

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-943 of 2019

(Abdul Khaliq Vs. Amir Ali & others)

**Petitioner:** Abdul Khaliq s/o (Late) Abdul Majeed  
Through Mr. Sikandar Khan Yasir, Advocate

**Respondent No.1: Amir Ali through legal heirs**  
i) Durriya Salemwala (widow)  
ii) Busaina Mustafa Ali (daughter)  
iii) Munira Amir Ali (daughter)  
iv) Salma Amir Ali (daughter)  
Through M/s. Ghulam Abbas Pishori and  
Burhanuddin Pishori, Advocate for legal heirs of  
the respondents No.1. i to iv.

**Respondent No.2: III Sr. Civil Judge & R.C. Karachi East**

**Respondent No.3: IX ADJ Karachi East**

Through Mr. Muhammad Javed, Asstt. Advocate  
General

**Date of Hearing:** 21.12.2023.

**Date of Decision:** 13.01.2024

## ORDER

**Amjad Ali Bohio, J.:** Rent Case No.404/2010 was filed by the petitioner against respondent No.1 for eviction on the grounds of default in payment of monthly rent and personal need. The rent case was dismissed by the Rent Controller-III, at Karachi East vide order dated 28.04.2014 and the dismissal was maintained by the appellate Court by dismissing First Rent Appeal No.89/2014 filed by the petitioner vide judgment dated 18.07.2019. The concurrent findings of the Courts below have been impugned by the petitioner through this constitutional petition under Article 199 of the Constitution of the Republic of Pakistan, 1973.

2. The dispute relates to premises situated on 1<sup>st</sup> floor of plot No.A-38, Survey CC-8A, Sheet No.35-P/1, Karachi, Co-operative Housing Society, Union Ltd. Karachi, of which the respondent No.1 was tenant of one Dr. Muhammad Sadiq Rangonwala. On 29.10.2010 Abdul Khaliq petitioner served a notice under section 18 of the Sindh Rented Premises Ordinance, 1979 (hereafter called the Ordinance) on the respondent No.1 informing him that the property in dispute had been sold out by Dr. Muhammad Sadiq on 26.05.2006 under conveyance registered deed to him. Therefore the said respondent was called upon to pay monthly rent at the rate of Rs.3000/- per month w.e.f. 01.06.2006 to the petitioner. It is alleged that the respondent/tenant did not pay the rent and therefore he filed an application for ejection on the grounds of default in payment of the monthly rent and on the ground of personal *bonafide* need of the petitioner.

3. After service of notice, the respondent No.1 in his written statement admitted that he was occupying the premises being tenant, but denied all the averments made by the petitioner in his rent case. It was claimed by him that he had paid rent to Dr. Muhammad Siddiq Rangonwala regularly and was depositing the same in Misc. Rent Case No.166/2004 in his favour. The respondent replied the legal notice of the petitioner on 07.12.2010 wherein, he mentioned that the rent of Rs.3032/- sent by the respondent through Money Order returned undelivered by the postal authority; and, subsequently the respondent deposited the rent for the months of January, February and March, 2011 by filling Misc. Rent Case No.18/2011 under section 10(3) of the Ordinance and started depositing rent in the said case. The petitioner's

claim of personal need was disputed by the respondent No.1 by denying that the petitioner required the premises for his personal bona fide use in good faith.

4. From pleadings of the parties, the Rent Controller framed the following points for determination:

*1. Whether the opponent has committed willful default in payment of monthly rent?*

*2. Whether the tenement in question is required to the applicant for his personal bonafide use/need?*

*3. What should the order be?*

5. Petitioner then examined himself and he was cross-examined at length by the learned counsel for the respondent No.1. The petitioner claimed eviction on the grounds of default in payment of rent and personal bona fide need. The learned Rent Controller dismissed the petitioner's eviction application on both grounds. The appeal filed by the petitioner was also dismissed through the impugned judgment dated 18.07.2019 by the learned appellate court.

6. The petitioner's counsel contends that the findings of both courts rest on conjectures and surmises, neglecting the crucial aspect of the respondent's failure to pay rent after receiving notice under Section 18 of the Ordinance. The Money Order coupon, presented as evidence, lacks crucial details, as it does not specify the recipient and there is no endorsement from the postman indicating the landlord's refusal. The counsel argues that both lower courts overlooked the fact that the respondent, to substantiate the remittance of rent through Money Order, failed to produce the concerned postman or any other credible witness.

According to him mere submission of the Money Order, without proper endorsement regarding the petitioner's refusal, is insufficient to discharge the respondent's burden of proving the rent remittance through the mentioned Money Order. In support of his contention he has relied on case of HAMEED and 3 others Vs JITENDRA and 2 others (2010 CLC 561), Mst. AISHA and another Vs Mrs. SAMAR AFROZE (2008 YLR 24), SARDAR MUHAMMAD Vs KHUWAJA MUHAMMAD NAZAR (2004 CLC 289), Messrs ALI BROTHERS and others Vs Mrs. NAUSHABA JABEEN and others (2001 MLD 648), Mst. SABARUN NISA through attorney Vs ABDUL GHANI MEMON (2020 CLC 1708), MUSHTAQUE ALI and 5 others Vs SYED LATIFUDDIN FAKHRI (1993 CLC 1696), and Messrs MUKHTAR BROTHERS Vs Mst. HAWA BAI ADMANI and 9 others (1992 MLD 1045).

