

ORDER SHEET  
THE HIGH COURT OF SINDH, KARACHI  
C. P. Nos.S-1132 of 2022

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Dated: Order with signature of Judge(s)

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- 1.For hearing of CMA No.8230/2022.
- 2.For hearing of Main Case.

Date of Hearing : 5 May 2023.

Petitioner : Muhammad Arif through Mr. Shah Jahan Khan, Advocate.

Respondent No.1 : Mst. Musarat Muzafar through Muhammad Shamaim-ul-Ahsan Khan, Advocate.

Respondents No.2&3 : VIth Senior Civil Judge / Rent Controller Karachi (South) and District & Sessions Judge Karachi (South) through Mr. Imran Abbas, Assistant Advocate General, Sindh.

**JUDGEMENT**

**Mohammad Abdur Rahman, J.** This a Petition that has been maintained by the Petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 impugning a Judgement dated 28 October 2022 passed by the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022 that had upheld an order dated 26 April 2022 passed by the VI Rent Controller Karachi (South) in Rent Case No. 526 of 2020 granting an application that had maintained by the Respondent No. 1 under Section 15 of the Sindh Rented Premises Ordinance, 1979.

2. It is a common ground that the Respondent No. 1 is the owner of Shop No.2, Plot No.R-1286, Street No.21, Azam Basti, Karachi (hereinafter referred to as the 'Said Tenement ') and which was let by the Respondent No. 1 to the Petitioner. An application was moved by the Respondent No. 1 bearing Rent Case No. 526 of 2020 as against the Petitioner under:

- (i) clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 alleging that the Petitioner has defaulted on his obligation in the payment of rent to the Respondent No. 1;
- (ii) sub-clause (a) of clause (iii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 for subletting the Said Tenement to a third part; and
- (iii) clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 as the Respondent No. 1 required the Said Tenement for her son, who had an established business of cleansing articles and who needed the Said Tenement to establish a showroom.

3. The Petitioner filed his written statement to Rent Case No. 526 of 2020 and alleged that the current rate of rent was not Rs.10,000/- but Rs.7,200/- per month. He further contended that he had not defaulted on his obligation to pay rent to the Respondent No. 1 under Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 as when he had tendered the rent for the month of March 2020 at the rate of Rs.7,200/- in response the Respondent No. 1 refused to accept the rent. He thereafter tendered the rent through a money order to the Respondent No. 1 who refused to accept the same and thereafter he had made an application under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 and had been depositing rent in MRC No. 413 of 2020 pursuant thereof. He clarified that he had not sub-let the Said Tenement to any person and finally in respect of the issue of the Respondent No. 1 requiring the Said Tenement for her personal use in good faith he stated that the Respondent No. 1 has filed a suit for specific

performance as against the Respondent No. 1 and on this basis alone the rent case was liable to be dismissed.

4. Rent Case No. 526 of 2020 was heard by the VI Rent Controller Karachi (South), who after framing the following issues:

- “ ...
1. Whether there exists relationship of landlord and tenant between the parties in presence of opponents claim that he has purchased the rented shop from applicant vide sale agreement dated 16-01-2015?
  2. Whether opponent has unauthorizedly sublet the rented shop to some other person?
  3. Whether applicant requires the rented shop for the use of her son Osama?
  4. Whether applicant has committed any default in the payment of rent?
  5. What should the Judgement be?”

in an order dated 26 April 2022 found that:

- (i) the pendency of a suit for specific performance would not bar the Respondent No. 1 from maintaining an application under Section 15 of the Sindh Rented Premises Ordinance, 1979;
- (ii) the Respondent No. 1 had failed to prove that the Said Tenement had been sub-let to a third party;
- (iii) the Respondent No. 1 had failed to prove that she required the Said Tenement for the use of her son in good faith; and
- (ii) the Petitioner having deposited the rent for the month of April 2020 in MRC No. 413 of 2020 in the month of June 2020, by submitting the rent two months late amounted to a default on the obligation on the part of the Petitioner to pay rent to the

Respondent No. 1 under Clause (ii) of Subsection (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

5. The Petitioner preferred an Appeal under Section 21 of the Sindh Rented Premises Ordinance, 1979 bearing FRA No.199 of 2022 before the District & Sessions Judge Karachi (South) who by a Judgement dated 28 October 2022 was pleased to hold that:

