

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. S- 239 of 2021

Petitioners : Mst. Hina Irfan through Mr. Anwar Ali Shah,
Advocate

Respondent No.1 : Muhammad Asif Raj through Mr. Shahnawaz M.
Sahito, Advocate

Date of hearing & : **04.09.2026**
Order

ORDER

NISAR AHMED BHANBHRO, J. This petition is arises out of conflicting judgment/order passed by the VIIIth Rent Controller (South) Karachi in Rent Case No.91 of 2017 (re: Mst. Hina Irfan – vs – Muhammad Asif Raj on 24.09.2020 and order dated 13.02.2021 passed by the learned XII Additional Sessions Judge (South) Karachi in FRA No.126 of 2020. The rent case was allowed and the tenant was directed to handover the vacant peaceful possession of the demised premises to the Landlady within 30 days. However, Appellate Court was set-aside the judgment passed by the Rent Controller and allowed the appeal.

2. Learned counsel for the Petitioner contends that the Petitioner is admittedly the owner of the demised premises, whereas Respondent No.1 claimed a right there in on the basis of a sale agreement, pursuant to which he had instituted Civil Suit No.1465/2016 for specific performance. The said suit was dismissed vide judgment and decree dated 30.04.2026. He further contends that the relationship of landlord and tenant was duly established and admitted; however, it was the case of Respondent No.1 that the tenancy was with the husband of the Petitioner. He further submits that Respondent No.1 was a defaulter in payment of monthly rent and that such ground stood established. Therefore, there was no justification for disturbing the findings rendered by the learned Rent Controller in its judgment dated 24.09.2020. He, therefore, prays that the instant petition be allowed and the order passed by the learned Appellate Court be set aside.

3. Mr. Shahnawaz M. Sahito, learned Advocate, files Vakalatnama on behalf of Respondent No.1 and offers to argue the case. He contends that, although the Petitioner is the owner of the demised property, she does not fall within the definition of “Landlady” as articulated under Section 2(a) of the SRPO, 1979. He further submits that no tenancy agreement was executed between the parties and that the agreement produced before the learned Trial Court was sent for forensic

examination, which found the same to be false and fabricated. Consequently, FIR No.140 of 2017 was registered at Police Station Arambagh, Karachi. Although the Petitioner was acquitted by the learned Trial Court in the said FIR, an appeal against acquittal is still pending adjudication before this Court. He further contends that mere ownership of the property does not confer jurisdiction upon the Rent Controller to entertain and allow the case unless the relationship of landlord and tenant, as articulated under Sections 2(f) and 2(g) of the SRPO, 1979, is established. He contends that the learned Rent Controller committed an error in misreading and non-reading of the evidence; therefore, its judgment was not sustainable in law and was rightly set aside by the learned Appellate Court. He placed reliance on the case of *Afzal Ahmad Qureshi vs. Mursaleen* (2001 SCMR 1434). He prayed for dismissal of instant petition.

4. Heard arguments and perused the material available on record.

5. The crux of the controversy involved in the instant petition pertains to the office premises, i.e., Suite No.1, Mezzanine Floor, Plot Survey No.1/3, Hunain Square, Street S.R. 13, measuring 475 sq. yds., Sirai Quarters (Muhammad Bin Qasim Road), Karachi. The Petitioner is admittedly the owner of the demised property, which fact finds support from the own assertion of Respondent No.1 that the property was purchased by him through an agreement of sale. Upon denial by the owner of the execution of any sale deed, Respondent No.1 instituted a suit for specific performance, which was dismissed vide judgment and decree referred to hereinabove. An appeal against the said judgment and decree is presently pending adjudication before the learned District Judge.

6. It transpires from the record that the learned Rent Controller framed two issues for determination, relating to the existence of the relationship of landlord and tenant and the default in payment of rent. The issue regarding the relationship of tenancy was found to have been proved by the learned Rent Controller; however, the said finding was set aside by the learned Appellate Court, which held that the relationship of landlord and tenant had not been established. Consequently, the appeal was allowed. It further transpires from the evidence of Muhammad Irfan, attorney of Mst. Hina Irfan, that the relationship of tenancy was admitted; however, it was suggested that such relationship existed between Muhammad Irfan and Respondent No.1. For the sake of convenience, relevant portion of the cross examination of Muhammad Irfan is reproduced herein below:-

“It is correct at the time of inception of tenancy I received a cheque of Rs.64,000/- from opponent is in lieu of fixed deposit of Rs.50,000/ and advance rent of one month of R.14,000/-. It is correct to suggest that I have not produced any documentary

evidence that I received cheque of Rs.64000/- on behalf of my wife. It is correct to suggest that opponent has filed suit for specific performance bearing No 1465/2016 against me in respect of property in question and applicant has filed instant, rent application subsequently. It is correct to suggest that opponent has lodged FIR No.140/2017 U/S 420/468/471 R/W 34 PPC against me and my wife (applicant) at PS Arambagh in connection with rent agreement dated 02.02.2016. It is correct to suggest that I.O. of aforesaid FIR 140/2017 sent rent agreement dated 02.02.2016 to FSL therein, for their opinion regarding genuineness of signature of opponent upon agreement.

