

IN THE HIGH COURT OF SINDH KARACHI

CP No.S-1393 of 2023

(M/s. Anjuman Akhwan-us-Safa v. Shahid Jan and 2 others)

CP No.S-1394 of 2023

(M/s. Anjuman Akhwan-us-Safa v. Mr. Muhammad Ibrahim and 2 others)

M/s. Asim Iqbal and Farmaullah Khan, advocate for the petitioner in CP No.S-1393 & 1394 of 2023

M/s. Syed Mehmood Alam Rizvi, Sagheer Ahmed Shaikh and Masjood Ali Memon, advocates for the respondent No.1

Date of Hearing and order: 17.12.2025

Date of reasons: 01.01.2026

ORDER

Nisar Ahmed Bhanbhro, J. Since common questions of law and facts are involved in both the captioned petitions, I propose to decide their fate through this single order. The Rent Case No.70 of 2018 and the Rent Case No.71 of 2018 were filed by the petitioner seeking ejectment of Shahid Jan son of Ali Jan and Muhammad Ibrahim son of Ahmed Din (**Tenants**) from demised premises Shop No. 29-A, and Shop No.30-A, Ground Floor, constructed on the Plot No. JV-1-S-2/A, Liaquatabad No.4, S.M. Taufeeq Road, Karachi, situated in Block-4, Liaquatabad, Karachi on the sole ground of default in payment of rent, before the Court of learned VIIIth Rent Controller, Karachi Central (**Rent Controller**).

2. Both the captioned petitions are filed against the conflicting findings of the Courts below, whereby, vide separate judgments dated 08.08.2023, Rent Case No 70/2018 (M/s Anjuman Akhwan-us-Safa V. Shahid Jan) and Rent Case No 71/2018 (M/s Anjuman Akhwan-us-Safa V. Muhammad Ibrahim) were allowed and Tenants were directed to vacate the tenement premises. Tenants filed FRA No.141 of 2023 (Shahid

Jan v. M/s Anjuman Akhwan-us-Safa and another) and FRA No.142 of 2023 (Muhammad Ibrahim v. M/s Anjuman Akhwan-us-Safa and another) before the Court of Learned District Judge Karachi Central, which were assigned to the Court of learned VIth Additional District Judge, Karachi Central (**Appellate Court**) for disposal in accordance with law. Learned Appellate Court allowed the appeals vide separate judgments dated 21.11.2023, whereby set aside the judgments dated 08.08.2023 passed by Learned Rent Controller in both the Rent Cases, remanded back the Rent Cases to Rent Controller decision afresh.

3. Learned counsel for the petitioner contended that the petitioner is the owner of a shopping complex constructed on Plot No. JV-1-S-2/A, Liaquatabad No.4, S.M. Taufeeq Road, Block-4, Liaquatabad, Karachi, that the respondents, namely Shahid Jan and Muhammad Ibrahim, are tenants of the petitioner in respect of Shop Nos. 29A and 30A, Ground Floor, since July, 1986. It was further contended that the respondents have miserably failed to pay rent at the enhanced rate of 25% with effect from October, 2014, in respect of the demised premises. Despite repeated requests made by the petitioner, the respondents avoided payment of rent on one pretext or other and failed to pay rent at the rate of Rs. 750/- per month from October, 2014 till January, 2018, thereby arrears amounting to Rs. 30,000/- accrued. Such conduct, according to learned counsel, amounts to wilful default, rendering the respondents liable to be evicted from the demised premises. He further contended that the Learned Rent Controller rightly allowed the rent cases but Learned Appellate Court allowed the FRAs on the ground that the rent cases were instituted by unauthorized person. He argued that the rent cases were filed by duly authorized person as such remand order was quite illegal. He contended that the judgment passed by the appellate Court was not tenable under the law, he therefore, insisted that these petitions be allowed, FRAs filed of the Respondents be dismissed and judgment passed by Rent Controller be maintained.

4. In rebuttal, learned counsel for the respondents in both the Petitions, contended that respondents were tenants of the petitioner in respect of the tenement shops since July, 1986, having obtained the same on pagri. Counsels argued that the Tenants were not defaulters, they paid the last monthly rent to the petitioner in September, 2014 and had been regularly paying monthly rent through pay orders, which is a matter of record. It was further contended that Tenants as usual, visited the office of

the petitioner to tender monthly rent for October, 2014, but the petitioner's rent collector refused to receive the pay order; thereafter, Tenants sent the rent for October, 2014 through money order, which was also refused by the petitioner. Learned counsel further argued that Tenants again visited the petitioner's office in the months of November and December, 2014 and offered rent for the months of October, November and December, 2014, but on each occasion the same was refused. Consequently, the Tenants remitted the monthly rents through money orders, which were again refused by the petitioner's rent collector, the postman of the concerned post office refunded the money order amounts to Tenants after obtaining his signatures on the money order coupons and returned the original half portions thereof, which were produced by Tenants along with his affidavit-in-evidence. It was further contended that thereafter Tenants deposited the monthly rents for October, November and December, 2014 through M.R.C. No.583 of 2014 before the learned Rent Controller, District Central, Karachi. Subsequently, pursuant to the orders of the learned Rent Controller, the rent is being regularly deposited before trial Court. Counsel argued that the Rent case was filed by unauthorized person, the appellate Court rightly remanded the case back for trial afresh and prayed for dismissal of the petitions.

