

IN THE HIGH COURT OF SINDH, KARACHI

CONST. PETITION NO. S-822 OF 2020

CONST. PETITION NO. S-823 OF 2020

Petitioner : Muhammad Iqbal Lakhani, through Syed
Muhammad Haider, Advocate
Respondent : Jamal Uddin and Muhammad Haroon
through Mr. Munwar Ali Tevno, Advocate

CONST. PETITION NO. S-1036 OF 2020

CONST. PETITION NO. S-1039 OF 2020

Petitioner : Jamal Uddin and Muhammad Haroon
through Mr. Munwar Ali Tevno, Advocate
Respondent : Muhammad Iqbal Lakhani, through Syed
Muhammad Haider, Advocate
Date of Hearing & : 11.08.2026
Order

ORDER

NISAR AHMED BHANBHRO, J. This common order will decide the fate of above captioned petitions, as a common issue of facts and law is involved. First Rent Appeal No 95 of 2019 (Re - Muhammad Iqbal V. Jamaluddin) and First Rent Appeal No 96 of 2019 (Re - Muhammad Iqbal V. Muhammad Haroon) were allowed by the Court of Learned VIIth Additional District Judge (MCAC) Karachi South (**Appellate Court**) vide separate order orders dated 06.10.2020 (**impugned orders**), whereby judgments dated 17.04.2019 passed separately by Learned Rent Controller Xth Karachi South (**Trial Court**) in Rent Case No 25 of 2016 (Re - Muhammad Iqbal V. Jamaluddin) and Rent Case No 17 of 2016 (Re -

Muhammad Iqbal V. Muhammad Haroon) were set aside. Learned Trial Court was directed to decide the matter afresh after framing of issue of relationship of tenancy between the parties.

2. Short lived facts of the petitions are that Muhammad Iqbal who is petitioner in CP No 822 of 2020 and CP No 823 of 2020 and Respondent No 1 in CP 1036 of 2020 and CP No 1039 of 2020 is co-owner of Iqbal Mansion building formerly known as Abdullah Khan Trust constructed over plot No 22 Street No 10 Saria Quarters Pakistan Chowk Karachi, purchased by him in the year 2015, through registered sale deed. Prior to the purchase of premises, Jamaluddin (Respondent No 1 in CP 822 of 2020 and Petitioner in CP 1036 of 2020) and Muhammad Haroon (Respondent No 1 in CP 823 of 2020 and Petitioner in CP 1039 of 2020) were enjoying possession as Tenants. Upon change in ownership, the Tenants did not deposit the rent with the new owner (Landlord) despite oral intimation for change in ownership. Consequently, Muhammad Iqbal, as a Landlord filed separate ejectment applications on the ground of default. Tenants appeared before Trial Court, filed written statement and took stance that since had been depositing the rent through MRC, they were not defaulters and they were not aware of change in ownership, no default had been committed, demised premises being a trust property cannot be disposed of and there existed no relationship of tenancy between the parties. Learned Trial Court after full fledged trial dismissed the rent case. In First Rent Appeal, learned Appellate Court, after hearing the parties, through impugned orders remanded the matter back to the learned trial Court with observation that, since the relationship of tenancy was denied by the Tenants, therefore, an issue in that regard shall be framed and after affording the parties a fair opportunity of trial, findings on the

controversy shall be rendered a fresh. Both the parties have assailed the impugned orders through separate petitions.

3. Learned Counsel for the Landlord contended that there is no dispute with regard to the relationship of tenancy between the parties; that the tenants were depositing the rent through MRC despite being fully aware of the change of ownership, which ought to have been deposited with Landlord. He, therefore, submitted that default stood admitted and instead of remanding the case, the ejectment application ought to have been allowed by Appellate Court. He lastly prayed to allow the petitions, the orders passed by the Courts below may be set aside, and the ejectment application may be allowed.

4. Learned counsel for the Tenants contended that the Tenants were not aware about the change in ownership. He further contended that since demised premises were a trust property, therefore, the same could not be sold out. He prayed for allowing the petitions filed by Tenants and dismissal of petitions filed by Landlord.

5. I have heard learned counsel for the parties and perused the material available on record.

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6. From perusal of record it revealed that Learned Trial Court dismissed both the rent cases on the ground that Tenants were not defaulters as they were depositing rent through MRC as articulated under section 10 of the Sindh Rented Premises Ordinance, 1979 (SRPO). The findings of Learned Trial Court were not sustained by Appellate Court and matter was remanded back for decision afresh under the premise that

Tenants had denied the relationship with Landlord and no such issue was framed by trial court, therefore, to reach a definite conclusion as to the status of parties fresh trial was mandated.

7. learned Trial Court dismissed the rent applications on the ground that from April 2015 until the date of decision in the rent proceedings, Tenants had been depositing rent through MRC No. 472 of 2011 before Learned Rent Controller Ivth Karachi South and Court in its order dated 28.02.2017 had regulated the payment of rent, hence no default was committed by Tenants. Therefore, dismissed the ejectment applications, being devoid of merits.

8. Section 15 of SRPO provides the procedure to file ejectment application on the ground of default. For the sake of convenience Section 15 is reproduced below:-

15. Application to Controller. (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that –

*(i) *****]*

(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the

first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;

(iii)

3. ...

4. ...

9. From perusal of the above provisions of law, it is crystal clear that, if the learned Rent Controller is satisfied that Tenant had not committed any default and the case was instituted on sole ground of default, then it is obligatory upon Rent Controller to dismiss the ejectment application.

