

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Date

Order with signature of Judge

C.P No.S-813 of 2024

Muhammad Saleem Khan.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-814 of 2024

Muhammad Saleem Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-815 of 2024

Muhammad Naeem..... Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-816 of 2024

Shamshad Hussain.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-817 of 2024

Sajid Shamshad.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-818 of 2024

Muhammad Jamsheed.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-819 of 2024

Muhammad SaleemPetitioner

V/s

Umair Ali.....Respondent

C.P No.S-820 of 2024

Muhammad SaleemPetitioner

V/s

Umair Ali.....Respondent

C.P No.S-821 of 2024

Syed Zafar Ali TarimiziPetitioner

V/s

Umair Ali.....Respondent

C.P No.S-822 of 2024

Zafar Ali Tarimizi.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-823 of 2024

Muhammad Jamsheed.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-824 of 2024

Arif Ali.....Petitioner

V/s

Umair Ali.....Respondent

C.P No.S-825 of 2024

Shamim Rabani.....Petitioner

V/s

Umair Ali.....Respondent

Date of hearing and Order: 15.7.2024

Mr. Muhammad Iqbal advocate for the petitioners in all petitions
Mr. Abdul Ghaffar Malik advocate for private respondents in all petitions
Mr. Muhammad Hisham Mahar, Assistant AG

ORDER

Adnan-ul-Karim Memon, J. – Through this order, this Court will decide the afore-titled petitions as common questions of law and facts are involved therein.

2. Private respondents in all petitions, filed different rent cases under Section 15 (ii) and (iii) of Sindh Rented Premises Ordinance, 1979, against the petitioners, before the learned Rent Controller, Karachi East, seeking their ejection on the ground of willful default in payment of Rent since 1997. The learned Rent Controller due to divergent pleas of the parties framed the following points for determination.

- i) *Whether the present rent application is maintainable.*
- ii) *Whether a relationship between landlord and tenant exists.*
- iii) *Whether the petitioners/Opponents have committed willful defaults in the payment of rent.*

3. The respondent/landlord/applicant examined himself and filed his affidavit-in-evidence at Exh-A and produced a certified true copy of affidavit in evidence of Objector/Tenant as Exh-A/1, Photostat copy of a certified true copy of order dated 18.10.2005 passed by the Honourable Banking Court No.V at as Exh-A/2, Photostat copy of a certified true copy of Letter of Administration issued on 15.07.2014 by the District Judge Karachi East in SMA No.386/2013 as Exh-A/3, Photostat copy of Mutation Order as Exh-A/4, Photostat copy of a certified true copy of judgment and decree dated 07.01.2020 in Civil Suit No.1608/2017 passed by learned X-Senior Civil Judge Karachi East as Exh-A/5.

4. The petitioners/opponents were examined, who filed their affidavit-in-evidence and one of the petitioner produced a Photostat copy of certified copy of execution application No.66/2001 in the Banking Court-V at Karachi, Photostat copy of certified copy of Judgment dated 05.07.2001 passed by the Banking Court-V Karachi, Photostat copy of certified copy of decree dated 05.07.2001 passed by the Banking Court-V, Karachi, Photostat copy of the application under Section 12(2) CPC for cancellation of decree and judgment obtained through fraud/forgery and misrepresentation in Case No.8085/2000 in Execution No.66/2001, Photostat copy of the counter affidavit to the application under Section 12(2) CPC for cancellation of decree and judgment obtained through fraud/forgery and misrepresentation in Case No.8085/2000 in Execution No.66/2001, Photostat copy of a certified copy of the order dated 31.08.2017 passed by the Honourable Banking Court No.V Karachi in Execution No.66/2001 (Suit No.8085/2000). Photostat copy of intimation submitted by the Advocate for the Interveners in Execution No.66/2001, Photostat copy of certified copy of order dated 09.09.2015 passed by the Honourable Banking Court No.5 Karachi in Suit No.8085/2000 (Execution No.66/2001), Photostat copy of certified copy of letter dated