7. From a perusal of the above portion of the cross-examination, it is crystal clear that a suggestion was put to the attorney that a cheque in the sum of Rs.64,000/- had been given to him, comprising a security deposit of Rs.50,000/- and monthly rent of Rs.14,000/-. However, it was further suggested that there was no evidence on record to establish that the said amount had been received by him on behalf of the owner, Mst. Hina Irfan. In another suggestion put to the attorney of the Petitioner, it was suggested that the attorney used to receive the rent on behalf of the Petitioner and issue rent receipts. For the sake of convenience, relevant part of cross examination is reproduced herein below:-

“It is correct to suggest that I use to issue receipts of rent of Rs 14000/- to opponent. It is incorrect to suggest that contents of paragraph No 15 to 18 of A/F are false. It is incorrect to suggest that opponent is in possession The premises as purchaser in lieu of part performance. It is incorrect to suggest applicant has filed rent application to harass opponent.”

8. In his evidence, Muhammad Asif Raj admitted that a rent agreement had been executed between Muhammad Asif Raj and Muhammad Irfan, pursuant to which an amount of Rs.50,000/- was paid as a security deposit and Rs.14,000/- was paid to him as one month's advance rent. For the sake of convenience relevant part is reproduced hereunder:-

“It is correct to suggest that rent agreement was executed between me and Muhammad Irfan Siddiqui husband of the applicant in respect of the premises as well I also signed receipt of Rs.50,000/- as SECURITY DEPOSIT and Rs.14,000/- as advance rent.”

From the analysis of above piece of evidence, it is admitted position that the Respondent No.1 is not denied his relationship of tenancy with the husband of Petitioner.

9. Learned counsel for Respondent No.1 submits that, in order to institute and maintain an ejectment petition, the Petitioner was required to establish her personal relationship with the tenant, in the absence of which a case for ejectment before the learned Rent Controller could not be maintained. If such a condition, as

contended by learned counsel for Respondent No.1, were to be imposed, it would deprive the owner of the property of the right to pursue matters relating to tenancy and rent. Such an interpretation would also defeat the very definition of “landlord” and “tenant” provided under Section 2(f) of the SRPO, 1979, which reads as under:-

“(f) “landlord” means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises.”

10. From a perusal of the above provisions of law, it is crystal clear that the owner of the property remains a landlord by virtue of his or her title, whereas a person who receives or collects rent also falls within the definition of “landlord” for the period during which such rent is received or collected by him or her. The receipt of rent by any person does not, however, exclude the owner from the definition of “landlord”, as the owner, by virtue of his or her title, is competent to institute a rent case seeking ejectment under Sections 14 and 15 of the SRPO, 1979, as the case may be. In the present case, although the existence of a direct relationship of tenancy between Respondent No.1 and the owner was denied, it was admitted that Respondent No.1 was a tenant of the husband of the original owner. Such admission entitled either the husband, as the person receiving rent, or the owner, Mst. Hina Irfan, herself to institute proceedings for ejectment. In the present proceedings, Mst. Hina Irfan instituted the rent case and produced Muhammad Irfan, her attorney, who appeared in the witness box and deposed regarding the relationship between the parties. The existence of such relationship also stood admitted from the evidence of the attorney of the Petitioner as well as from the evidence of Muhammad Asif Raj himself.

11. Assertions of learned counsel for the Respondent No.1 that the rent agreement in foreign-sic was found to be forged and fabricated document and in pursuance thereof a FIR was also registered wherein he was acquitted but an acquittal appeal is pending adjudication before this Court, therefore, tenancy cannot be considered as document of tenancy. Under Section 45 of the Qanun-e-Shahadat Order, 1984, an admission is a statement by a person accepting the truth of a fact. In the present case, it is admitted from the evidence of the parties that Respondent No.1 was in a relationship of tenancy and was paying rent. Even the rent receipts showing payment of Rs.14,000/- per month were admitted, and it was acknowledged that the same were being collected by Muhammad Irfan. Respondent No.1 on account of its own admission was estopped from making any other claim.

12. In view of the foregoing, the learned Appellate Court erred in law in holding that mere ownership of the property would not bring a person within the definition of “landlord”. Such proposition, however, would hold good only where the relationship of landlord and tenant has not been established between the parties. In the case in hand, the said relationship stood established and, in fact, was admitted in the evidence led by both sides.

13. For the foregoing reasons, a case for indulgence by this Court and for exercise of its jurisdiction of judicial review under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is made out. Consequently, this petition is allowed. The impugned order dated 13.02.2021, passed by the learned Additional District Judge-XII (South), Karachi, is hereby set aside, and the order dated 24.09.2020, passed by the learned Rent Controller in Rent Case No.91 of 2017, is maintained.

14. Since Respondent No.1 has been in possession of the demised premises for a considerable period, he is granted six (06) months’ time to vacate the demised premises. In case of failure to vacate the premises within the stipulated period, the learned Trial/Executing Court shall take coercive measures in accordance with law to ensure vacation of the demised premises.

JUDGE