

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S – 98 of 2017

Date	Order with signature of Judge
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Petitioner : Mansoor-ul-Haq Solangi,
through Mr. Zamir Hussain Ghumro Advocate
a/w Mr. Imtiaz Ali Solangi Advocate
and the petitioner.

Respondent No.1 : Pakistan Industrial Development Corporation (Pvt.)
Limited, through Mr. Asim Iqbal Advocate.

Dates of hearings : 18.08.2022, 19.09.2022, 04.10.2022 & 27.03.2023.

ORDER

NADEEM AKHTAR, J. – The subject matter of these proceedings is Flat No.24, PIDC Officers’ Flats situated in Bath Island Karachi, along with servant quarter No.14 (**‘demised premises’**). Rent Case No.1028/2004 filed by respondent No.1 against the petitioner seeking his eviction from the demised premises on the grounds of personal need and default in payment of monthly rent and utility charges was allowed by the Rent Controller vide order dated 13.05.2010 by directing the petitioner to vacate the demised premises within sixty (60) days. First Rent Appeal No.281/2010 filed by the petitioner against the aforesaid order of his eviction was dismissed by the Appellate Court vide judgment dated 29.11.2016. The petitioner has impugned the concurrent findings of the learned Court below through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. This case has a checkered history as this is the second round of litigation between the parties in respect of the demised premises. In the first round, respondent No.1, being the owner and landlord of the demised premises, filed Rent Case No.1795/1996 against the petitioner seeking his eviction on the grounds of default in payment of monthly rent with effect from February 1996 and also default in payment of electricity and gas charges. It was alleged by respondent No.1 that default in payment of gas and electricity charges was committed by the petitioner not only in respect of the flat, but also in respect of the servant quarter. The rent case was contested by the petitioner, however, the same was allowed by the Rent Controller. The appeal filed by the petitioner against the order of his eviction was dismissed by the Appellate Court which order was maintained by this Court in the Constitutional Petition filed by the petitioner. The above concurrent findings were

challenged by the petitioner before the Honourable Supreme Court in CPLA No.944-K/2002 which was converted into an appeal and was allowed vide judgment dated 14.05.2003 reported as **2003 SCMR 1483** *Mansoor-ul-Haq Solangi V/S Pakistan Industrial Development Corporation, Karachi and 2 others* (**'Supreme Court Judgment'**).

3. It was held by the Honourable Supreme Court in the above-cited case that the eviction proceedings initiated by respondent No.1 against the petitioner under the Sindh Rented Premises Ordinance, 1979, were maintainable as the provisions thereof were applicable to autonomous bodies. It was observed in the said case that the petitioner was originally appointed by respondent No.1 as a Stock Verifier whereafter he was promoted to the ranks of Assistant Manager and then Deputy manager and was sent on deputation to PACO as Senior Manager Marketing ; as respondent No.1 had terminated his lien on the ground that his lien will be maintained in PACO, the learned Tribunal reinstated his service with all back benefits and held his lien with PACO ; and, thereafter his services were transferred by PACO to Naya Daur Motors and as per the agreement, the occupancy charges were deducted from his salary by Naya Daur Motors and were sent to respondent No.1 in lieu of occupancy charges of the demised premises. In view of the above observations, it was held by Honourable Supreme Court that the default in payment of occupancy charges was technical in nature. The petitioner made a statement before the Honourable Supreme Court that a sufficient amount in the shape of his G.P. fund etc. lying with respondent No.1 was liable to be adjusted towards the dues outstanding against him. In view of his above statement, it was observed by the Honourable Supreme Court that his case fell within the ambit of Sub-Rule (iii) of Rule 13 of the Allotment Accommodation to Officers at Karachi, according to which an officer who has preferred an appeal or petition against the order of his dismissal, discharge or removal from service may be allowed to retain his accommodation pending decision of his appeal or petition. It was further observed that the petitioner had been agitating his removal by availing remedies before the competent forums and had been ultimately reinstated with all back benefits by the Tribunal which order was, at that time, subjudice before the Honourable Supreme Court in Constitutional Petition No.566-K/2000. In view of the above, the petition filed by the petitioner was converted into an appeal and was allowed by the Honourable Supreme Court. This was the end of the first round of litigation.

