

# IN THE HIGH COURT OF SINDH AT KARACHI

## Constitution Petition Nos.S-1287 to 1306 of 2011

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

**Before: Mr. Justice Nazar Akbar**

Petitioner in all petitions : Nisar Khan (since deceased)  
through L.Rs., through  
M/s. Muhammad Ali Waris Lari  
and S.M. Haider Advocates.

### **Versus**

Respondent No.1 in all petitions : Naseer Khan, through  
M/s. Sabir Shah and  
Muhammad Tamaz Khan,  
Advocates.

#### **Respondents No.2 in all petitions**

1.	(C.P No.S-1287/2011)	:	Babar
2.	(C.P No.S-1288/2011)	:	Moulana Saddaruddin
3.	(C.P No.S-1289/2011)	:	Atta Muhammad
4.	(C.P No.S-1290/2011)	:	Ghulam Murtaza
5.	(C.P No.S-1291/2011)	:	Ghulam Mohammad
6.	(C.P No.S-1292/2011)	:	Shoukat
7.	(C.P No.S-1293/2011)	:	Irfan
8.	(C.P No.S-1294/2011)	:	Manzoor Alam
9.	(C.P No.S-1295/2011)	:	Mushtaq Ahmed
10.	(C.P No.S-1296/2011)	:	Abdul Hakeem
11.	(C.P No.S-1297/2011)	:	Azeem-ur-Rehman
12.	(C.P No.S-1298/2011)	:	Faraj
13.	(C.P No.S-1299/2011)	:	Muhammad Naseem
14.	(C.P No.S-1300/2011)	:	Zeeshan
15.	(C.P No.S-1301/2011)	:	Farhat
16.	(C.P No.S-1302/2011)	:	Shaikh Parvaiz Malik
17.	(C.P No.S-1303/2011)	:	Muhammad Israil
18.	(C.P No.S-1304/2011)	:	Usman
19.	(C.P No.S-1305/2011)	:	Zia-ulHaq
20.	(C.P No.S-1306/2011)	:	Kamal.

Respondent No.3 in all petitions : IVth Additional Session  
Judge, Karachi West.

Respondent No.4 in all petitions : IInd Rent Controller,  
Karachi West

Date of hearing : **06.02.2020**

Date of Decision : **16.03.2020**

### **JUDGMENT**

**NAZAR AKBAR, J.** By this common judgment I intend to  
dispose of above twenty (20) Constitution Petitions, since common  
questions of facts and law are involved in all the petitions.

2. The petitioner Nisar Khan through these constitution petitions has challenged the identical orders dated **31.10.2011** passed by the IV-Additional District Judge, West Karachi, whereby, FRAs Nos.13/2011 to 32/2011 filed by the Petitioner and Respondents No.2/tenant were allowed and Rent Cases Nos.75/2009 to 80/2009 , 83/2009 to 89/2009 and 91/2009 to 97/2009 filed by Respondent No.1 were remanded to the trial Court with the following mandatory direction to be fulfilled by the petitioners:-

*Since appellants are challenging the title of landlord of the appellant, therefore, to meet the end of justice as well as to ascertain the bonafide of the appellants. The parties are directed to produce the evidence on the preliminary issues whether the relationship of landlord and tenant exists between the parties subject to deposit of arrears of rent in ejectment application with the Nazir of District West Karachi by the Appellants amounting to Rs.38,400/- till 30.11.2011 together with future monthly rent on or before 10<sup>th</sup> of each English calendar month.*

3. Briefly stated the facts of the case are that Respondent No.1/ landlord filed separate ejectment applications under **Section 15** of the Sindh Rented Premises Ordinance, 1979 (SRPO 1979) against Respondents No.2/tenants who has paid rent to Respondent No.1/landlord of a shop in their respective possession in the market called Al-Khalil Market on Commercial Plot bearing No.585-A, 586 and 586-A, (Sheet No.1), Sector 11, Baba Willayat Ali Shah Colony, Orangi Town, Karachi. Respondents No.2 in all petitions are the tenants in different Shops of the said market (the demised shops) and they were paying rent at the rate Rs.800/- per month to Respondent No.1/landlord till **April 2007**. However, from May, 2007 monthly rent was not paid by the tenants to Respondent No.1 and when he personally came to collect the rent, he was informed that his brother/the Petitioner has received the same from the tenants. Therefore, on **08.05.2008** Respondent No.1/landlord sent a legal

notice to all the Respondents No.2/ tenants for recovery of rent under intimation to the Petitioner. The Petitioner immediately filed a civil suit seeking declaration of ownership in the Court of IVth Senior Civil Judge, West Karachi. Respondent No.1/ landlord had severally requested Respondents No.2/tenants to vacate the demised shops but they failed to do so, therefore, Respondent No.1/landlord filed ejectment applications against Respondent No.2/tenants.