10.05.2016 written by the Nazir of Banking Court-V, Karachi to the Sub-Registrar Central Record, Block-F, City Court, Karachi about verification of registered documents, Photostat copy of certified copy of statement dated 26.05.2016 filed by the counsel for the applicant in Execution No.66/2001, Photostat copy of certified copy of order dated 10.10.2015 passed in Rent Case No.193/2015, Photostat copy of certified copy of the Commissioner report dated 30.09.2018 submitted in Execution No.66/2001, Photostat copy of certified copy of order dated 03.10.2006 passed in First Appeal No.65/2005 by this Court, Photostat copy of certified copy of order dated 18 10.2005 in Execution No.66/2001, Photostat copy of true copy of Memo of Civil Appeal No.43/2020 alongwith application under Order XXXIX Rules 1&2 CPC as well as its annexures, Photostat copy of certified copy of Judgment passed by the learned IX-Rent Controller Karachi East in Rent Case, Photostat copy of certified copy of Judgment passed by the District Judge Karachi East in First Rent Appeal, Photostat copy of certified copy of report regarding the opponent's depositing the rent from January to April, 2014 before Banking Court No.V Karachi in Execution No.66/2001, Photostat copy of certified copy of report regarding the opponent's depositing the rent from January to April, 2016 before Banking Court No.V Karachi in Execution No.66/2001, Photostat copy of true copy of report regarding the opponent's depositing the rent from January to April, 2018 before Banking Court No.V Karachi in Execution No.66/2001, Photostat copy of certified copy issued by Banking Court No.V, Karachi, letter dated 12.06.2009 in respect of permission to mortgage/assign, Photostat copy of certified copy issued by Banking Court No.V, Karachi, Mortgage Deed dated 14.06.1999, Photostat copy of certified copy issued by Banking Court No.V Karachi of Transfer/Mutation order No.AD/SFT/99 dated 10.06.1999, Photostat copy of certified copy issued by Banking Court No.V Karachi, Conveyance Deed executed by Zaheer Ali through his attorney Sami Ahmed between Mrs. Shagufta Sami, Photostat copy of a certified copy of the application for withdrawal of the rent case and order dated 26.11.2001, Photostat copy of a certified copy of order passed in MRC by learned I-Rent Controller Karachi East. Photostat copy of goodwill agreement bearing attestation dated 21.04.1981, Photostat copy of agreement of goodwill dated 02.09.1996, Photostat copies of rent receipt bearing No.560 and 561, Photostat copies of deposit slips of MRC dated 05.01.1998, 05.01.2009, 22.12.2022.

5. The learned Rent Controller after hearing the parties allowed the rent applications vide different orders dated 15.9.2023. It would be

conducive to refer to relevant paragraphs of one of the orders of the Rent Controller in Rent Case No.203/2020, which is that:

“27. For what has been discussed in point No.1 and 3, I am of the considered view that the applicant has proved his case against the opponent on the ground of default in payment of monthly rent. Consequently, the captioned rent application for ejectment is hereby allowed and the opponent is directed to hand over peaceful vacant possession of the rented premises to the applicant within sixty (60) days from the date of this order. The prayers except those expressly granted shall be deemed declined. There is no order as to cost.”

6. Such orders of the Rent Controller were assailed by the petitioners by filing First Rent Appeals, which also were dismissed by learned VII-Additional District Judge, Karachi East vide different orders dated 29.5.2024, an excerpt of one of the orders passed in FRA No.180/2023 is reproduced as under:-

“Point No.2

In present circumstances, I am of humble opinion that the learned Rent Controller has not committed any illegality or jurisdiction error, hence the impugned order requires no interference by this Court and the same is hereby maintained. Applicant / opponent is directed to hand over peaceful vacant possession of the demised/rented premises to the respondent within 30 days from the date of this order. Accordingly, instant rent appeal is dismissed with no order as to cost. Office is directed to send the R&P of Rent Case to the learned trial Court.”

7. Against the concurrent findings, the petitioners have filed the captioned petitions.

8. Mr. Muhammad Iqbal, learned counsel for the petitioners in all petitions attempted to give a brief history of the case and contended that the impugned orders / judgments passed by the learned trial and appellate Court are contrary to the facts and law and are based upon misreading and non-reading of the facts and documentary evidence on record. He next argued that in both the impugned orders, it is held that the petitioners failed to pay the rent since February 2021, whereas, the respondent never claimed the rent from February 2021, however, the respondent alleged that the petitioners are defaulters since 1997 without mentioning rate of rent or month though the entire said rental property was under dispute with Mst. Shagufta Sami from 1999 till 14.7.2023 and the petitioners continued to deposit rent in MRC No.82 of 2018 in the name of the previous owner (Mst. Shagufta Sami) and the last rent deposited by the petitioner for July to December 2023 in advance in June 2023 before order dated 15.9.2023 in the said MRC. It is further contended that in September 2023 when it came into the knowledge of the petitioners, the attorney of Mst. Shagufta Sami had withdrawn II-Appeal No.2015 of 2022 on 14.7.2023 from this Court then petitioners offered the rent to the respondent and sent money

orders, but the same was refused by the respondent, thereafter petitioners filed MRC No.146 of 2023 before the II-Rent Controller Karachi East and started depositing the rent since July 2023 till onwards. He prayed for setting aside the impugned orders passed by both the Courts below.

9. On the contrary, learned counsel for the respondent states that the petitioners have failed to deposit rent with the respondent and have committed willful default in payment of rent, as despite knowing that ownership of the subject property had been changed long ago, petitioners did not pay the rent amount to the respondent, therefore, the petitioners are defaulter and these petitions are liable to be dismissed on this score alone.

