

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-248 of 2024

(Mst. Shereen v. Sajjad Hussain)

DATE	ORDER WITH SIGNATURE OF JUDGE.
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1. For hearing of CMA No.2463/2024 (Stay).
2. For hearing of main case.

Mr.Syed Murtaza Haider, Advocate for the Petitioner.
Mr. Muhammad Aslam, Advocate for respondent.

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Date of hearing : 19.01.2026
Date of Order : 09.04.2026

ORDER

Abdul Hamid Bhurgri, J.- Through the instant constitutional petition, the petitioner has called in question the judgment dated 03.02.2024 passed by the learned VII-Additional District Judge, Karachi South, in F.R.A. No.311 of 2023, whereby the learned appellate Court, while setting aside the order of eviction passed by the learned XV-Rent Controller, Karachi South, on the ground of personal bona fide need, nonetheless ordered eviction of the petitioner/tenant on the ground of default and alleged violation of Section 10 of the Sindh Rented Premises Ordinance, 1979 (“the Ordinance”).

2. Briefly, the respondent/landlord instituted Rent Case No.873 of 2022 seeking eviction of the petitioner from the demised premises on the grounds of (i) personal bona fide requirement, and (ii) willful default in payment of rent. The learned Rent Controller, after framing issues and recording evidence, returned a categorical finding that the ground of default was not proved; however, eviction was ordered solely on the ground of personal bona fide need.

3. The petitioner preferred First Rent Appeal No.311 of 2023. The learned appellate Court, vide impugned judgment dated 03.02.2024, set aside the finding of personal bona fide need but proceeded to order eviction on the ground of default and alleged violation of Section 10 of the Ordinance, inter alia by invoking the concept of “judicial notice”.

4. Learned counsel for the petitioner contended that although the appellate Court had jurisdiction to examine the issue of default, the finding so recorded is based on misapplication of law, without structured reappraisal of evidence and without adherence to the statutory requirements of Section 10 of the Ordinance. It was further contended that reliance upon "judicial notice" for determining a disputed factual controversy is legally impermissible.

5. Conversely, learned counsel for the respondent supported the impugned judgment and contended that the appellate Court, being the final Court of fact, was competent to reappraise the evidence and arrive at its own independent conclusions.

6. I have heard learned counsel for the parties and have examined the record with their assistance.

7. At the outset, it may be observed that this Court, in exercise of constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, does not sit as a Court of appeal. Reappraisal of evidence or substitution of findings is not ordinarily undertaken. Interference is warranted only where the subordinate Courts have acted without lawful authority, misapplied statutory provisions, committed material irregularity, or findings suffer from misreading or non-reading of evidence. Reliance in this regard is placed upon ***Mst. Farhat Jabeen vs. Muhammad Safdar and others (2011 SCMR 1073)***.

8. It is an admitted position that the ground of default was specifically pleaded, issues were framed, and evidence was led by both parties. The learned Rent Controller, after appraisal of such evidence, recorded a categorical finding that default was not established.

9. The appellate Court, being the final Court of fact under the Ordinance, was competent to reappraise the evidence and examine the issue of default. However, such jurisdiction is required to be exercised on

settled legal principles by independently evaluating the evidence on record and assigning clear, cogent and legally sustainable reasons for reversal of findings recorded by the trial Court.

10. Perusal of the impugned judgment reflects that the conclusion of default has been drawn primarily by invoking the concept of “judicial notice” and on perceived inconsistencies in the tenant’s stance, without undertaking a structured examination of the statutory requirements of Section 10 of the Ordinance.

11. The determination of default under Section 10 of the Ordinance is not a matter of conjecture but requires strict adherence to statutory conditions, including accrual of rent, lawful tender within prescribed time, refusal by the landlord (if asserted), and compliance with the statutory mechanism of deposit of rent in Court. Such determination necessarily requires independent appraisal of evidence on record.

12. The doctrine of judicial notice is confined to matters of common knowledge or facts capable of indisputable verification. It cannot be invoked as a substitute for adjudication of disputed questions of fact requiring appreciation of evidence. The reliance placed by the learned appellate Court upon “judicial notice” for determining the question of default, therefore, constitutes misapplication of law.

13. Reversal of a categorical finding recorded by the learned Rent Controller on the issue of default necessitated a reasoned determination based on proper reappraisal of evidence in the light of statutory requirements. The impugned judgment does not reflect such exercise, and thus suffers from material irregularity in exercise of jurisdiction, as well as misreading and non-reading of material evidence.

14. It is clarified that this Court is not entering into reappraisal of evidence nor expressing any opinion on the merits of the controversy. The interference is confined strictly to correction of defective exercise of

jurisdiction. Consequently, the impugned judgment dated 03.02.2024 passed by the learned VII-Additional District Judge, Karachi South, in F.R.A. No.311 of 2023, to the extent whereby eviction of the petitioner has been ordered on the ground of default and alleged violation of Section 10 of the Sindh Rented Premises Ordinance, 1979, is hereby set aside. **The matter is remanded to the learned appellate Court for fresh decision of the appeal strictly in accordance with law, limited to the issue of default and alleged violation of Section 10 of the Sindh Rented Premises Ordinance, 1979, as discussed herein.** The learned appellate Court shall independently reappraise the evidence on record and apply the statutory requirements of Section 10 of the Ordinance, and thereafter assign clear, cogent and reasoned findings. It is clarified that the reconsideration shall remain confined to the aforesaid issue and the learned appellate Court shall not reopen findings which have otherwise attained finality between the parties. The learned appellate Court shall decide the matter expeditiously, preferably within a period of two months from the date of receipt of this order, uninfluenced by any observation made herein.

15. The constitutional petition stands disposed of in the above terms along with all pending applications. Needless to observe that the scope of this order is confined strictly to the extent indicated herein, and nothing contained in this judgment shall be construed as an expression on the merits of any other issue involved in the appeal.

JUDGE