4. In the second round, respondent No.1 filed Rent Case No.1028/2004 against the petitioner on 04.10.2004 seeking his eviction from the demised premises on the grounds of personal need and default in payment of monthly rent and electricity and

gas charges. It was claimed by respondent No.1 that the demised premises were required by it for its other officers. It was alleged by respondent No.1 that monthly rent and electricity and gas charges had not been paid by the petitioner from February 1996 and even after pronouncement of the Supreme Court judgment on 14.05.2003. The amounts outstanding against the petitioner on account of the above were specifically mentioned by respondent No.1 in this rent case. In his written statement, it was pleaded by the petitioner that the rent case filed by respondent No.1 was not maintainable as all the questions relating to payment of outstanding dues were decided by the Honourable Supreme Court whereafter no new cause of action had accrued to respondent No.1 for filing the second eviction application against him. The personal need of respondent No.1 was denied by the petitioner on the ground that there were thirty flats in the subject building some of which were lying vacant and were not being allotted to anyone. It is significant to note that the allegation of default in payment of monthly rent and electricity and gas charges made by respondent No.1 in this rent case, particularly after the Supreme Court judgment, were not specifically denied in his written statement by the petitioner, and para-wise reply to the eviction application was not submitted by the petitioner in his purported written statement. In view of the divergent pleadings of the parties, points for determination were settled by the Rent Controller on questions of maintainability of the eviction application, default by the petitioner in payment of electricity and gas charges and personal need of respondent No.1.

5. Vide impugned order dated 13.05.2010, all the points were decided by the Rent Controller in favour of respondent No.1 and accordingly the rent case was allowed on both the grounds of personal need and default in payment of electricity and gas charges, by directing the petitioner to vacate the demised premises within sixty (60) days. It was held by the Rent Controller that the rent case filed by respondent No.1 through its authorized representative was maintainable in view of the reported cases of the Honourable Supreme Court and this Court discussed in the impugned order, and also as it was filed on a new cause of action. Regarding default by the petitioner in payment of electricity and gas charges, it was held that the witness of respondent No.1 had reiterated the assertion made in this behalf and had also produced the relevant bills in his evidence, but no suggestion to the contrary was made to him by the petitioner although he was cross-examined by the latter ; and, also that the petitioner filed his affidavit-in-evidence, but he did not appear for cross-examination and also did not produce any evidence in rebuttal to prove payment of the said outstanding charges by him. As to the personal need of respondent No.1, it was held that the petitioner could not dislodge the evidence of respondent No.1 on this point.

6. First Rent Appeal No.281/2010 filed by the petitioner against the order on his eviction was dismissed by the Appellate Court vide impugned judgment dated 29.11.2016 by concurring with the findings of the Rent Controller that the rent case filed by respondent No.1 was maintainable under the Ordinance of 1979 and was not barred under the principle of res-judicata as fresh grounds were pleaded therein by respondent No.1 ; the attorney / witness of respondent No.1 had produced copies of the unpaid electricity and gas bills, but during his cross examination no suggestion was made to him by the petitioner that the outstanding amount of the said bills had been paid by him or that the same were required to be adjusted in view of the order of the Honourable Supreme Court ; the petitioner did not produce any evidence as he did not offer himself for cross-examination, and there was nothing on record to show that outstanding bills had been paid by him ; although the witness of respondent No.1 had admitted in his cross-examination that some of the flats in the subject building were vacant, but he had voluntarily stated that all of them were in a dilapidated condition ; and, such statement by the witness of respondent No.1 that the vacant flats were not in habitable condition was not controverted by the petitioner either in the cross-examination of the said witness or by producing his own evidence in rebuttal.

