petition [C.P No. S-174/2019] has been initiated by one of the tenants *'M/s. Pak Enterprises'* occupying Godown No.3-B, on the Ground Floor of the subject building.

3. Seven individual Rent Applications under Section 8 SRPO were filed by the petitioner before the learned VIIIth Rent Controller, Karachi (South) against its seven tenants, (each of them being around 40 year old tenant) seeking fixation of fair rent for each tenement from around Rs.6/- to Rs.10/- (depending on each tenement) to Rs.201/- per square foot. The applications were duly contested by each tenant. After recording of evidence of the parties, the prayer for fixation of rent at Rs.201/- was declined. The learned Controller fixed fair rent from the date of filing of the applications, in the manner reflected in the Table at paragraph 8 below.

4. Aggrieved by the Order, the landlord challenged the same in First Rent Appeals before the learned XIIth Additional District Judge, Karachi (South), whereas one of the tenants [Pak Enterprises in Rent Case No. 1253/2016] also preferred FRA No. 535/2017 against the same Order. Finding no merits in any of the appeals, the learned Appellate Court concurrently upheld the Orders of the learned Rent Controller, which have been assailed in these petitions.

5. Heard learned Advocates for the parties and perused the record with their able assistance, which will be discussed at the relevant portions in this Judgment, for brevity's sake.

6. Gist of the common arguments agitated by Mr. Altamash Arab learned counsel for landlord/ Petitioner are that the Respondents are old tenants in the subject building since around 40 years, whereas the existing rents being paid by them, which ranged from approximately Rs. 5.62 to Rs.17/- per square foot, were grossly low compared to the prevailing market rates in the vicinity. The landlord relied upon a Compromise Decree passed in Suit No.1453 of 2009 ***'Muhammad Hanif Adamjee and others vs. MCB Bank Ltd.'*** pertaining to an adjacent building, wherein the rent was fixed at Rs.125/- per square foot by mutual consent of the parties in that suit. Per learned counsel for the landlord, such compromise decree reflects the prevailing market rent and should have been considered based whereon, the landlord claimed that fair rent be fixed at Rs.201/- per sq.ft. Further submits that the Courts below have failed to appreciate the increase in inflation, taxes, and utility bills, and despite observing that the existing rents are very low, they did not grant the relief prayed for.

7. Conversely, Mr. R.F. Virjee, M/s. Zafar Iqbal Dutt and Mr. Syed Mukhtar Hussain learned Advocates for the tenants individually contended that the petitions are

not maintainable against concurrent findings of fact by two Courts below. They further pleaded that the petitions are also hit by delay and *laches*. Further argued that the rent application itself was filed by an unauthorised person and in this regard, no Resolution of the Board of Directors was produced in evidence. Attention was also drawn to the cross-examination of the petitioner's witness on this point (at page 95 of the Court file). They also pointed out the last paragraph of the Judgment and pleaded that the order for increase of rent was only passed based upon personal knowledge and information of the learned Controller, whereas no evidence on any of the factors under section 8 SRPO was produced by the landlord. They further argued that Rent Applications were duly contested by tenants through written statements, wherein their primary defenses were that the condition of the subject building is a very old one, is in a dilapidated condition, lacking basic amenities and even proper maintenance. They also disputed the exact covered area of their respective tenements and further argued that the landlord utterly failed to produce any convincing evidence of rent being paid by other tenants in the same building or in similarly situated buildings in the adjoining locality. Lastly argued that the condition of the adjacent building could not be compared with the subject building since both buildings have different facilities, infrastructure, and state of repair and maintenance etc.

8. Perusal of the Order reflects, which has also been summarized in the following Table, that the learned Controller, while rejecting landlord's claim of Rs.210/- pers square foot, fixed fair rent respectively at Rs.20/-, 25/- or 30/- per square foot, to be effective from the date of filing of the applications. The tenants were also directed to pay future enhancements as per the provisions of Section 9(2) of the Sindh Rented Premises Ordinance, 1979. In cases where there was a dispute regarding the covered area, the Rent Controller directed the landlord to get the proper measurement of the tenements done:

SUMMARY OF TENANTS, AND RENT FIXED BY COURT

C.P No.	TENANT	PREMISES	Area, in sq.ft. approx.	Earlier Rent, per sq.ft.	Rent fixed by Controller, per sq.ft.
723/2019	Mr. Kikobad Pastanjee Kakalia	Office No.4, Ground Floor.	4768	9.82/-	Rs. 25/-
725/2019	M/s. Yaqoob Traders	Godown No.2, Ground Floor.	4824	6.55/-	Rs. 25/-
726/2019	Mr. F. Rehman & Co.	Office No. 8-B, First Floor.	1070	17/-	Rs. 20/-
727/2019	Mr. Behram Kakalia	Office No. 7, First Floor.	2280	8.47/-	Rs. 20/-
729/2019	Qazi Traders	Office No. 9, First Floor.	1091	5.62/-	Rs. 25/-
732/2019	Pak Enterprises	Godown No.3-B, Ground Floor.	790	6.25/-	Rs. 30/-
733/2019	Mr. Muhammad Sarwar	Office No. 5-B, First Floor.	2082	10.32/-	Rs. 25/-

9. Section 8 of the Sindh Rented Premises Ordinance, 1979 provides the parameters for determining fair rent for which the Rent Controller is required to take into consideration the factors i.e. ***(a)*** *the rent of similar premises situated in similar circumstances in the same or adjoining locality,* ***(b)*** *the rise in cost of construction and repair charges,* ***(c)*** *the imposition of new taxes after the commencement of the tenancy, and* ***(d)*** *the annual value of the premises on which property tax is levied.*

10. It is now well settled that the burden of proving these conditions rests squarely on the landlord who seeks enhancement of rent. In the present rent cases, firstly, the landlord produced and heavily relied upon a compromise decree passed in a civil Suit No.1453 of 2009 between some other parties, pertaining to some adjacent building. The Honourable Supreme Court of Pakistan has consistently held that a consent decree is not binding on third parties and cannot be used as a precedent to determine the rights of persons who were not parties to such decree. A compromise decree is essentially an agreement between the parties to that litigation. It does not represent a judicial determination of fair rent which requires evidence on the factors enumerated under Section 8 SRPO. Both the learned courts below therefore concurrently and very rightly concluded that such a compromise decree between some other parties cannot be treated as evidence of rent of similar premises situated in similar circumstances. Moreover, the landlord himself admitted during cross-examination that he had never visited the adjacent building and did not know its present condition, facilities, or amenities. In the absence of any evidence to show that the adjacent building and the subject building are similarly situated in all material respects, including the age, condition, facilities, and state of repair and maintenance, the compromise decree pertaining to some adjacent building could not be relied upon to fix the rent of tenements of Nadir House. The learned Appellate Court has correctly held that a consent-based increase of rent between some other parties is not binding upon the parties in the instant cases. No jurisdictional error, illegality or even error could therefore be found in such findings by both the learned Courts below.

11. Secondly, the landlord filed its affidavit-in-evidence (page 223 of the Court file) and produced Exhibits A/1 to A/5 (page 217 to 221 of the Court file). Exhibit A/1 is a compromise order passed in some other case between some other parties, whereas Exhibit A/5 was relied on as a yardstick. No other witness or independent and reliable evidence was produced by the landlord of the prevailing market rent in the vicinity. No other tenant from the same building or from adjacent buildings was examined. No rent receipt or rent agreement of any other tenement in the same building was produced to show that any other tenant is paying rent at the rate of Rs.201/- per square foot. No evidence was led regarding the rise in cost of construction and repair charges specific to the subject building. No paid property tax challans were produced to demonstrate an increase in property tax. No official from the Excise & Taxation Department was examined to prove the annual value of the premises for property tax purposes. The landlord merely relied upon general assertions of inflation and increase in prices. While the courts below have taken judicial notice of the general inflation prevailing in the country, such judicial notice can only form the basis for a reasonable enhancement and

not for a drastic jump from approximately Rs.6/- or Rs.10/- per square foot to Rs. 201 per square foot. Even otherwise, an inspection conducted in some other case could not be considered as a substitute for evidence in the present cases and the same was the ratio settled in ***'M/s. A.R. Builders (Pvt.) Ltd. v. Faisal Cantonment Board and 4 others'*** (PLD 2004 Karachi 492).

12. Thirdly, the petitioner side also attempted to rely upon a Judgment passed in some First Rent Appeal No.113 of 2014 about some other property i.e. the Variawa Building. However, the landlord produced no evidence nor any witness from that building, nor produced any rent receipts or agreements from that building. The landlord also failed to produce any evidence to the effect that the said adjacent building has similar circumstances and is situated in the adjoining locality of the subject building. Mere production of a Judgment in some other case, in proceedings for fixation of fair rent, without any connecting evidence, is not sufficient to discharge the burden of proof under Section 8 of the Ordinance. The findings of the Courts on this aspect are also in consonance with law.