- (i) the pendency of a suit for specific performance would not bar the Respondent No. 1 from maintaining an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 as it was admitted that the Petitioner was tendering rent to the Respondent No. 1;
- (ii) that there was no evidence of the Petitioner having sub-let the Said Tenement to a third party;
- (iii) the requirement of proving that the Said Tenement was required by the Respondent No.1 for her personal use was not proved by the Respondent No. 1;
- (ii) the Petitioner having issued a money order on 13 April 2020 for the rent for the month of March 2020 when it should have been deposited by 5 April 2020 had defaulted on his obligation to pay rent to the Respondent No. 1

6. The Petitioner thereafter has impugned the Judgement dated 28 October 2022 passed by the learned District Judge Karachi (South) in FRA No. 198 of 2022 before this Court on the sole ground that keeping in mind that Covid-19 was rampant during the month of March 2020, whereby from

22 March 2020 all Court work had suspended except urgent work, the Petitioner had a valid ground for not depositing the rent for the month of April 2020 and May 2020 and which he thereafter had deposited at the earliest opportunity in June 2020. He relied on a notification that was issued by this Court on 22 March 2020 and which reads as under:

“ ... In order to prevent harm from “Coronavirus” which is contagious and is rapidly spreading, the Honourable Chief Justice, High Court of Sindh has been pleased to direct as under:-

1. All the cases fixed before any bench at Principle seat, Karachi or Sukkur and Circuit Courts at Hyderabad and Larakana shall stand discharged except the bail matters.
2. All the date by Court cases fixed before any bench at Principle seat, Karachi or Sukkur and Circuit Courts at Hyderabad and Larakana shall stand delisted from 24<sup>th</sup> March 2020 till further orders except bail matters.
3. All the civil business of Sindh High Court shall remain close from 24<sup>th</sup> march 2020 till further orders. However the bench available may on urgent application may entertain a case as per rules.
4. All the employees of High Court of Sindh, who are above the ages of 50 years, shall be available at their residence for any urgent assignment.
5. All lady employees of High Court of Sindh, except telephone operators are not required to come to Court from 24<sup>th</sup> march 2020 till further orders.
6. The Criminal Cases of urgent nature will be heard by the benches on appropriate application.
7. The Registrar shall make appropriate arrangement of the High Court employees by rotation, who are not covered in the preceding paras.
8. **The Civil Work in District Judiciary in the entire province shall stand suspended except urgent matters and bail matters from 24<sup>th</sup> March 2020 till further orders.**
9. All the employees of District Judiciary as well as Federal and Provincial Tribunals/Special Courts including Anti-Corruption Courts, Labour Courts, Anti-Terrorism Courts and Tribunals working under the Administrative Control of this Court, who are above 50 years age shall work from home from 24<sup>th</sup> Marach till further orders and will be available at their residence.
10. The Lady employees of District Judiciary shall not come to work from 24<sup>th</sup> March 2020 till further orders.
11. The concerned District Judge/Chairman of the Tribunal/Presiding officer shall regulate their staff, which is not covered by the preceding Para, on rotation basis.”

(Emphasis is Added)

7. In reply, the counsel for the Respondent No. 1 stated that the provision of Subsection (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 was quite clear and that the Petitioner having deposited the rent for the month of March 2020 in the April 2020 had defaulted on his obligation to pay rent to the Respondent No. 1 under clause (ii) of Subsection (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. He relied on a decision of this court reported as **Muhammad Riaz Shaikh vs. Iftikharuddin**<sup>1</sup> to advance a proposition that it was the initial obligation on the part of the landlord to allege default on the part of the tenant identifying the default and once that burden had been discharged, the entire burden to show that the tenant had not defaulted on its obligation to pay rent to the Respondent No. 1 would shift on to the Petitioner and which the Petitioner had failed to discharge. He also relied on a decision of this court reported as **Mst. Khadija Dawood vs. 1st Additional District Judge, (Karachi) East**<sup>2</sup> in which it was held that it was duty of the Petitioner to find the landlord so as to pay the rent and in the event that the Petitioner failed to do so it must be held that the Petitioner had defaulted on its obligation to pay rent to the Respondent No. 1. He finally relied on the decision reported as **Mumtaz Sultana vs Ishrat Jehan**<sup>3</sup> in which it was held that where a specific date had been stipulated in the tenancy agreement for payment of rent, any rent paid after that date must be construed as default.