7. Mr. Zamir Ahmed Ghumro, learned counsel for the petitioner, mainly reiterated the contents of the purported written statement filed by the petitioner before the Rent Controller by submitting that all questions relating to default in payment of monthly rent and utility charges had been decided by the Honourable Supreme Court by allowing the appeal of the petitioner and setting aside the concurrent findings of the learned Courts below ; therefore, the second rent case filed by respondent No.1 was barred under the principle of res-judicata. It was contended by him that after the Supreme Court judgment, the entire outstanding amount on account of rent and utility charges was deducted from the pensionary benefits of the petitioner, as such there was no cause of action for filing the second rent case against the petitioner in the year 2004. It was further contended by him that the amount deducted by respondent No.1 from the pensionary benefits of the petitioner was more than the amount actually outstanding against him, therefore, there was no question of default. It was also contended by him that in any event there was no default on the part of the petitioner as he started depositing rent with the Rent Controller with effect from 01.08.2006 in Miscellaneous Rent Case (M.R.C.) No.1035 of 2006. According to the learned counsel, all these facts were not appreciated by the learned Courts below. Regarding the personal need of respondent No.1, it was contended by him that the witness of respondent No.1 had

admitted in his cross-examination that 27 out of 30 flats were lying vacant in the subject building at the relevant time ; and, this admission alone was sufficient to reject the ground of personal need claimed by respondent No.1. In support of his last contention, learned counsel placed reliance on Allies Book Corporation through legal heirs V/S Sultan Ahmed & others (2006 SCMR 152) and Muhammad Shoaib Naji and others V/S Muhammad Yaseen and others (2011 SCMR 1306). No other submission was made on behalf of the petitioner.

8. On the other hand, it was contended by Mr. Asim Iqbal, learned counsel for respondent No.1, that the principle of res-judicata was not attracted in the instant case as the subsequent rent case was filed also on the ground of personal need which ground was not pleaded in the first rent case, and default in payment of monthly rent and utility charges was pleaded / alleged not only from February 1996, but also for the entire period subsequent to the Supreme Court judgment. It was urged by him that in view of the above, the subsequent rent case was filed on a new / fresh cause of action. It was further contended by him that after his reinstatement, the petitioner retired from service on 22.12.2005, whereas M.R.C. No.1035/2006 was filed by him admittedly on 01.08.2006 i.e. after more than seven (07) months of committing default. It was urged by the learned counsel that the concurrent findings of the learned Courts below cannot be called in question by the petitioner on any of the grounds urged in the instant petition. It was further urged by him that the entire evidence produced by respondent No.1 before the Rent Controller remained un-rebutted and unchallenged as the petitioner did not offer himself for cross-examination and did not produce any evidence of his own. In support of his submissions, learned counsel placed reliance upon Badruddin V/S Muhammad Yousuf (1994 SCMR 1900), Abdul Ghafoor V/S Mst. Amtul Saeeda (1999 SCMR 28), Barkat Ali V/S Muhammad Nawaz (PLD 2004 SC 489), M/S Shell Pakistan Ltd. through Authorized Officer V/S Rana Azhar Ali Khan through L.Rs and others (2020 CLC 14), Abdul Hafeez V/S Mohammad Yousuf and others (2020 MLD 7), Nizar Noor and others V/S Ameer Ali and others (2020 CLC 254), Syed Haroon Aziz V/S Mrs. Kishwar Mateen and 2 others (2017 CLC Note 197), Dr. Masuma Hasan V/S Muhammad Hafeez and 2 others (2015 MLD 1577), Muhammad Ishaque Qureshi V/S Zahir Hussain Jafri and 2 others (PLD 2013 Sindh 245), Pakistan State Oil Company Ltd. through Authorized Officer V/S Muhammad Rafique and 4 others (2010 CLC 1300), Muhammad Afzal V/S IInd Additional District and Sessions Judge and 2 others (PLD 2008 Karachi 189), and Muhammad Qasim V/S VIth Additional District and Sessions Judge, Karachi Central and 2 others (2008 CLC 446).

9. In addition to his above submissions, it was pointed out by the learned counsel for respondent No.1 that as the entire subject building had been declared dangerous by the Sindh Building Control Authority and notices had been issued by the said authority to the occupants to vacate their respective tenements, the petitioner had filed C.P. No.D-4956/2016 before this Court wherein a detailed order was passed by a learned Division Bench on 26.01.2022 after examining the report of the 'Technical Committee on Dangerous Buildings SBCA', and it was held that the subject building had been rightly declared dangerous as cracks had appeared in its pillars, beams and roof ; and, it was observed in the aforesaid order that it was dangerous even for the petitioner and his family members to live in the demised premises. Learned counsel also pointed out that it was specifically observed in the aforesaid order that since no appeal against the dismissal, discharge or removal of the petitioner from his service was pending in any Court at the relevant time, the Supreme Court judgment relied upon by the petitioner was not applicable. He submitted that in view of the above observations and findings, the petitioner was directed in C.P. No.D-4956/2016 by the learned Division Bench to vacate the demised premises within ninety (90) days from the date of the said order, with the observation that his stay during the said period shall be at his own risk and consequences ; and, the review application filed by the petitioner against the aforesaid order was dismissed by the learned Division Bench vide order dated 10.05.2022, whereafter the said order attained finality.

