

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

**Constitutional Petition No.S-1396 of 2018**

**Petitioner** : Syed Mujeeb Alam Son of Syed Abdul Hameed Shah through M/s Farhad Ali Abro & Suleman Unar Advocates

**Respondents No.1 to 3** : Abdul Ghaffar Son of Muhammad Umar & others through Mr. Anwar Baig Mughal Advocate

**Respondents No.4 & 5** : V-Additional District Judge, Hyderabad & another through Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

Date of hearing: 01.3.2019

Date of decision: 01.3.2019

**JUDGMENT**

**ADNAN-UL-KARIM MEMON,J:-** Through the captioned Constitution petition, Petitioner has impugned the judgment dated 30.11.2016, passed by the Court of learned V-Senior Civil Judge/Rent Controller, Hyderabad in Rent Application No.63 of 2014, whereby rent case filed by Respondents No.1 to 3 was allowed and the judgment dated 13.4.2018 passed by learned V-Additional District Judge, Hyderabad, whereby First Rent Appeal No.99 of 2016, filed by the Petitioner was dismissed.

2. Precise facts of the case are that on 7.5.2014, Respondents No.1 to 3 filed ejectment application under section 15 of Sindh Rented Premises Ordinance, 1979 against the Petitioner praying therein that they are joint-owners of the property bearing No.C.S.No.F/1165/1, admeasuring 334.5 Square Yards, Ward-F Doaba Police Line, Gari Khata Qazi Abdul Qayoom Road, Hyderabad, whereby they constructed a building having shops on ground floor; that the private Respondents let out the subject shop No.12 to the Petitioner at monthly rent of Rs.2500/- per month against the security deposit of Rs.10,000/- vide Rent Agreement dated 07.4.2012; that due to constant default in payment of rent, the private Respondents filed Ejectment Application No.63 of 2014, before the learned V-Senior Civil Judge/Rent Controller, Hyderabad, which was contested by the Petitioner by filing

written reply and adducing evidence. Learned Rent Controller framed the points for determination and after evaluating the evidence adduced by the parties and considering their point of view, allowed Rent Application vide judgment dated 30.11.2016. Petitioner being aggrieved by and dis-satisfied with the aforesaid order, preferred First Rent Appeal No. 99 of 2016, which was dismissed by learned V-Additional District Judge, Hyderabad vide judgment dated 13.4.2018 and directed the Petitioner to handover the vacant peaceful possession of demised shop to the private Respondents within 60 days. Petitioner being aggrieved by and dissatisfied with the aforesaid orders have filed the instant petition on 28.7.2018.

4. Mr. Farhad Ali Abro learned Counsel for the Petitioner contended that the private Respondents have malafidely filed the ejectment proceedings against the Petitioner in order to blackmail him to withdraw from the suit for recovery of his professional fee, amounting to Rs.2,40,000/-; that the learned Rent controller had no jurisdiction to entertain the Rent application of the private Respondents; that the impugned Judgment dated 30.11.2016 passed by the learned Rent Controller and Judgment dated 13.4.2018 passed by the learned Appellate Court are full of errors based on misreading and non-reading of evidence; that the findings of learned courts below are arbitrary and perverse; that that the averments of the Petitioner made in the affidavits in evidence were not considered in the impugned Judgments, therefore both the judgments are nullity in the eyes of law; that the both the learned courts below have failed to appreciate the material aspects of the matter came in favor of the petitioner; that that the learned Presiding Officer of Rent Controller as well as Appellate Court have failed to appreciate that the petitioner has not committed default in payment of Rent and Private Respondents failed to prove their case on each and every aspect, therefore the impugned Judgments are illegal and against the basic sprit of law, thus are liable to be set-aside; that the learned Appellate court failed to consider the grounds of Appeals agitated by the Petitioner; therefore, both the Judgments cannot be sustained on this score alone, and are thus liable to be set aside; that the Attorney of Respondents No.1 to 3 admitted in paragraphs 4 to 7 of Rent Application regarding the factum that the Petitioner is depositing Rent in M.R C No.13/2014; that there is no default in rent on the part of the petitioner; that the Petitioner filed F.C. Suit No.879/2014 against the private Respondents' brother namely Muhammad Yousuf and on filing of the above suit, they became annoyed and filed above ejectment proceedings against the petitioner; that the learned trial