5. Heard arguments. Scanning of material available on record revealed that the Landlord filed Rent Cases on the sole ground of default in payment of rent. It was claimed by the landlord/ Petitioner that since October, 2014 till January, 2018, the rent was not paid and both the tenants were in arrears of Rs.30,000/-. In rebuttal, the tenants took a plea that till September, 2014 relationship between the parties remained upto the mark, the landlord was receiving rent as agreed by him but since October, 2014, the collection of rent was refused, therefore, the rent was sent through money order. On refusal to receive money order, Miscellaneous Rent Cases (MRCs) No.583/2014 & 588/2014 were filed, and rent was deposited through MRCs regularly as such no case of default was made out. Besides the Tenants also took a plea that the Rent case was not maintainable as the same was instituted through an incompetent person.

6. The learned Rent Controller on the pleadings of the parties, framed following issues:

- "1. Whether the opponent has committed willful default in payment of monthly rent.*
- 2. What should the order be?"*

7. Parties led evidence to substantiate respective claims. Learned Rent Controller allowed ejectment application vide judgment dated 08.08.2023 on the ground that the landlord never refused to accept the money order and terms and conditions of tenancy were breached as the tenant was required to pay monthly rent in advance. F.R.As filed against the judgment of Rent Controller were allowed vide judgment dated 21.11.2023 on the ground that rent case was filed by an incompetent person, the case was remanded back to the Rent Controller to decide afresh after framing following additional issue:

- "1. Whether the Abdul Majid Khan is duly authorized & competent to file/proceed ejectment case against the opponent/tenant."*

8. Record reflects that the rent case was instituted by the landlord and it was specifically mentioned in Para -7 of the Rent Petition that the case was instituted through authorized person Abdul Majid Khan who is employee of the landlord. Abdul Majid Khan was authorized person to file, sign and verify the rent application and conduct all other proceedings arising therefrom up to the highest Court of the country. The observations of the learned appellate Court that the tenant / respondent in its written statement had challenged maintainability of the rent case, therefore, the landlord was burdened to establish that the Rent Case was instituted through a competent person were not supported from the record. It transpired from the record that the said authorized person Abdul Majid Khan appeared in the witness box, he produced in evidence, the authorization letter to institute the case duly signed and issued by managing Director of the Petitioner , original resolution dated 13.11.2017 passed by the Board of Directors through Circulation. The resolution explicitly authorized Abdul Majid Khan to institute rent cases against the tenants. In any case, even the said authorization if was found defective for any reasons, the same was not a sufficient ground to remand the case back to examine this controversy. This issue could have been resolved by the appellate Court, if it was found that case was instituted by an unauthorized person, instead of defeating the case, the Court ought to

have asked the Petitioner to place on record the authorization on behalf of the landlord in favour of the said Abdul Majid Khan. Otherwise the law did not require for filing of an authorization letter to sue on behalf a company, business entity in a particular manner. Moreover particular in rent cases such an objection was not material as it will not change the status of the Tenant. .

9. The learned appellate Court was required to appreciate the evidence of the parties to render findings on the core issue of default within the meaning and scope of section 15(2)(ii) of SRPO 1979 which envisaged that the Controller on application by Landlord shall make 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 the Controller is satisfied that 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. In case the landlord sought eviction on the sole ground of default, 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.

10. Since learned appellate Court has not decided the case on merits, rather has remanded the matter back to the learned trial Court for framing the additional issues regarding competency of the authorized person to institute the rent case and decide the matter afresh by recording evidence, the mistake so detected was curable and not substantial in nature, therefore, appellate court erred in law while deciding the F.R.As.

11. Consequently, both the captioned petitions are accepted and judgments dated 21.11.2023 passed by the learned VIth Additional District Judge, Karachi (Central), in FRA No.141 of 2023 (Shahid Jan v. M/s Anjuman Akhwan-us-Safa and another) and FRA No.142 of 2023 (Muhammad Ibrahim v. M/s Anjuman Akhwan-us-Safa and another), are

set aside. The First Rent Appeals shall be deemed to be pending before the appellate Court and shall be decided on the basis of available evidence on merits.

12. The captioned petitions were allowed subject to any modification in the detailed reasons vide short order dated 17.12.2025, and these are the reasons for the same.

Office is directed to send a copy of this order along with the short order dated 17.12.2025 to the learned District and Sessions Judge Central Karachi for compliance.

JUDGE

Nadir/PS*

Approved for reporting