8. I have heard the Counsel for the Petitioner and the Counsel for the Respondent and have perused the record. As it is apparent, the issue that the Respondent No. 1 required the use of the Said Tenement for the personal use of her son in good faith and the ground of the Said Tenement having been sublet both having been refused by the VI Rent Controller

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<sup>1</sup> 2014 CLC 1695

<sup>2</sup> 2009 YLR 1165

<sup>3</sup> 1989 CLC 639

Karachi (South) in Rent Case No. 526 of 2020 and no appeal having been filed as against that order by the Respondent No. 1, I am surprised that these issues were even raised and decided by the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022. Be that as it may, as no Petition having been preferred by the Respondent No. 1 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against the Judgement dated 28 October 2022 passed by the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022, I am of the opinion that the only issue that remains to be decided in this Petition is in respect of the issue of default on the part of the Petitioner to pay rent to the Respondent No. 1 in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

9. The question as to on whom the burden of proving that the tenant had defaulted on paying the rent, entitling the landlord to evict the tenant under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been decided by the Supreme Court of Pakistan in the decision reported as **Allah Din vs. Habib**<sup>4</sup> wherein it was held that:<sup>5</sup>

“ ... *It is no doubt correct to say that the initial burden of proof lies upon the landlord to establish that the tenant has not paid or tendered rent due by him as required by section 12 (2) (1) of the Sind Urban rent Restriction Ordinance, 1959, but it must be appreciated that non-payment of rent is a negative fact, therefore, if the landlord appears in Court and states on oath that he has not received the rent for a certain period, it would be sufficient to discharge the burden that lies under the law upon him and the onus will then shift to the tenant to prove affirmatively that he had paid or tendered the rent for the period in question.*”

It is therefore apparent that in the first instance, the Landlord has to adduce evidence to state that he has not received rent. Once the landlord has done

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<sup>4</sup> PLD 1982 SC 465

<sup>5</sup> *Ibid* at pg. 468

so the burden then shifts onto the tenant to prove that the rent has been duly paid by him.

10. Under the provision of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 it is a statutory obligation of every tenant to pay rent to the landlord failing which the tenant is liable to being evicted from the tenement. Clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 reads as under:

“ ... (ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment

*provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application”*

**As such where a time period is specified in the agreement, it is the statutory obligation of the tenant to pay the rent to the landlord initially on a date mutually agreed as between the tenant and the landlord and if such a rent is not tendered within a period of 15 days from which date the rent was due, the omission on the part of the tenant will render the tenant being considered as having defaulted on his obligation to pay rent to the landlord and liable to being evicted from the tenement.**

In the event that there is no date which has been mutually agreed as between the landlord and the tenant for the payment of rent, then the tenant must submit the rent to the landlord within a period of 60 days from when the obligation to pay rent arises failing which the tenant will again be subject to being evicted from the tenement as having defaulted on his obligation to pay rent to the landlord.



11. In the event that a landlord refuses to accept the rent that is to be tendered by the tenant, the provisions of Section 10 of the Sindh Rented Premises comes to the rescue of the tenant and prescribes that:

“ ... 10. (1) *The rent shall, in the absence of any date fixed in this behalf by mutual agreement between the landlord and tenant, be paid not later than the tenth of the month next following the month for which it is due.*

(2) *The rent shall, as far as may be, be paid to the landlord, who shall acknowledge receipt thereof in writing.*

(3) *Where the landlord has refused or avoided to accept the rent, it may be sent to him by postal money order or, be deposited with the Controller within whose jurisdiction the premises is situate.*

(4) *The written acknowledgement, postal money order receipt or receipt of the Controller, as the case may be, shall be produced and accepted in proof of the payment of the rent:*

*Provided that nothing contained in this section shall apply in the cases pending before the Controllers on the commencement of this Ordinance.*

12. The provisions of Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 have been interpreted by the Supreme Court of Pakistan in the decision reported as **Mst. Yasmeen Khan vs. Abdul Qadir**<sup>6</sup> that:<sup>7</sup>

“ ... Although, in view of Section 10 of Sindh Rented Premises Ordinance, 1979, a tenant is supposed to tender rent to the landlord/landlady and in case he/she has avoided or refused then rent is to be sent through money order or deposited in the office of the rent controller .”