10. I have heard learned counsel for the parties at length and with their able assistance have carefully examined the material available on record and the law cited at the bar. During the course of hearing, the following statement / table was filed on behalf of the petitioner on 04.10.2022 :

**“ TABLE IN RESPECT OF DEDUCTION OF MONTHLY RENT
W.E.F. FEBRUARY 1996 TO NOVEMBER, 2005**

S. No.	Period of Rent	Rent	Months	Amount
01	February 1996 to November, 2005	3500/-	118 months	413,000/-

ELECTRICITY / GAS CHARGES

S. No.	Electricity Charges Actual	Deduction	Extra amount
01	86000/- Electricity	124,000/-	38,000/-
02	3960/- Gas Charges	3,960/-	Nil

2. Total amount in respect of Rent charges w.e.f. February 1996 to November, 2005 is calculated amount of Rs.413,000/- with Electricity & Gas Charges 86,000 + 3,960= 89,960/-

Total Amount Payable to PIDC = 502,960/-

3. Amount of Rs.721,592/- in respect of Rent Charges as well as Utility Charges deducted by the PIDC / Respondent No.1 from Pensionary benefits on 05.08.2008; whereas total outstanding amount of Rs.502,960/- against the Petitioner. Balance amount of Rs.218,632/- payable by the PIDC to the Petitioner. Calculation sheet is annexed at page 159 of main petition.

Note: Amount was deducted on 05.08.2008, which vital fact has been concealed by the PIDC before learned Rent Controller as well as the Appellate Court; whereas impugned Judgment was announced on 13.05.2010.

ii. Amount in respect of utility charges was deducted by the PIDC on 05.08.2008, but till todate has not been paid to the concerned agencies K-Electric & SSGC.

Karachi,

Dated 04.10.2022

(Advocate for the petitioner) ”

11. According to the above table filed by the petitioner, the total amount payable by him to respondent No.1 on account of monthly rent and electricity and gas charges was Rs.502,960.00 for the period February 1996 to November 2005 (till his retirement from service), whereas the amount deducted by respondent No.1 on 05.08.2008 from his pensionary benefits was Rs.721,592.00. Thus, according to his calculation, an amount of Rs.218,632.00 was deducted by respondent No.1 in excess and as such was payable to him by respondent No.1. A categorical statement was made on behalf of the petitioner during the course of hearing that a Suit was instituted by him in the year 2014 against respondent No.1 for recovery of the amount allegedly belonging to him, which Suit is still subjudice. This shows that on the one hand the petitioner has all along taken the plea that he was / is not liable to pay monthly rent and utility charges because respondent No.1 owed substantial amount to him, and on the other hand he has filed a Suit against respondent No.1 for recovery of the said amount and he is still pursuing the same.

12. The admitted facts that have emerged from the record and in view of the above table are that the Supreme Court judgment was pronounced on 14.05.2003 ; the second rent case was filed by respondent No.1 on 04.10.2004 ; the petitioner retired from service on 22.12.2005 ; he started depositing rent in Court with effect from 01.08.2006 ; and, the outstanding monthly rent and utility charges were deducted from his pensionary benefits by respondent No.1 on 05.08.2008. The second rent case was filed by respondent No.1 alleging default by the petitioner in payment of monthly rent and utility charges from February 1996 and even after pronouncement of the Supreme Court judgment on 14.05.2003. It was never the case of the petitioner whether in the first round or in the second round that he had paid the rent and utility charges and was not in default. His case has throughout been that sufficient amount in the shape of his G.P. fund etc. lying with respondent

No.1 was liable to be adjusted towards the dues outstanding against him, which statement was made by him also before the Honourable Supreme Court in the first round ; and according to the petitioner himself, the said amount was deducted by respondent No.1 on 05.08.2008 after filing of the subject rent case by respondent No.1 in the second round. Thus, admittedly the petitioner was in arrears when the subject rent case was filed by respondent No.1.