4. Notices/summons of ejectment applications were sent to Respondent No.2/tenants through all modes but they failed to appear before the trial Court. On **13.10.2009**, the Petitioner filed applications under **Order 1 Rule 10 CPC** for impleading him as party in all the rent cases, the said applications were allowed by order dated **15.04.2010** and he was impleaded as Respondent, but he, too, failed to file his written statement. Therefore, the Petitioner and Respondents No.2/tenants were debarred from filing written statement by order dated **08.05.2010** and matters were proceeded exparte against them. Then Petitioner filed an application under **Order IX Rule 7 CPC** for recalling the order dated **08.05.2010**, but the same was dismissed after hearing both the parties.

5. The Rent Controller after hearing learned counsel for Respondent No.1/landlord, by exparte orders dated **31.03.2011** allowed Rent Applications filed by Respondent No.1 and directed Respondent No.2/tenants to vacate the demised shops in their respective possessions within thirty (30) days and hand over the same to Respondent No.1/applicant in peaceful manner. The Petitioner and Respondent No.2/tenant have jointly filed **FRAs Nos.13/2011 to 32/2011** against the said exparte orders before the appellate Court which were allowed by order dated **31.10.2011** and

all the rent cases were remanded to the trial Court in the following manner:-

*In view of discussion on point No.1 I am of the opinion that ex-parte order dated 31.03.2011 requires to be set-a-side conditionally to meet the requirement of natural justice. The appellants are allowed to file written statement with direction to learned Rent Controller for framing preliminary issue in respect of existence tenancy relationship between the parties. The appellants are directed to conclude their evidence within one month of receiving the R&Ps by Rent Controller and allow the parties to conclude the evidence within 60 days. The learned Rent Controller is further directed to conclude trial within 90 days after passing of this judgment. In case of failure to deposit of arrears of rent till 30.11.2011 by the appellants the ejectment order dated 31.03.2011 will be remained enforce as it is. The appeal in hand is hereby disposed of accordingly.*

Respondent No.2 in each of these petitions who were admittedly tenants in the demised shops have not challenged the appellate order dated **31.10.2011**. The judgment of eviction against Respondent No.2 in all the petitions has attained finality as none of them has deposited rent in terms of the impugned order. Only the Intervener, who was impleaded in the rent cases, has preferred instant petitions against both the orders of the trial Court as well as the appellate Court.

6. I have heard learned counsel for the parties and perused the record as well as written arguments filed by the learned counsel for the Petitioner.

7. The record shows that the Petitioner has obtained exparte stay order from this Court on first date of hearing i.e **07.12.2011**.

8. In written arguments learned counsel for the Petitioner has merely relied and referred to the civil litigation between the petitioner and respondent No.1 through a suit filed by the petitioner. Subsequently even **Suit No.543/2008** filed by the petitioner/

Intervener in these rent cases was also dismissed by judgment dated **28.2.2012**. However, the appellate Court in Civil Appeal No.43/2012 by judgment dated **14.05.2013** set aside the decree of dismissal of suit and decreed it. The appellate decree was under challenge before this Court in Revision Application No.112/2013, therefore, all these Constitution Petitions were ordered to be fixed and heard along with **Civil Revision No.112/2013**. The said Revision Application has been allowed and the order of the trial Court dismissing the suit of the Petitioner has been maintained. Consequently all these petitions are also dismissed as in all these petitions nothing has been said by the Petitioners except that these petitions are tagged with the Civil Revision No.112/2013.

9. It may be clarified here that Respondents No.2/ tenants have not challenged the order of remand of Rent Cases by appellate Court (reproduced in para-5 above) and, therefore, the ejectment order against all Respondents No.2/tenants is intact. Therefore, as it is clear from the record that fro the last 12 years not a single penny has been paid by the tenants/occupants of the demised shops to Respondent No.1, the lawful registered lease deed from the competent authority. Therefore, after almost 12 years of litigation since Rent Cases were filed in 2009, no further time can be granted to Respondents No.2/ tenants or whoever is in possession of the demised shops/ property, which is subject matter of these Constitution Petitions. Respondents No.2/tenants are, therefore, directed to vacate the demised shops/property **within 15 days** from today. In case of failure of Respondents No.2/tenants to vacate the demised shops within 15 days, the Executing Court is hereby ordered to issue writ of possession with police aid and permission to break open the locks each one of the demised shops without even notice to Respondents No.2/ tenants. The SSP concerned area is also directed

to ensure that enough police force is available to avoid any untoward situation on the spot. The office is directed to place copy of this Judgment in all connected matters.

JUDGE

Karachi, Dated:16.03.2020

Ayaz Gul