10. However, learned Appellate Court did not record any findings with regard to the change of ownership of the demised premises, acquired by Landlord through a registered sale deed. Instead, Appellate Court observed that the relationship of tenancy between the parties was disputed and, therefore, an issue ought to have been framed and evidence led by the parties.

11. Tenants were denying the tenancy relationship on the ground that tenement premises were a trust property, therefore, illegally sold out to the Landlord. Admittedly, Tenants were under tenancy with previous owners and learned Appellate Court failed to appreciate that Section 18 of SRPO protected the rights of purchaser, and upon change in ownership the tenancy rights automatically stand transferred in favour of new owner,

and, for the purpose of seeking payment or deposit of rent, the new owner is only required to give notice to the Tenant. For the sake of convenience, it would be conducive to reproduce section 18 of SRPO, which reads as under:

18. Change of ownership. Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of sub-section (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.

12. It is crystal clear that under the SRPO, in case of change in ownership, the new owner is required to intimate Tenant about such change and on receipt of information if the rent is paid within 30 days time, tenant shall be out of the limb of default. In the present case, if it is believed that no such intimation was tendered, the said requirement stood fulfilled when the notice of rent proceedings was issued to Tenants and they appeared before Trial Court and contested the case. In the circumstances, when tenants admitted their relationship with previous owner, their denial of relationship with new owner had no importance as they were tenants and they cannot take benefit of any defect in the title of new owner, which is an issue in essence between the previous and new owners. The relationship of tenancy under such circumstances stands established. Section 18 of the SRPO protected rights of new owners on purchase of the property. Court of Rent Controller cannot decide the question of title when seized with the rent proceedings. Landlord, claims ownership on the basis of a duly registered sale deed, and Tenants' claim that transfer of ownership was illegal cannot alter their status as Tenant.

13. Learned Appellate Court was required to decide the appeal on merits instead of remanding the matter back to Trial Court. Since there was a specific finding by Trial Court that Tenants had not committed any default and that the rent case had been instituted on the sole ground of default, therefore stood dismissed on failure of Landlord to establish default. Appellate Court was required to appraise the evidence and determine whether any default had in fact been committed by the Tenants or not and there was any defect in the findings of Trial Court. Appellate Court travelled beyond its jurisdiction by setting aside the findings recorded by Trial Court and remanded the matter back for determination of an issue which stood established by application of statutory provisions discussed herein above.

14. Under the SRPO, a remedy of appeal has been provided and appellate Courts have been established to re-appraise the evidence and to cure an illegality or infirmity committed by Trial Court in deciding the fate of a case. A case may properly be remanded to the Trial Court where material facts remain undetermined, or procedural fairness has been compromised, or essential evidence has not been duly examined, that make the appellate court handicapped to do complete justice. The purpose of remand is corrective, not dilatory; it serves to secure a just adjudication, not to prolong litigation. Remand is not an automatic judicial reflex. It is a judicial instrument to be employed only when justice so demands. A case cannot be remanded to Trial Court as a matter of routine or in a run off mill manner, for remanding the case strong circumstances must exist as discussed above. Yet, the power to remand must be exercised with circumspection and restraint. Where the factual matrix is complete, the issues are purely legal, or the

appellate record permits a final determination, the appellate court ought to decide the matter itself. To remand in such circumstances is to sacrifice substance at the altar of form and to delay justice in the name of process. The restraint against unnecessary remand finds its rationale in the principle of judicial economy a foundational tenet of modern adjudication that obliges courts to avoid duplication of proceedings, promote finality, and conserve judicial time. Judicial economy thus demands that appellate courts decide, not defer, where the record enables them to do so, for justice delayed is justice denied. Reliance in this regard is placed on the case of **The SECRETARY/CHAIRMAN RAILWAYS, GOVERNMENT OF PAKISTAN, MINISTRY OF RAILWAYS, ISLAMABAD and others Versus TARIQ MANSOOR and others** reported as 2026 S C M R 807 and the case of **MUHAMMAD FAREEDON REHMAN Versus The STATE and another** reported as 2026 S C M R 987, wherein the Honorable Supreme Court of Pakistan has depreciated the practice of remand of case in a routine manner.

15. For the forgoing reasons, a case of indulgence of this Court to exercise the powers of judicial review conferred under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 is made out. Consequently the Constitution Petition No 822 of 2020 *Muhammad Iqbal v. Jamaluddin and others* and Constitution Petition No 823 of 2020 *Muhammad Iqbal v. Muhammad Haroon* are allowed and the impugned orders dated 06.10.2020 passed by the learned Appellate Court in FRA No. 95 of 2019, titled *Muhammad Iqbal v. Jamaluddin and another* and in FRA No 96 of 2019 titled *Muhammad Iqbal V. Muhammad Haroon another* are hereby set aside. The appeals filed by the Landlord shall be deemed to be pending and

shall be decided afresh on the merits on the basis of evidence available on record within a period of one month from the date of this order.

16. Constitution Petition No. S-1036 of 2020 and Constitution Petition No. S-1039 of 2020, in the wake of orders passed in connected petitions have become infructuous and are disposed of accordingly.

17. Office is directed to send copy of this order to Learned Appellate Court for compliance. Learned MIT-II to ensure compliance.

A signed copy of this order shall be kept in the connected petitions.



JUDGE

Approved for reporting