(Emphasis is added)

While the proposition is well settled that there must a be refusal or evasion on the part of the landlord to receive the rent prior to the tenant sending a postal money order, there is some dispute as to whether after such refusal or evasion, as to whether the tenant must first send a postal money order which also must be refused prior to depositing the rent with the rent controller or in the alternative as to whether the tenant can bypass the sending of a postal money order altogether and directly deposit the rent before the rent controller. As is apparent the

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<sup>6</sup> 2006 SCMR 1501

<sup>7</sup> *Ibid* at pg. 1503-1504

interpretation of the word “or” in subsection (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 is critical and it has to be seen as to whether the expression should either be read conjunctively or disjunctively. In **Shaikh Israr vs. Muhammad Arif Khan**<sup>8</sup> Anwar Zaheer Jamali, J. (as his Lordship then was) held that:<sup>9</sup>

“ ... 15. A plain reading of above-quoted provision of law would show that use of word "or", which is normally used in disjunctive sense, in sub-rule (3) of section 10 of the Ordinance at two places is significant. In the first place use of word "or" in-between the words "refused" and "avoided", which carry different meanings, denotes a situation where a tenant can make a valid and legal tender of rent to the landlord despite, as such, there is no refusal of landlord from accepting rent from his tenant but the tenant could show that the landlord by his conduct avoided to accept rent. In the second place use of word "or" in between the two modes of payment of rent prescribed under sub-rule (3) viz. to pay rent by postal money order and deposit with the Controller, visualizes a situation which puts both the modes at par and thus, gives an option to the tenant to follow any of the two modes for tender/payment of rent to the landlord. However, such a construction and interpretation of section 10(3) of the Ordinance giving both options to the tenant may lead to a situation where the tenant may exercise such options for causing harassment and inconvenience to the landlord which may defeat the spirit of subsection (2) of section 10 of the Ordinance. Thus, to give a, more pragmatic and rational interpretation to the above provision of law and to check and restrict such discretion of the tenant to a reasonable extent, the real test for examining the validity or otherwise of tender/payment of rent would be dependent on examination of overall conduct of the landlord and tenant in each case and the satisfaction of the Controller that whether tender of rent by money order or deposit of rent in the office of Controller, as the case may be, was justified and bona fide or the same was mala fide aimed at causing harassment anti inconvenience to the landlord. In the former case, same will be considered as valid tender/payment in the later case as invalid.”

A different interpretation has been cast on this section in the decision reported as **Azeemuddin vs. Mst. Attiga Begum**<sup>10</sup> where Ali Sain Dino Metlo, J. held that:<sup>11</sup>

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<sup>8</sup> 2001 YLR 442

<sup>9</sup> *Ibid* at pg. 446-447

<sup>10</sup>2008 CLC 1499

<sup>11</sup> *Ibid* at pg. 1503

“ ... 10. It also not necessary that before depositing rent with the Controller it should be sent by postal money order. The modes are independent. Neither of the two modes is dependent upon the other. One may opt for any mode with first trying the other.”

13. The law to the extent of whether the options given to the tenant in Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance 1979 to the extent of whether the expression “or” as used therein is conjunctive or disjunctive is unsettled and which issue not being material to the subject *lis* will remain to be decided in an appropriate proceeding.

14. As is apparent from the decisions of the Courts that there is an absolute rule on the part of the tenant to first offer the rent to the landlord under sub-section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 it is only in the event that if the rent is refused by the landlord or where the landlord has avoided to receive the rent than the secondary modes that are prescribed under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 can be adopted. As has been stated above the initial obligation is on the part of the landlord to adduce that there has been default on the part of the tenant to pay rent in terms of Clause (ii) of sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

15. I note that in Rent Case No. 526 of 2020 the Respondent No. 1 has stated that:

“ ... 2. *That the Opponent is the tenant in respect of demise premises vide Tenancy Agreement dated 06<sup>th</sup> June 2006 executed between Muhammad Nazir son of Muhammad Aslam Pervaiz brother of Opponent and subsequently renewed the same with the opponent in the year 2008 and 2011 initially against the Monthly rent of Rs.5000/- per month with security deposit of Rs.50,000/- and thereafter Rs.6000/- and Rs.10,000/- per month.*

Photocopy of Tenancy Agreements dated 06.06.2006, 06.10.2008 & 20.04.2011 are filed herewith and marked as Annexure A, B, C respectively.

3. That since inception of tenancy the Opponent always paid the month rent with delay and committed defaults proving himself to be a habitual defaulter.

4. That the Opponent has defaulted in payment of monthly rent from March 2020 total amount whereof comes to Rs.50,000/- @ Rs.10,000/- per month till filing of the instant case."