10. The Learned Assistant Advocate General supports the impugned orders passed by both the Courts below.

11. I have heard learned counsel for the parties and have gone through the record with their assistance.

12. The perusal of the record reveals that the SMA was allowed and a Letter of Administration was granted in favor of the respondent / landlord / applicant by the competent Court, based on the Letter of Administration, the respondent / applicant got the property transferred in the name of all legal heirs of late Zaheer Ali through mutation letter dated 23.09.2015. The respondent / applicant and other legal heirs filed an application under Order XXI Rule 89 C.P.C in Civil Execution No.66/2018 before the Banking Court No.V at Karachi which was allowed, and the respondent / applicant paid off the loan amount to the Bank. The respondent / applicant and other legal heirs of late Zaheer Ali filed a Civil Suit bearing No.1608/2017 for cancellation of title documents of Shagufta Sami, which suit was decreed vide Judgment and Decree dated 07.01.2020 by the Court of X-Senior Civil Judge Karachi East and the title documents in the name of Shagufta Sami were canceled. However, the petitioners continued to deny the relationship between them based on the analogy that the respondent / applicant was/is neither the owner nor landlord of the demised premises. Their plea is that Mst. Shagufta Sami was the owner of the demised premises and landlord, and they have been depositing monthly rent in her name and favor in the MRC, when they came to know about the change of ownership, they were/are depositing the rent in MRC.

13. It appears from the record that the petitioners / Opponent in their pleadings as well as in their evidence have denied the relationship of the Landlord and Tenant with the respondent / applicant, on this point, the evidence was led by the parties and it transpired from the material available on record that Plot No.7-1/A-1, Shah Faisal Colony No.1,

Karachi East was allotted to the father of the respondent / applicant namely Zaheer Ahmed by the Rehabilitation Commissioner vide order Serial No.81RP/14/19 Dated 30.11.1978, and subsequently a lease agreement was executed by the KDA in favor of Zaheer Ali vide a lease deed duly registered on 17.12.1978. There is no denial of the fact that the father of the respondent / applicant constructed a building known as Asif Market consisting of 20 shops on the ground floor and residences on the first and second floors.

14. The real controversy between the parties is that the respondent / applicant alleged that one Sami Ahmed son of Fakhar-ud-din Siddiqui fraudulently transferred the property in the name of his wife Shagufta Sami and further prepared forged documents. The respondent / applicant claims that Mst. Shagufta Sami was neither the owner nor landlord of the demised premises and her documents were canceled by the judgment and decree passed by the trial Court and the appeal preferred before this Court was withdrawn by order of this Court dated 14.7.2023 (page 461). The aforesaid factual as well as legal position explicitly shows that the petitioners attempted to deny the relationship between the parties just to keep the rented premises intact for a longer period without payment of rent to the original owner under the garb of pending litigation between the main parties finally that ended in favor of the respondent through judgment and decree passed by the trial Court, though it is well-settled law that in absence of a relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court, which has already been set at rest, therefore, the petitioners / tenants cannot take refuge of litigation between the original parties and deny the title of the respondent / applicant and refused to pay rent on the aforesaid analogy. Merely depositing purported rent in MRC is no ground to pay rent to the original landlord, who has already been successful in obtaining the decree in his favour, thus, the action of the petitioners / tenants was/is uncalled for and not appreciated at all for the reason that from a bare reading of the above definition of tenant under the SRPO, 1979, it is quite clear that one who undertakes (promises) to pay the rent would also be included in the definition of 'tenant'. Such inclusion is deliberate one which allows the parties to create such a relationship for a future time or happening of a certain event and this was the reason, the trial Court allowed the rent applications and appellate Court concurred with the decision of the learned Rent Controller on the same analogy.

15. It appears from the statement of the respondent / landlord on oath which is quite consistent with his averments made in the ejectment

application and neither his statement was shaken nor anything was brought on record in evidence to contradict the same as such no case for further indulgence of this Court is made out as technicalities do not come in the way of substantial justice. Thus, the relationship between the respondent / applicant and petitioners / opponents is proved and was rightly held so by both the Courts below.

16. On the issue of concurrent findings of the two Courts below and jurisdiction of this Court under Article 199 of the Constitution, it needs to be reiterated that this Court, normally, does not operate as a Court of appeal in rent matters rather this jurisdiction is limited to disturb those findings which, prima facie, appear to have resulted in some glaring illegalities resulting into miscarriage of justice. The finality in the rent hierarchy is attached to the appellate Court and when there are concurrent findings of both the Courts below, the scope becomes rather tightened. It is pertinent to mention here that captioned petitions fall within the writ of certiorari against the judgments passed by both Courts below in rent jurisdiction and it is a settled principle of law that same cannot be disturbed until and unless it is proved that same is the result of misreading or non-reading of evidence. The instant petitions are against concurrent findings recorded by both the Courts below. Thus, for the foregoing reasons, the findings recorded by the learned Rent Controller as well as the Appellate Court are cogent and well-reasoned and thus do not call for any interference by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

17. At this stage, after arguing the matter at some length, both parties agreed with the understanding that the petitioners in all petitions shall vacate the premises in question within two months from today. Prima facie, the proposal seems to be reasonable; however, I have reservations as on merit the petitioners have no case at all in view of the aforesaid detailed reasons.

18. In view of the above position, these petitions stand disposed of alongwith the pending application(s) with direction to the petitioner(s) to vacate the premises in question in all petitions within two months from the date of receipt of this order; and in case, the petitioners in all petitions fail to vacate the rented premises, the same shall be vacated through police aid without further notice.

JUDGE