13. It was held in the Supreme Court judgment in the first round that the eviction proceedings initiated by respondent No.1 against the petitioner under the Sindh Rented Premises Ordinance, 1979, were maintainable, and the default by the petitioner in payment of “occupancy charges” was of a technical nature because of the peculiar circumstances of his case i.e. his frequent transfers and deputation ; and, his appeal was allowed in view of his statement that sufficient amount in the shape of his G.P. fund etc. lying with respondent No.1 was liable to be adjusted towards the dues outstanding against him, and also as he could be allowed to retain the demised premises under the relevant Service Rules as his appeal against his dismissal was pending at that time. Thus, the default committed by the petitioner in payment of occupancy charges, though technical, was established before the Honourable Supreme Court. It was not concluded or held on merits in the first round that the petitioner did not commit default ; however, he was allowed to retain the demised premises in view of his above statement and also because of pendency of his appeal at that stage, which is not pending anymore. The question of default by the petitioner in payment of utility charges was not decided in the first round. As a tenant, it was the statutory duty of the petitioner to tender rent and to pay utility charges, particularly after the Supreme Court judgment, and he could not be absolved from such duty under any circumstances. The Supreme Court judgment did not grant him the right or license to retain possession of the demised premises indefinitely and even after retirement without paying rent and utility charges, and he cannot take shelter thereunder to justify his default.

14. The Supreme Court judgment was pronounced on 14.05.2003, however, instead of seeking adjustment of the admitted outstanding rent and utility charges from respondent No.1 promptly, the petitioner not only kept on waiting till his retirement on 22.12.2005, but also retained the demised premises without any payment and or adjustment of the said admitted outstanding dues which, according to him, were finally deducted by respondent No.1 from his pensionary benefits on 05.08.2008. Not only this, he instituted the Suit against respondent No.1 for recovery of his alleged dues in the year 2014 i.e. after eleven (11) years of the Supreme Court judgment.

15. It may be noted that default in payment of both monthly rent and utility charges was alleged in the rent case by respondent No.1, however, the point for determination was settled by the Rent Controller only to the extent of utility charges. Thus, the alleged default by the petitioner in payment of monthly rent was not adjudicated upon in the present case / second round, nor were any findings given in respect thereof by the learned courts below ; and, in addition to the ground of personal need, the eviction of the petitioner was ordered on the ground of default only in payment of utility charges. The dates noted above show that the petitioner admittedly did not pay any amount on account of rent and or utility charges even after the Supreme Court judgment dated 14.05.2003, and he started depositing only the rent in Court on 01.08.2006, and meanwhile he retired from service on 22.12.2005. It is significant to note that the outstanding utility charges were admittedly never paid by him and were admittedly outstanding when the rent case was filed by respondent No.1 in the second round, and no explanation whatsoever was / has been offered by him for not paying the same. The allegation of default in payment of electricity and gas charges made by respondent No.1 in the second round, particularly after the Supreme Court judgment, were not specifically denied in his written statement by the petitioner. The petitioner has also not offered any explanation for not controverting the statement of the respondent No.1's witness, for not offering himself for cross-examination and or for not producing his own evidence to rebut the evidence produced by respondent No.1. Moreover, the petitioner did not even try to rectify his above blunders subsequently to save himself from the consequences emanating therefrom as he admittedly did not file any application before any of the learned courts below to allow him to be cross-examined or to produce evidence.

16. The stance taken by the petitioner that the outstanding rent and utility charges payable by him were liable to be adjusted from his dues allegedly lying with respondent No.1, does not appear to be correct as he himself started depositing the rent in court from 01.08.2006 i.e. much before the deduction of amount allegedly made by respondent No.1 on 05.08.2008. If the said outstanding rent and utility charges were not payable by the petitioner and were liable to be adjusted as claimed by him, then there was no occasion for him to deposit the rent in court before such adjustment. The deposit of rent by him in court on 01.08.2006 before adjustment clearly indicates that he himself knew that he was in arrears and was liable to pay / deposit the rent ; and, yet he deposited only the rent and did not clear the outstanding utility charges.

