

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No.S- 1105 of 2012
(Muhammad Haroon – v – Haji Muhammad Siddiq Ahmed)

Date	Order with signature(s) of Judge(s)
Hg:/Priority.	

1. For orders on Misc. No.4841/12
2. For hearing of main case.

Date of Hearing and order 09.02.2026.

Mr. Muhammad Naeem Suleman, Advocate for Petitioner.
Mian Mushtaq Ahmed, Advocate for Respondent.

ORDER

Nisar Ahmed Bhanbhro, J. This petition is directed against the concurrent findings of the courts below whereby the ejectment application filed by the respondent was allowed vide order 30.05.2011 by the Rent Controller - V (South) Karachi in rent case No 294 of 2009 (re: Haji Muhammad Siddiq Ahmed v Muhammad Haroon) and First Rent Appeal filed by the Petitioner was too dismissed by the V Additional District Judge (South) Karachi vide order dated 18.09.2012 .

2. Learned counsel for the petitioner contended that there was no default in the payment of rent. The Trust refused to accept the rent, where after it was sent to the Collector nominated by the Trust for rent collection; however, he also refused to receive the money order. Thereafter, Misc. Rent Case No. 465/2008 was filed before the Rent Controller, Karachi South, and rent was deposited in the aforesaid rent case. He further submitted that the rent case was filed on three grounds, namely: encroachment, alteration in the demised premises, and default in payment of rent. He contended that courts below concluded that the grounds of encroachment and alteration in the demised premises were not proved; however, it was held that the petitioner was a defaulter in payment of rent and ejectment application was allowed on the said ground. He contended that since Petitioner was not in default in payment of rent, as such the concurrent findings of fact suffered serious misreading and non-reading of the evidence. He lastly prayed to allow this petition. In support of his contention Counsel placed reliance on the cases of *Abdullah Ghanghro v Mst. Tahira Begum* (1988 SCMR 970), *Yousuf v Muhammad Zubair* (PLD 1986 SC 154), *Okhai Memon Jama Masjid Trust v IIIrd Adjoined to a date in*

office. Karachi-Central (2007 YLR 2083) and *Yousuf v Muhammad Zubair* (1985 CLC 165).

3. Learned counsel for the respondent contended that the petitioner defaulted in the payment of rent and failed to deposit the rent in the manner previously practiced. Instead, he sent a money order in the name of one of the Managing Trustees of the Trust, who was not responsible for collecting rent. He further contended that the learned courts below rightly allowed the ejectment application, as the rent deposited by the petitioner did not fall within the meaning and definition of Section 10 of the Sindh Rented Premises Ordinance, 1979. In support of his contention he placed reliance on the case of *The Military Estate Officer, Multan Cantt: v Mirza Muhammad Saleem Baig* (1982 SCMR 920), *Haji Allah Ditta v Mst. Shahzadi Bilqis* (1980 SCMR 41), *Amtul Haseeb v Jamil Autos, Proprietor S.Barkat Hussain Naqvi* (1995 MLD 1467), *Rafiuddin v Additional District Judge* (1986 MLD 793) and *Messrs Shah Nawaz Khan & Ors. v Government of NWFP & Ors.* (2015 SCMR 945). He prayed for dismissal of the Petition on the premise that well reasoned concurrent findings of fact cannot be disturbed under writ jurisdiction of this Court

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

5. A perusal of the evidence available on record reveals that the rent case was filed on three grounds, namely: encroachment, alteration in the demised premises without permission, and default in payment of rent. The parties led evidence, and the courts below concurrently found that there was neither encroachment nor alteration in the demised premises; however, it was observed that the rent was deposited in an improper and invalid manner, which did not comply with the conditions laid down under Section 10 of the Sindh Rented Premises Ordinance, 1979. The Trial Court and the Appellate Court observed that the office of the Trust was situated at Cutchi Memon Cooperative Society House, RB-6/5/3, Ghari Khata, Karachi, whereas the money order was sent to one Humayun L. Hamid, Director Consulting Worldwide Inc., at his office address Dominion Centre, 6th Floor, Hamid Chambers, Main Zaibunnisa Street, adjacent to Metropolitan Bank, Saddar, Karachi. As the rent was not deposited in accordance with law, the same could not be termed as valid payment of rent.

