

Judgment Sheet

IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-440 of 2021

[Taufiq Merchant vs. Swami Narayan Temple Estate Trust]

Petitioner Through Syed Abid Hussain Shirazi, Advocate
Respondent No.1 Mr. Ghulam Mustafa Shaikh, Advocate
Respondent No.2 Mr. Ahmed Khan Khaskheli, AAG Sindh.
Date of Hg.& Order **23.09.2025.**

ARSHAD HUSSAIN KHAN, J.- Through the present Constitutional Petition, the petitioner-Taufiq Merchant has challenged the judgment dated **30.04.2021** [*the impugned judgment*], passed by the learned Xth Additional District Judge, Karachi-[South] in First Rent Appeal No.33/2021, which was allowed by setting aside the dismissal order dated **22.01.2021**, passed by the learned Rent Controller in Rent Case No.583 of 2019, filed by respondent No.1-Swami Narayan Temple Estate Trust.

2. Concisely, Respondent No.1 – Swami Narayan Temple Estate Trust filed the aforesaid rent case against the petitioner, inter alia, on the ground of default, with the following prayers:

“It is, therefore, respectfully prayed on behalf of the above named applicant that this Honorable Court would be pleased to pass an ejectment order against the opponent directing them to vacate the said premises, without further delay and to put the applicant in peaceful physical possession the property bearing Godown/premises No: 170, Sawami Narayan Temple Trust Karachi thereon on the ground of violation of rent agreement, contrary to agreement usage of premises, damage to property, nuisance and default, from October 2016 to March 2019, which is Pak Rs. 456,300/- (Pak Rupees Four Lacs Fifty six Thousand Three Hundred Only).

To pass any further order which this Honorable Court may deem fit and proper under the circumstances of the case”.

Before the learned trial court, the opponent/petitioner-Taufiq Merchant, filed his written statement wherein he denied the allegations levelled by the applicant and contested the matter. Both the parties thereafter led their respective evidence, and upon conclusion of the proceedings, the learned trial court, vide judgment dated **22.01.2021**, dismissed the rent case. The said judgment was assailed by Respondent No.1–Swami Narayan Temple Estate Trust,

through First Rent Appeal No.33 of 2021 before the learned Xth Additional District Judge, Karachi-[South]. The appeal was allowed through judgment dated **30.04.2021**, whereby the judgment of the trial court was set aside and the petitioner was directed to vacate the rented premises and handover the vacant and peaceful possession to the respondent/landlord within a period of one month. The said judgment is impugned by the petitioner in the present constitutional petition.

3. Learned counsel for the petitioner has contended that the impugned judgment is bad both in law and on facts, and therefore suffers from serious legal infirmities. It is submitted that the appellate court has failed to properly consider the legal and factual pleas raised by the petitioner, rendering the judgment unsustainable. Learned counsel further argues that respondent No.1 has miserably failed to discharge the burden of proof before the learned trial court. The appellate court, however, has passed its judgment without appreciating the material evidence on the record and has instead based its findings on conjectures and surmises. It is contended that the appellate court erred in its observations regarding the tendering of rent for the period from October 2016 to March 2019 and failed to take into account the fact that the petitioner has been regularly paying rent through MRC since October 2016. It is also submitted that the learned appellate court did not properly consider the cross-examination of respondent No.1, wherein he admitted that he had not produced any valid power of attorney and that the resolution marked as Exhibit A-2 neither bears the seal nor the stamp of the Trust. Moreover, respondent No.1 himself admitted that he is not the rent collector and that, as per past practice, the tenant used to deposit rent on a quarterly basis for the months due. Lastly, it is prayed that the impugned judgment be set aside, its operation be suspended, and the order passed by the learned VII Rent Controller, Karachi (South) in Rent Case No. 583/2019 be maintained.

4. On the other hand, learned counsel for respondent No.1 argues that the petitioner has no locus standi to maintain the instant petition. He contends that the petitioner has violated the terms and conditions of the tenancy agreement by storing hazardous and inflammable materials, including plastic and chemicals, which had previously

caused a fire on the premises. According to the learned counsel, the trial court failed to consider the relevant facts and circumstances emerging from the pleadings, arguments, and evidence of both parties in their proper perspective. He maintains that the Rent Controller ignored material evidence that demonstrated continuous violations of the tenancy agreement by the petitioner over a considerable period. It is further argued that the learned Rent Controller misread the evidence on record and distorted the factual narrative in favour of the petitioner. Moreover, the counsel points out that the Rent Controller did not exercise a judicious mind in dismissing the rent case initiated by respondent No.1. Lastly, learned counsel seeks dismissal of the present petition on the ground that the appellate court has already considered every aspect of the matter in detail and rightly passed the impugned judgment, which calls for no interference by this Court in the exercise of its constitutional jurisdiction.

5. Heard learned counsel for the parties, perused the record and the relevant law.

From perusal of the record and submissions of the learned counsel for the parties, it is evident that the core controversy between the parties revolves around the alleged **default in payment of rent and violation of tenancy terms** by the petitioner, which led to the ejectment proceedings initiated by Respondent No.1. The petitioner denies the allegations, claiming regular payment of rent and procedural flaws in the appellate judgment.