17. It is a matter of record that the claim of the petitioner that the outstanding utility charges payable by him were liable to be adjusted from his dues allegedly lying with respondent No.1 was never admitted by respondent No.1 at any stage ; the evidence produced by respondent No.1 in the second round on the point of default by the petitioner in payment of utility charges was not controverted by him and the same remained un-rebutted and unchallenged ; and, the petitioner did not produce any evidence in the second round to prove that the utility charges were liable to be adjusted from his dues allegedly lying with respondent No.1. Thus, respondent No.1 had successfully discharged its burden in the second round to prove the default committed by the petitioner in respect of utility charges after the Supreme Court judgment ; whereafter the burden to prove the contrary shifted upon the petitioner, but he failed miserably in discharging the same. In this context, the concurrent findings of the learned courts below are correct and fully justified that the witness of respondent No.1 had produced unpaid electricity and gas bills, but during his cross examination no suggestion was made to him by the petitioner that the outstanding amount of the said bills had been paid by him or that the same was required to be adjusted in view of the Supreme Court judgment ; there was nothing on record to show that the outstanding bills had been paid by him ; and, he did not produce any evidence in rebuttal and chose not to offer himself for cross-examination. Likewise, the evidence produced by respondent No.1 on the point of personal need also remained unchallenged and un-rebutted, and as such the concurrent findings by the learned courts below on this point are also justified.

18. The upshot of the above discussion is that the concurrent findings of both the learned courts below, being in accord with the material on record and the settled law, do not suffer from any illegality or jurisdictional defect, and as such do not require any interference by this Court in its constitutional jurisdiction. The questions of default and personal need involved in this case were simple, particularly when the respondent No.1's evidence had remained unchallenged and un-rebutted and the petitioner did not lead any evidence at all, but the petitioner made every possible effort to complicate the matter and to prolong the litigation by unnecessarily resisting at all levels. The precious time of this Court consumed in this frivolous petition could have conveniently been utilized in hearing and deciding other legitimate and genuine cases involving serious questions of law and genuine disputes between parties pending adjudication before this Court that are unfortunately thousands in number. Therefore, the petition, which is a clear and blatant abuse of the process this Court, is liable to be dismissed with special costs in view of the recent pronouncement by the Honourable Supreme Court on imposition of costs in frivolous case in Capital Development Authority, through

Chairman, CDA, Islamabad V/S Ahmed Murtaza and another (2023 SCMR 61) and the unreported order dated 12.01.2023 passed in **C.P. No.3127/2020** (Qazi Naveed ul Islam V/S District Judge Gujrat etc.)

19. As noted above, the petitioner was directed by a learned Division Bench of this Court vide order dated 26.01.2022 passed in his own C.P. No.D-4956/2016, mentioned in paragraph 9 above, to vacate the demised premises within ninety (90) days on the ground that the subject building had been declared dangerous by the competent authority, which order attained finality long ago. The said order has no bearing on the merits of this petition which is being dismissed on merits, however, the said order cannot be ignored. The said order has not been complied with by the petitioner up until now by taking undue advantage of the ad-interim order obtained by him in the instant petition. It was stated at the bar that except for the demised premises, the entire subject dangerous building is lying vacant, however, no further action can be taken in respect thereof in accordance with law unless the demised premises are vacated by the petitioner.

20. Foregoing are the reasons of the short order announced by me on 30.03.2023 whereby this petition and the stay applications pending therein were dismissed with costs. The petitioner is directed to deposit an amount of Rs.100,000.00 (Rupees one hundred thousand only) with the Nazir of this Court within fifteen (15) days from the date of these reasons, which amount shall be deposited forthwith by the Nazir in the bank account of Karachi Down Syndrome Program.

21. After announcement of the short order, an application was filed by the petitioner on 31.03.2023 seeking suspension of the said order for a period of two (02) months to enable him to file an appeal before the Honourable Supreme Court. In view of the facts and circumstances of this case, the request is unjustified. However, as an indulgence, it is hereby ordered that this order shall remain suspended for a period of fifteen (15) days from the date of these reasons. The application stands disposed of in the above terms. Office is directed to assign number to the said application and to place it at the proper place in the Court file.

J U D G E