13. The fourth aspect for consideration is the evidence on the condition of the subject building, which is also a highly relevant factor to be considered while determining fair rent. Surprisingly, not a single piece of evidence on this point was produced by the landlord at all. The tenants produced photographs showing the dilapidated condition of the building. The landlord admitted in his cross-examination that the building is very old and some of the tenants have been in occupation for 60 to 70 years. The landlord has not produced any evidence to point out any substantial improvements or renovations carried out in the building that would justify a rental increase to the extent of Rs. 201 per square foot, the condition of the specific building cannot be ignored. A tenant cannot be expected to pay the same rent as a tenant in a modern, well-maintained building if he is occupying an old, poorly maintained building with inadequate facilities.

14. Fifthly, it is also noted that the landlord itself has been receiving rent from these tenants with annual enhancements of 5% to 10% over the years. The rent receipts produced by the tenants clearly demonstrate such a fact. The landlord did not specifically deny that such enhancements were being made and accepted by him. This consistent conduct of the parties shows that the existing rents were not completely stagnant but were being increased periodically by mutual understanding or by the terms of the tenancy agreements.

15. As the sixth aspect for consideration, the dispute between the parties regarding the covered different measurements and areas of the various tenements, both the learned Courts have concurrently directed the landlord to get the proper measurement of the tenements done within a specified time. This direction is eminently reasonable and has not been challenged on any valid ground. Once the measurement is done, the rent shall be paid on the basis of the actual measured area as found by the competent authority.

16. Moreover, the impugned Judgment was passed on 2.10.2018, copy whereof was received on 25.10.2018, whereas these petitions were filed by the landlord on 27.04.2019 i.e. after a delay of around six months, which supports the contention of the

tenants that these petitions are hit by *laches*.

17. The eighth consideration is that the perusal of the Rent application, the evidence produced by the landlord and the cross-examination of its witness (available at page 95 of the Court file) also extend support to the tenants' contentions that no Resolution of the Board of Directors of the applicant/ Private Limited Company was produced in evidence by the landlord's witness to show his valid and authority on behalf of the applicant/ corporate entity.

18. Additionally, the learned Rent Controller has rightly observed that the landlord had failed to produce any cogent evidence of rent being paid for similar premises in the same building or adjoining locality under similar circumstances. The compromise decree in Suit No. 1453 of 2009 was found to be of no relevance because it was based on a settlement between the parties therein and did not represent a fair rent determined by a court after proper evidence. Perusal of the appellate Judgment reflects that the record and arguments were correctly examined while concluding that the compromise decree in Suit No. 1453 of 2009 could not be used as a binding precedent for determining the rent of the subject premises. It observed that an increase of rent in the absence of recording of evidence and based on consent of the parties is not one of the conditions envisaged under Section 8 of the Ordinance for fixation of fair rent. The landlord himself admitted during cross-examination that he had not visited the Adamjee House building and was not aware of its present condition, facilities, and amenities. Similarly, the judgment in another First Rent Appeal regarding the Variawa Building was not found to be applicable because the landlord failed to produce any evidence that the said building had similar circumstances and was situated in the adjoining locality of Nadir House. The learned Appellate Court further noted that the tenants had been paying rent with annual enhancements of 5% to 10%, as evident from rent receipts, and that the building was admittedly very old, with some tenants occupying the premises for 60 to 70 years. Taking into consideration the inflation and the increase in the value of property, the Appellate Court found that the fixation of rent by the learned Controller was justified and did not require any interference.

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

20. Having examined the record and the impugned Judgments and based upon the multiple considerations discussed in detail hereinabove, I am satisfied that on merits, both the learned Courts below have concurrently applied their judicial mind to the evidence produced by the parties, have correctly evaluated the factors enumerated in Section 8 of the Sindh Rented Premises Ordinance, 1979, have arrived at a reasonable figure for fair rent, and have treated the evidence based upon correct legal principles. The enhancement granted is neither exorbitant nor meagre but is balanced, and the same is neither arbitrary nor perverse, and does not suffer from any misreading or non-reading of evidence. Hence, no case for interference is made out by the petitioners for exercise of writ jurisdiction under Article 199 of the Constitution.

21. For the reasons stated above, the impugned Judgments passed by the learned XIIth Additional District Judge, South Karachi dated 2nd October 2018, and the impugned Orders passed by the learned VIIIth Rent Controller, Karachi (South) are upheld, and all these Constitutional Petitions from the side of the landlord along with C.P No.S-174 of 2019 filed by one of the tenants, are hereby dismissed, with no Order as to costs.

22. Before parting with this Judgment, I appreciate the able legal assistance extended by learned counsels for respective parties in seniority, Mr. R.F. Virjee, Mr. Zafar Iqbal Dutt, Mr. Syed Mukhtar Hussain and Mr. Altamash Arab, Advocates.

JUDGE