6. The contentions raised by learned counsel for the petitioner carry weight and appear to be supported by the material available on the record. The petitioner has demonstrated consistent efforts to tender rent and has produced documentary evidence reflecting such payments. The appellate court, however, appears to have overlooked these material aspects and proceeded to base its findings on assumptions rather than a thorough appreciation of the record. The admissions made by Respondent No.1 during cross-examination particularly the absence of a power of attorney, the unsealed resolution, and the acknowledgment of quarterly rent deposits further dilute the strength of the respondent's case. In this backdrop, the

arguments raised on behalf of the petitioner merit serious consideration.

7. On the other hand, the arguments advanced by learned counsel for Respondent No.1 do not appear to be well-founded. While much emphasis was placed on the alleged storage of hazardous materials and violation of tenancy terms, there is little on the record to substantiate these claims through credible or conclusive evidence. The reliance on the fire incident, without sufficient linkage to the petitioner's alleged conduct or corroborative material proving deliberate misuse of the premises, renders the allegations speculative at best. Furthermore, the assertions regarding misreading of evidence by the Rent Controller are general in nature and fail to identify any specific misapplication of law or material irregularity.

8. From a careful perusal of the record, it appears that the learned appellate court, while allowing the appeal, recorded its findings primarily on the grounds of alleged willful default in payment of rent and violation of the tenancy agreement. However, the conclusions drawn appear to rest on a superficial appreciation of the evidence. The court failed to adequately consider the mode and timing of rent payments, including the tendering of rent via money orders and the filing of MRC, which reflect the petitioner's bona fide intention to comply with the statutory obligations under the Sindh Rented Premises Ordinance, 1979. Furthermore, the appellate court's reliance on the fire incident as evidence of nuisance and violation of the tenancy agreement is also misplaced. The findings seem to be based on assumptions and selective reading of the record, without properly appreciating the petitioner's version or the deficiencies in the respondent's evidence, such as the absence of power of attorney and lack of clarity regarding possession and control of the premises.

9. A careful appraisal of the judgment passed by the learned Rent Controller reveals a reasoned and legally sound approach in evaluating the evidentiary and factual matrix of the case. The trial court correctly framed the core issues and analyzed the evidence placed on record by both parties. As regards the alleged default in payment of rent, the learned Rent Controller rightly held that the burden to prove default rested with the applicant/landlord. The

opponent/tenant produced substantial evidence to rebut this claim, including returned cheques, money orders, postal correspondences, and consistent rent deposits in MRC No. 1346/2016. Notably, during cross-examination, the applicant's representative admitted that rent was previously paid quarterly and acknowledged ongoing deposits in the MRC. These admissions, coupled with the absence of effective rebuttal, effectively negate the allegation of willful default.

Regarding the allegation of breach of tenancy conditions due to the fire incident, the trial court gave cogent reasons for rejecting the same. The evidence connecting the fire to any hazardous materials stored by the petitioner was tenuous and largely speculative. There were no credible complaints from neighboring tenants, nor any photographic or documentary proof of alleged damage. Furthermore, it was admitted that the fire was officially declared accidental. In these circumstances, the trial court rightly found that the burden of proof had not been discharged by the applicant. Thus, the Rent Controller's conclusions on both counts appear to be based on correct appreciation of the evidence and established legal principles.

10. In view of the foregoing analysis, it is a settled principle under the Sindh Rented Premises Ordinance, 1979, that the burden to establish willful default lies upon the landlord. Where a tenant deposits rent through recognized channels such as money receipt challans or money orders, and the landlord refuses to accept the rent, the tenant cannot be held guilty of willful default. Mere non-payment or delayed payment does not amount to default where the tenant demonstrates bona fide intent and makes consistent efforts to tender rent. The record reflects that the petitioner regularly deposited rent through money orders and in MRC proceedings recognized legal modes in situations where the landlord refuses to accept rent. It is observed that the question as to whether a tenant is guilty of a willful default depends on the facts of each case. If a landlord, by fraud or other sharp practice, creates a default, the Rent Controller may rightly find no willful default on the tenant's part warranting eviction. Reliance in this regard may be placed on *M/s. Pragma Leather Industries v. Mrs. Sadia Sajjad* [PLD 1996 SC 724]. Likewise, allegations of breach of tenancy or nuisance must be proved through

cogent and credible evidence, which is evidently lacking in this case. The respondent's failure to discharge this burden renders the appellate court's findings legally unsustainable.

11. While it is a settled proposition that the findings of an appellate court ordinarily command greater weight, such deference is unwarranted where those findings are contrary to the evidence on record or based on misreading of material facts. In the present case, the appellate court overlooked key documentary evidence and admissions made by respondent No.1, and failed to appreciate the petitioner's documented efforts to comply with his statutory obligations. Its conclusions regarding willful default and breach of tenancy, therefore, lack legal foundation and cannot be upheld.

12. In view of the foregoing discussion, the impugned judgment dated **30.04.2021**, passed by the appellate court in First Rent Appeal No. 33/2021, being contrary to the evidence on record and settled principles of law, is not sustainable. Accordingly, the instant constitutional petition is allowed, the impugned judgment is set aside, and the order dated **22.01.2021**, passed by the learned Rent Controller in Rent Case No. 583 of 2019 **is maintained**.

The above are the reasons of my short order passed on **23.09.2025**.

JUDGE

Jamil