6. The Courts below have disputed the manner in which the rent was deposited, however it is an admitted position that the Petitioner was depositing rent with the Rent Controller since refusal to receive by Respondent No 1. The Appellate Court dealt with the issue of default in payment of rent in its para-9 of the order dated 18.09.2012, which is reproduced herein below:-

"Having gone through the contentions of learned counsel for the appellant so also above discussion of the learned trial Court on point No.1 concerning the default in payment of rent. I may say that there is no denial to the fact that the rent receipt explicitly shows the address of the Trust Cutchi Memon Poor House RB-6/5/3, Ghari Khata, Karachi. It is also matter of record that the appellant sent the money order to Humayun L. Hamid. Direct Consulting Worldwide Inc., Domincon Centre, 6th Floor, Hamid Chambers, main Zaibunnisa Street, adjacent Metropolitan Bank, Saddar, Karachi as is visible from Ex.O/3 & Ex.O/4. The learned counsel for the appellant during his arguments, contended that the learned trial Court failed to consider the fact that there is no such office of Trust at RB-6/5/3, Ghari Khata, Karachi, This plea of the appellant's side is not considerable on the score being neither taken in the written statement nor in affidavit in evidence, nevertheless, not a single suggestion in this respect was asked to the representative of the respondent during cross-examination. In these circumstances, the learned trial Court rightly observed in the impugned order that it was obligatory upon the appellant to tender the monthly rent to the respondent at the address of the Trust i.e. RB.6/5/3, Ghari Khata, Karachi, which admittedly he not did so and such deposit of the appellant could not be termed to be valid one. The learned trial court rightly based its such findings in view of the observations of the Hon'ble apex Court, reported in case law 1995 MLD 1467 (Karachi). As such, rightly arrived to a conclusion that the appellant has committed willful default as alleged."

7. From a perusal of the above observation, it transpired that the petitioner was non-suited on the ground that the payment of rent was not valid. A perusal of the rent receipts shows that the petitioner had been continuously depositing rent with the management of the Trust, except for the month of April 2008, which was sent through a money order to one Humayun L. Hamid at the address mentioned herein above. It further transpired from the record that a special meeting of the Board of Trustees was held at the home of the Managing Trustee, Humayun L. Hamid, namely C-1, Cutchi Memon Cooperative Housing Society (CMCHCS), Block-IV, KDA Scheme No. 7, Karachi, to discuss the matter pertaining to the defaulting tenement shop (demised premises) under the tenancy of the petitioner. From a perusal of this document, available at page 57 of the Court file, it reveals that the said Humayun L. Hamid was the Managing Trustee of the Trust, and that the meeting was held in the month of February 2009. Since the money order was sent to the address of one of the Managing Trustee who refused to accept the

rent thereafter rent case was preferred. For the sake of convenience of para-4 of the rent application is reproduced herein below:-

“Since the April 2008 the Opponent did not pay the rent without any justification, therefore, outstanding rent from April 2008 to December 2008 @ Rs.1800/- P.M. total Rs.16,200/- and for January 2009 to February 2009 @ Rs.1980 P.M. (inclusive 10% annual increase as per agreed terms) upto February 2009, therefore total outstanding rent is Rs.20,160/-.

8. It appears from the record that Petitioner had deposited the rent for the said period in Rent Case mentioned Supra, being in knowledge of payment of rent, the Landlord leveled additional charges of encroachment and alteration in land use which he could not prove which prima facie establishes that the Trust was predetermined to secure the eviction of the petitioner. This action on the part of Landlord manifested volumes of the mala fide on its part. This conduct sufficiently establishes the bona fides of the petitioner in sending the monthly rent to one of the Trustees through money order and on refusal through MRC. Section 10 of the Sindh Rented Premises Ordinance, 1979 enunciated the mode of payment of rent, placing it at the discretion of the tenant, in case of refusal by Landlord either by depositing the same through money order or by depositing it in Court by filing a rent case. Upon refusal by the Managing Trustee to receive rent through money order, the petitioner filed the rent case and started depositing rent from the month of April 2008. Moreover, Section 15 of the Sindh Rented Premises Ordinance, 1979 obligated the Rent Controller to inquire whether the rent was deposited within the stipulated time and to ask the tenant about his willingness to deposit the default amount where the period of alleged default did not exceed beyond a period of six months. In the instant case, at the time of filing of the rent application, the petitioner was not a defaulter in the payment of rent. In the eventuality that the Trial Court concluded that the other two grounds were not available, it was obligatory upon the Court to dismiss the rent application.

9. It is a settled proposition that this Court, in its writ jurisdiction, sparingly interferes with concurrent findings of fact, and only in cases where such findings do suffer from misreading or non-reading of evidence or any jurisdictional defect; in the instant case, the courts below committed an error in appreciating the evidence led by the parties and proceeded to determine that the rent was deposited in an improper manner which was not the case in the instant lis.

10. With due reverence the case laws relied upon by the learned Counsel for the parties were not fitting to the facts and circumstances of the present case and are distinguishable.

11. For the aforementioned reasons, a case for indulgence of this Court to exercise powers of judicial review in its writ jurisdiction is made out. This petition is consequently allowed. The orders dated 18.09.2012 passed by the V Additional District Judge, Karachi-South, and order dated 30.05.2011 passed by the Vth Rent Controller, Karachi-South, are hereby set aside. The rent application stands dismissed. The petitioner shall continue to pay rent to the landlord, in case of default, the landlord shall be at liberty to avail the remedy provided under the law. Copy of this order shall be sent to the learned trial Court for information and compliance.

JUDGE

Approved for reproting