

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IInd Appeal No.224 of 2022

Date	Order with Signature of Judge
	<i>S. M. Shahnavaz Akhter.....Appellant</i>
	<i>Versus</i>
	<i>Jahanzeb KhanRespondent</i>
Date of hearing	:13.05.2025
Date of Judgment	:13.05.2025

Appellant in person.
Mr. Zulfiqar Ali Khan, advocate for the Respondent
No.1.

J U D G E M E N T

1. Instant 2nd Appeal has been preferred against the Impugned judgment and decree dated 07.11.2022 passed in Civil Appeal No.82/2022 by the II-Additional District Judge, Karachi East. The said civil appeal emanated from the judgment and decree dated 31.03.2022 passed in Suit No.659/2015 by the III-Senior Civil Judge, Karachi East. Brief facts of the case are encapsulated in the paragraphs hereinunder. The above-noted Civil Suit No.659/2015 was filed by the Respondent with the following prayers: -

- a. Money decree against the defendant on account of rental dues amounting to Rs.18,21,582/- (Rupees Eighteen lacs, twenty-one thousand, five hundred & eight two only), on account of defaulted utility bills, cost of repairs of damages to premises, etc., as fully explained in para 9 of the body of plaint.
- b. Money decree against the defendant in the sum of Rs.20,00,000/- (Rupees twenty-lacs only), on account of damages under the law of torts, as fully explained in para 10 of the body of plaint.
- c. Such other relief(s) which this Honourable Court may deem fit and proper be granted.
- d. Costs of the suit.

Thereafter, through written statement, the Appellant filed a set-off with the following prayers: -

1.	7 (Seven) Cheques Rs.8890/-	621,398/-
2.	Renovated and maintenance	300,000/-
3.	Deposit	25,000/-
4.	Damages due to wrong bounced Cheques	<u>3,500,000/-</u>
		<u>4,446,398/-</u>

2. The learned Trial Court passed judgment and decree dated 31.03.2022 in the suit preferred by the Respondent, as noted above, for a sum of Rs.1,676,492/-. The learned Trial court in light of the set-off claimed by the Appellant deducted Rs.325,000/- from the above-noted amount and the final decree was issued for the sum of Rs.1,351,492/-. Being aggrieved by the order of the learned trial Court, the Appellant herein preferred a Civil Appeal No.82/2022, which modified the judgment and decree of the learned trial Court and the suit of the Respondent was decreed for a sum of Rs.1,151,492/-. Instant IInd Appeal has been filed against concurrent findings of the Courts below.

3. The Appellant, who is appearing in person has invited my attention to both the judgments of the Courts below and said that the same are the result of misreading and non-reading of evidence. He has further argued that the learned trial Court and the Appellate Court were “biased” and he was not heard “properly” by the courts below. He has further argued that it is his “vested right” to file several interlocutory applications. He has further argued that the Courts below have failed to appreciate the difference between a set-off and counter claim and no proper adjudication in that respect has been made by the learned Trial Court as well as first Appellate Court. He has lastly argued that no amount is payable to the present Respondent and infact it is the present Respondent, who owes him significant sums of money to the Appellant, as he vacated the subject property in the year 2012 and is not responsible for the damage to the same.

4. Learned counsel for the Respondent has conversely stated that instant appeal has been filed against the concurrent findings of the Courts below and no interference is required under Section 100 CPC, as the scope of the above noted section is limited. He has further invited my attention to the cross examination conducted by the Appellant of the Respondent and stated that no pertinent question was asked of the Respondent and therefore, the plea which was taken by the said Respondent in the plaint as well as in the Affidavit-in-Evidence stood unrebutted, hence admitted. He has lastly stated that the instant IInd Appeal is only another vile attempt to linger on the said matter and the conduct of the Appellant, which is reflected from the orders of the Courts below, will only exhibit that the Appellant was trying to delay the matter on one pretext or the other by filing several Misc. interlocutory applications, most of which were dismissed by the Courts below.

5. I have heard the Appellant and the learned counsel for the Respondent and perused the record. I have specifically perused the cross examination of the Respondent, which was conducted by the Appellant before the trial Court. It is apparent that no question regarding the specific and detailed claim of the Respondent was put to the said Respondent during the said cross examination. The details of the bills paid by the said Respondent, are clearly enumerated in the plaint as well as in the Affidavit-in-Evidence, however, no question regarding the same was posed by the Appellant. Further the Appellant has conceded to the proposition that he was a tenant of the Respondent in question, however, there is only a dispute regarding the date on which he vacated the tenement in question. When the question regarding the above-noted anomaly was put to the Appellant, he responded in the following words: -

“It is correct to suggest that I have left any written proof of vacating the demised premises in the year 2012. Vol. says that I have orally informed the plaintiff.”

6. It is apparent that the failure of the Appellant to efficiently and adequately cross examine the Respondent is fatal to his claim. I have examined both the

judgments of the Courts below and the same require no interference whatsoever by this Court. The scope of Section 100 CPC has been expounded in the judgment of **Faqir Syed Anwaruddin versus Syed Raza Haider and others**¹

wherein it was held as under: -

“It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

7. In view of what has been held above, the Appellant has failed to point out any misreading and non-reading of evidence, which would require interference of this Court under Section 100 CPC. Consequently, instant IInd Appeal stands dismissed with no orders as to costs along with all pending applications.

Judge

Nadeem

¹ P L D 2025 Supreme Court 31