Court has given its wrong findings that nothing was available on record to show that landlord ever refused to accept the rent, though the rent was sent through money order, but the same was returned by making on the rent receipt that no clear name of recipient was mentioned; that the impugned judgments passed by the learned trial Courts below are against the principle of natural justice; that the learned Appellate Court has not properly appreciated the evidence brought on record in favor of the petitioner; that facts of the case and relevant law have not been appreciated in its true perspective. The learned courts below have failed to consider the contents of written statement filed in Rent application as well as contents of FRA; therefore, concurrent findings passed by both the Courts below are liable to be set-aside and ejection Application is liable to be dismissed; that the petitioner has been condemned unheard on the basic issues involved in the matter. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

5. Mr. Anwar Baig Mughal learned Counsel for private Respondents supported the impugned judgments passed by both the learned Courts below. He next contended that the Petitioner has defaulted in payment of rent. He next contended that Petitioner has not come to this Court with clean hands; therefore he is not entitled to any relief; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that both the aforesaid Judgments are passed within the parameters of law; that instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties. He next added that merely depositing rent in court without tendering same to the private Respondents is no compliance under the Rent Agreement and law. He next added that once default is committed, it cannot be condoned. He next argued that there is nothing on record to show that there is malafide on the part of Respondents. In support reliance is placed upon the case of Syed Imran Ahmed vs. Bilal and others (PLD 2009 SC 546). Finally, he prayed for dismissal of the instant Petition.

6. During the course of arguments the parties informed that the Respondent No.3 has passed away during the pendency of the proceedings and in this regard an application has been filed for bringing her legal heirs on record. Application is allowed accordingly. Since the matter has been heard on merit, therefore the office

is directed to array the legal heirs as Respondent No.3. Mr. Anwar Baig Mughal Advocate has already filed power on behalf of the legal heirs of Respondent No.3.

7. I have heard the learned counsel for the parties and with their assistance carefully gone through the material placed by them and case law cited at the bar.

8. The primordial question in the present proceedings is whether the petitioner has committed default in payment of monthly rent of the subject rented premises?

9. In order to evaluate the above legal proposition the learned Rent controller, framed the following issues in the Rent Application of the private Respondents and gave its findings in their favor.

- i) Whether the rent ejection application is not maintainable?
- (ii) Whether rent agreement dated 07.4.2012 was executed between the parties at the rate of rent of Rs.2500/- per month?
- (iii) Whether their exist relationship between the applicants and opponent as being landlord and tenant?
- (iv) Whether the opponent has committed default in payment of monthly rent respecting demised shop?

10. To appreciate the controversy in its proper prospective, I deem it appropriate to have a glance on the evidences brought on record by the parties. At the first instance, the relevant portion of the findings of learned Rent Controller, in the rent Application is as under:-

“ The burden to prove this point lies upon the applicants as they claimed that opponent is willful defaulter in payment of monthly rent respecting demised shop. The opponent denied the same. It is his claim that he was regularly paying the rent without any rent receipt. It has been further submitted that opponent has paid rent up to December, 2013 duly received by the applicants but when he offered rent for the month of January, 2014 they refused to receive the same and demanded vacant possession without any reason. The opponent claims to have tendered the rent through money order on the same day, which they also refused to received; therefore, he started depositing the rent by filing miscellaneous rent application U/S 10 (3) of SRPO, 1979 bearing No.13 of 2014 before the court of IIIrd Senior Civil Judge/Rent Controller Hyderabad. On the other hand, it has been claimed by the applicants in their rent application that the opponent has not paid rent since December, 2012 and malafidely filed application for depositing the rent of Rs.1400/- per month, U/S 10 (3) of Sindh Rented Premises Ordinance, 1979; hence willful defaulter since December, 2012. Following evidence of

attorney of the applicants would be relevant for the purpose of further discussion on this point.