16. The same contention was recorded in the affidavit-in-evidence submitted by the Respondent No. 1 in Rent Case No. 526 of 2020 before the VI Rent Controller Karachi (South) and which reads as under:

" ... 4. I say that the opponent is the tenant in respect of demise premises vide Tenancy Agreement dated 06<sup>th</sup> June 2006 executed between Muhammad Nazir son of Muhammad Aslam Pervaiz brother of opponent and subsequently renewed the same with the opponent in the year 2008 and 2011 initially against the Monthly rent of Rs.5000/- per month with security deposit of Rs.50,000/- and thereafter Rs.6000/- and Rs.10,000/- per month.

5. I say that since inception of tenancy the opponent always paid the month rent with delay and committed defaults proving himself to be a habitual defaulter.

6. I say that the Opponent has defaulted in payment of monthly rent from March 2020 total amount whereof comes to Rs.50,000/- @ Rs.10,000/- per month till filing of the instant case."

During the cross-examination of the Respondent No. 1 following statements were made by her:

" ... It is correct to suggest that in April, 2020, the opponent had sent monthly rent at the rate of Rs.7200/- to me through money order but I did not accept that money order. Voluntarily says: since said amount was less than the agreed amount Rs.10,000/-, therefore, I did not accept that money order. It is correct to suggest that after refusing that money order, the opponent has been depositing the monthly rent at the rate of Rs.7200/- in this Court by way of filing MRC No.413/2020. Yes, it is fact that I have withdrawn this deposited rent from this Court in July 2021. It is incorrect to suggest that opponent has not committed any default. Voluntarily says: before March, 2020 he used to pay the monthly rent to me and since then he has been committing default in payment of rent and payment of charges of utility bills. It is correct to suggest that the copies of bills of K-Electric annexed to the WS of opponent show that opponent had paid the bills of the month of June, 2020 to month of September, 2020. Voluntarily says: after filing this case, he again started to pay the bills, otherwise, he did not pay the bills regularly. It is incorrect to suggest that the bills used to be collected by me and I deliberately avoided to hand over the same to opponent, that is why opponent used to pay the bills on duplicate copies of bills."

(Emphasis is added)

From the evidence adduced by the Respondent No. 1 it has been clearly alleged that the Petitioner has defaulted on his obligation to pay rent to the Respondent No. 1. It has also specifically admitted by the Respondent No. 1 that she had refused to accept the money order that has been sent by the Petitioner for the rent for the month of March 2020 on 13 April 2020. Once such a statement has been made by the Respondent No. 1 in her Affidavit in Evidence, I am of the opinion that the burden had shifted on to the Petitioner to show that after the Respondent No. 1 having refused to receive the Rent entitled him to adopt a secondary mode for the payment of rent under Sub-Section (3) of Section 10 of the Sindh Rented Premises Ordinance, 1979 and as to the fact that by offering the rent on 13 April 2023 by money order representing the rent for the month of March 2020, there had been no default on his part in respect of his obligation to pay rent to the Respondent No. 1.

17. The Petitioner in his Affidavit-in-Evidence has stated as under:

- “ ...
2. *That, the adverse allegations made by the applicant in Ejectment Application, Affidavit in Evidence & Cross of Applicant are specifically and vehemently denied.*
  3. *That the contents of para No. 1 & 2 of the ejectment application under reply as stated there in are denied. It is not denied I am tenant of the applicant it is further submit that the rent of the demise premises is 7200/= per month. It is specifically denied that the rent of premises Rs.10,000/= the applicant is to strict proof thereof.*
  4. *That the contents of para, 3 to 5 are fabricated and false hence specifically denied it is specifically denied that I am defaulter in payment of rent and/or utility it is further submitted that I has paid rent to the applicant in person up to March 2020, and when the rent was refused by the applicant in the April 2020, the same sent through money order and after refusal filed MRC bearing No.413/2020, and the rent is being deposited regularly, therefore I am not committed any default. It is pertinent to mention have that the applicant lastly acknowledged the rent receipt in the year 2011 issued receipt of rent.”*

During the cross-examination the Petitioner has averred as under:

“ ... It is correct to suggest that on 01.10.2008, applicant had executed written rent agreement in my favour in respect of rented premises. It is correct to suggest that at para No.13 in this rent agreement, it is written that rent of the rented premises shall be increased to 10% after one year. It is correct to suggest that at para No. 14 in this rent agreement, it is written that if parties to this rent agreement continue the tenement with their mutual consent then same terms and conditions of this rent agreement shall apply. It is correct to suggest that on 01.04.2011, another rent agreement was executed by applicant in my favour in respect of the rented premises. It is correct to suggest that in this rent agreement, the rent was agreed as Rs.6000/-. It is correct to suggest that it is written in para No.3 in this rent agreement that tenant shall submit the paid bills of electricity to landlady. It is correct to suggest that I did not submit such paid bills to her. Voluntarily says: due to some dispute, landlady stopped to supply the electricity bills, I myself got issued the bills and paid the same. It is correct to suggest that I have not produced upto date paid bills to this court and have produced only three bills of the electricity for the months from June to September 2020. It is correct to suggest that at para No.14 in rent agreement dated 01.04.2011, it is written that if parties to this rent agreement continue the tenement with their mutual consent then same terms and conditions of this rent agreement shall apply. It is correct to suggest that it was written in rent agreement that this agreement commenced on 01.04.2011 and shall end on 29.02.2012. It is correct to suggest that at para No.13 in this rent agreement, it is written that rent shall increase to 10% at time of renewal of rent agreement. It is correct to suggest that it is written at para No.11 in this rent agreement that either party shall serve one month's notice in case the demised premises is being vacated or is required to be vacated. It is incorrect to suggest that landlady has verbally asked me to vacate the rented premises, but I refused her. It is correct to suggest that after 29.02.2012, no written rent agreement has been executed by landlady to continue the tenement by me. **It is correct to suggest that amount mentioned in money order receipt produce by me at Ex.O/3, contains the lesser amount then the agreed amount of rent.** It is incorrect to suggest that this amount does not tally to the amount of increased rent as per rent agreement dated 01.04.2011. It is incorrect to suggest that according to rent agreement dated 01.04.2011, rent of rented premises at increased rate of the month of January 2022 is computed as Rs.18824/-.”

18. I have considered the contentions of the counsel for the Petitioner and the counsel for the Respondent No. 1 and have perused the record. It is come on record that the Petitioner had offered the rent to the Respondent No.1 for the month of March 2020 which when refused by her, was sent to the Respondent No. 1 through a money order on 13 April 2023. While the

Respondent No. 1 has admitted to refusing to receive the money order on 13 April 2023, the rent as per clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 should have been tendered by the Petitioner to the Respondent No. 1 within 15 days after the expiry of the period fixed in the tenancy agreement as executed between the Petitioner and the Respondent No. 1 and which admittedly was payable for the month of March 2020 by 5 April 2020. Such rent having been tendered through a money order on 13 April 2020 was therefore tendered in compliance of the provisions of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. I therefore am not inclined to agree with the Judgement dated 28 October 2022 passed by the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022 that by tendering the rent for the month of March 2020 through a money order on 13 April 2020 the Petitioner had defaulted on his obligation to pay rent to the Respondent No. 1 in terms of clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979.

19. However, I note that the Petitioner has in cross examination admitted that:

“ ... *It is correct to suggest that amount, mentioned in money order receipt produce by me at Ex.O/3, contains the lesser amount than the agreed amount of rent.*”

To my mind, the admission on the part of the Petitioner that he had not tendered the entire rent to the Respondent No. 1 would amount to an admission on the part of the Petitioner that he had defaulted on his obligation to pay rent to the Respondent No. 1. The Petitioner's arguments regarding the Petitioner's inability to deposit rent during the period after 22 March 2022 on account of the various notifications involving Covid 19 and as to his conduct during this period would have been material if he had proved that the amount of rent that had been tendered by him in the money order was the entire rent but as he has himself admitted that this was not

done, this issue is immaterial. While coming to the conclusion that the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022 had incorrectly held that it was incumbent on the Petitioner, having elected to adopt a secondary mode of depositing rent by way of a money order, to have ensured that the same was tendered prior to 5 April 2023, I have come to the conclusion that as the Petitioner had admitted in his cross examination that the entire rent had not been tendered amounted to an admission on the part of the Petitioner that he had breached his obligation under clause (ii) of sub-section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and had defaulted on his obligation to pay the rent to the Respondent No. 1 rendering the Petitioner liable to be evicted from the Said Tenement.

20. In the facts and circumstances, I find that while the Judgement dated 28 October 2022 passed by the District & Sessions Judge Karachi (South) in FRA No. 198 of 2022 and the order dated 26 April 2022 passed by the VI Rent Controller Karachi (South) in Rent Case No. 526 of 2020 have not been correctly premised, however on the basis that the Petitioner had admitted to his default on his obligation to pay rent under clause (ii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979, the Petition must be dismissed along with all listed applications with no order as to costs.

Karachi;  
Dated: 2 August 2023.

JUDGE

**Nasir PS.**