“It is correct that we have recorded in the rent application, so also in my affidavit in evidence that opponent has defaulted in payment of rent since December, 2012, meaning thereby the opponent duly paid rent up to November, 2012. It is correct that when the opponent defaulted in payment of rent since December, 2012, therefore, no question of giving him receipts for subsequent months thereto would arise. It is incorrect to suggest that I have not produced any rent receipt alongwith my affidavit in evidence (Ex.14). Note:- (On being confronted with such document Ex.14, he admits that there is no any rent receipt produced therewith). It is incorrect to suggest that Photostat copies of rent receipts filed alongwith rent application are false and forged. It is correct that I have not produced original receipts thereof in my evidence. It is correct that I have also not produced any legal notice sent by us. It is incorrect to suggest that we remained receiving rent from opponent till December, 2013. It is incorrect to suggest that we refused to receive the rent for the month of January, 2014 from opponent. I had not received any money order sent by opponent in the month of January, 2014; as such no question of its refusal or acceptance arises. It is incorrect to suggest that opponent filed application U/S 10 (3) of SRPO, 1979, thereafter started depositing the rent in Court till date.”

The claim of applicant side that the rent was only paid up to December, 2012 is however, belied by the suggestion offered by the opponent side, so denied by attorney of applicants reproduced and highlighted as above. At-least, the applicant, by such denial, have bound themselves to the repercussion thereof and could be used against them. The receipts attached with the rent application shows that rent has been paid even up to 12.11.2013, though the opponent claims same to be forged for the reason that rate of rent shown therein is higher than that of one claimed by the opponent. Being available on record, the receipts could be taken into consideration as under rent laws, application of provisions of Qanun-e-Shahadat, Order, 1984 are not strictly applicable. Thus, the cumulative effect of these receipts seen in the light of above evidence, it would appear that rent was paid up to the month of November, 2013 and thereafter it was sent through money order per postal receipts produced by the opponent as Exs:24/C & 24/D. The reliance in this regard has been placed upon by advocate for the opponent on the case laws reported as PLD 1993 Karachi 462 (Re-State Life Insurance Corporation of Pakistan, Karachi versus M/s. Siddique Tailors through its Sole Proprietor, Karachi) and 1995 MLD 408 Karachi (Re-Azizur Rehman and others through legal heirs versus Rana Abdul Khaliq). Perusal of such case laws shows that Honourable High Court has held that postal money order if produced would be accepted in proof of the payment of rent. It has also been held that if the money order

was sent to a wrong address, then it is the obligation of sender to prove his bonafide by summoning appropriate evidence. In present case also, the postal receipts produced as Ex.24/B clearly bear the note of postmen that the address of the recipients was ambiguous; as such returned. It does not bear any note of refusal or avoidance on the part of applicant side. In accordance with the ratio laid down in the case laws relied upon by advocate for the opponent himself, it was incumbent upon him to have summoned the appropriate evidence. The opponent/tenant has not produced any document of refusal or avoidance himself and even failed to examine the postman. It was held in 2006 SCMR 1872 (Muhammad Asif Khan v. Shaikh Iqrar) as under:-

“There is nothing on record to show that the appellant / landlord even refused to accept rent by tender so as to entitle or give any justification to the respondent/tenant to send monthly rent through money order or thereafter to change even said mode into deposit of rent in the office of rent Controller. The deposit of rent in the office of Rent Controller in absence of having proved refusal on the part of the appellant/landlord would not authorize the respondent/tenant for the deposit of rent in the office of Rent Controller in terms of subsection (3) of Section 10 of Sindh Rented Premises Ordinance, 1979. Consequently, such deposit cannot be considered to be a valid tender in the eyes of law.”

Consequently, the opponent/tenant has failed to discharge such a burden and merely but depositing the rent in court, he cannot escape the legal consequence of default committed by him. This point is; therefore, replied in affirmative.

Point No.5/-

In the light of above discussion on point No.4, the rent ejectment application is allowed, thereby the opponent is directed to vacate the demised shop within sixty days by putting the applicants in possession thereof from the passing of this order.”

11. The learned Rent Controller after recording the evidence of the parties and hearing gave decision against the Petitioner on the aforesaid issue of willful default in payment of rent by the Petitioner. The learned Appellate court concurred with the decision of the Learned Rent Controller on the same premise. The impugned Judgments passed by both the learned courts below explicitly show that the matter between the parties has been decided on merits based on the evidences produced before them. The relevant portion of findings of learned Appellate Court in First Rent Appeal is as under:-

“ I have reappraised the evidence and perused the material available on record, am of the view that findings of the learned trial court on all above contentious issues are correct and in accordance with law, hence this point of determination is hereby decided in “Negative”.

Point No.2.

On the basis of my findings on the Point No.1, the `impugned judgment` dated 30.11.2016 of the trial Court has been maintained, and instant rent appeal is hereby dismissed with no order as to costs. However, appellant being old tenant has been granted further 90 days time to vacate and to hand over vacant possession of the demised premises to the Respondents under intimation to the learned trial Court.

R&Ps of trial Court be returned back with copy of this judgment for information and compliance.”

12. Record reflects that their existed relationship between the petitioner and Respondent No.1 to 3 as being landlord and tenant. In view of the forgoing, I am of the considered view that the learned Rent controller had the jurisdiction to entertain the Rent application of the private Respondents under Sindh Rented Premises Ordinance, 1979.

13. Reverting to the claim of the learned counsel for the Petitioner that he has been condemned unheard by the learned Rent controller and learned Appellate court on the issues involved in the matter, Record clearly reflects that the learned Rent controller dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidences of the parties, therefore I do not agree with the assertion of the learned counsel that the petitioner was unheard on the issues. Concurrent findings arrived by the courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out. I am of the view that the learned Appellate court has also considered every aspect of the case and thereafter passed an explanatory Judgment.

14. I have also noted that in the present case, there is no material placed before me by which I can conclude that Impugned Orders have been erroneously issued by both the courts below, therefore no ground existed for re-evaluation of the evidences, thus, I maintain that the impugned Judgments dated 30.11.2016 passed by the learned Rent Controller and Judgment dated 13.4.2018 passed by the learned Appellate court. I am fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Dilshad Khan Lodhi vs. Allied Bank of Pakistan and others (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur, District Abotabad vs. Muhammad Aslam and others (1992 SCMR 2169).

15. Returning on the point of default in payment of rent the private Respondents claim that Petitioner has not paid rent with effect from December 2012 till date. On the other hand Petitioner is claiming that he has paid the rent up to December 2012 and then the private respondents refused to receive the rent, he sent money order which was returned and since 2014 he is depositing rent in MRC No 13 of 2014. In support of his contention he relied upon the documents attached with the memo of petition. In such a situation when the Petitioner is denying the assertion of the private respondents, this evasive denial has been discarded by both the courts below, which prima-facie show that he has not paid the rent as per terms of Rent Agreement, therefore the learned trial Court has rightly observed that the petitioner has committed willful default in payment of rent since its inception. In such circumstances, I am of the considered view that sole testimony of landlord is sufficient to establish such default in payment of Rent if the landlord's statement on oath is consistent with the averments made in the Ejectment Application. I have noted that the said testimony of the landlord when not rebutted in cross examination then the burden on the part of landlord stands discharged. Secondly, Petitioner failed to prove his case before the learned trial court and Appellate court on the above mentioned points of determination framed by the learned Rent Controller. The Honorable Supreme Court has already enunciated the principle on the aforesaid point in the case of Pakistan Institute of International Affairs vs. Naveed Merchant and others (2012 SCMR 1498). This court has also followed the same principles laid down by the Honorable Supreme Court with respect to the issues of landlord and tenet in the case of Nisar Ahmed Shaikh vs. VIIth Additional District And Sessions Judge District South and others (2017 MLD 605) Thirdly, the grounds taken by the learned counsel for Petitioner are dilated upon by the both the courts below.

16. I am of the view that in rent matter Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the Trial or Appellate Court has flouted the statute or fail to follow the law relating thereto? In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the orders passed by both the learned Trial Court as well as Appellate Court. Besides, I do not see misreading or non-reading of evidence which could warrant interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with all pending application(s).



17. The Petitioner is directed to vacate the premises in question and handover its vacant and peaceful possession to the Respondents No.1 and 2 within thirty days from the date of this Order. In case of failure, the Petitioner shall be evicted from the subject premises without notice.

The above are the reasons of my short order dated 1.3.2019 whereby the above constitutional petition was dismissed.

JUDGE