7. The respondent's counsel supports the decisions of the lower courts, arguing that the available evidence on record prima facie establishes that in response to the notice under Section 18 of the Ordinance, the respondent tendered the rent through a Money Order on November 24, 2010, which is presented as evidence at Ex.O/11 during the evidence of respondent No.1 recorded before the Rent Controller. The counsel asserts that the respondent subsequently commenced depositing the rent in Misc. Rent Case No.18/2011 after the rent remitted through the Money Order was returned by the petitioner. Additionally, it is contended that the petitioner failed to prove his bona fide need for vacating the demised premises, as the petitioner already resides with his family in their own house. In support of his contention he has relied upon the case MUHAMMAD IQBAL Vs LIAQUAT

DAWOOD KUKDA (1999 MLD 1842), JIAND RAI Vs ARJAN DAS (2016 MLD 116), NAEEM NOOR MUHAMMAD alias NAEEM CYCLEWALA Vs The IInd ADDITIONAL DISTRICT JUDGE, KARACHI SOUTH and 4 others (2017 CLC 626), RAJANDAS GIANCHAND Vs IST ADDITIONAL DISTRICT JUDGE< KARACHI, SOUTH and another (2018 CLC 97), CAPRI AUTOS, MOTORCYCLE DEALERS Vs Dr. MASUMA HASAN ( 2019 YLR 2500), NASREEN KAUSAR Vs Mst. HOOR AFZAL and 2 others (2020 YLR 902), Syed FAHAD MAHMOOD GILLANI Vs ABDUL GHAFUOR (1995 SCMR 96), Sir E.H. JAFFAR AND SONS LTD Vs SULTAN KARAM ALI and others (1995 ASCMR 330), and HIRJIBHAI BEHRANA DAR-E-MEHER through attorney Vs Messrs BOMBAY STEEL WORKS, PARTNERSHIP FIRM, through partner (2001 SCMR 188), Shaikh ISRAR Vs MUHAMMAD ARIF KHAN (2001 YLR 442), HAJI ALI MUHAMMAD PANWALA through legal Heirs Vs HAJI MUHAMMAD HUSSAIN and others (1985 CLC 2801), MUHAMMAD ASLAM Vs MUHAMMAD ASLAM (1987 CLC 686), Major (Retd.) JAMSHED KHUDADA IRANI Vs ABDUL REHMAN (1987 CLC 1988), ABDUL MAJEED MEMON Vs Mst. ATTIYA REHMAN (1993 CLC 1350), SHAHZAD Vs Mst. KULSOOM (2009 YLR 2166), AAMANULLAH KHAN Vs Mst. KHATOON ABBAS through L.Rs (2011 CLC 622), ABDUL FAYYAZ KHAN Vs IIIrd ADDITIONAL DISTRICT JUDGE, KARACHI, SOUTH and 4 others (2012 CLC 793), Dr. SHAHID HUSSAIN KHAN and 2 others Vs MAQSOOD AHMED through L.Rs and others (2013 YLR 2705), TARIQ ALI Vs Mst. RUBINA BANO and another (2014 MLD 693), NANIK RAM and 3 others Vs JURIO MAL and 7 others (2014 YLR 2508), and SOHAIL Vs KAMRAN SIDDIQUI and another.

8. I have given careful consideration to the arguments and gone through the relevant documents brought on record.

9. It is an admitted position that respondent Ameer Ali was tenant of previous landlord, Dr. Muhammad Siddiq Rangonwala over the demised premises and he was regularly depositing the monthly rent in Miscellaneous Rent Case No.166/2004. Later on, petitioner Abdul Khaliq purchased the demised premises from Dr. Muhammad Siddiq Rangonwala vide Conveyance Deed dated 26.05.2006 and served notice U/s 18 of the Ordinance on 29.10.2010 upon the respondent to which, the respondent replied on 07.12.2010 and so also tendered the rent of Rs.3032/- for the month of November, 2010 through Money Order dated 24.11.2010, produced by the respondent at Ex.O/11. Subsequently, the respondent by filing Miscellaneous Rent Case No.18/2011 deposited the rent of Rs.3032/- on 10.02.2011 in favour of the petitioner. Respondent Ameer Ali has also produced memo of Miscellaneous Rent Case No.18/2011 at Ex.O/12 and bank challan dated 10.02.2011 at Ex.O/13, which mentions that amount of Rs.3032/- for the month of January, 2011 were deposited before the Rent Controller. The respondent stated in Rent Case No.18/2011 that he has received notice dated 29.10.2010 in the 1<sup>st</sup> week of November, 2010 through his neighbor. Thus, the respondent admittedly came in knowledge about change in ownership during first week of November, 2010. Accordingly, the respondent was liable to pay the rent within 30 days to the petitioner as the fact about the change of ownership was brought into the knowledge of the respondent as held in the case of Hameed and 03 others vs. Jitindra and 02 others ( 2010 C L C 561 ). Moreover, the petitioner during his cross examination has denied

the suggestion put to him that the respondent sent Money Order of monthly rent to him. Thus, the burden shifted upon the respondent to prove the remittance of rent by Money Order dated 24-11-2010 (Exh. O/11). In order to discharge the burden respondent Amir Ali has only produced Money Order dated 24.11.2010. To properly understand, it would be appropriate to reproduce section 18 of the Ordinance for the sake of convenience, which reads as under:

"18. Change in ownership:- Where the ownership of a premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of subsection (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant."

10. From plain reading of the above provision of the Ordinance, it appears that under section 18 of the Ordinance, a tenant is not be deemed to have defaulted in payment of rent for the purpose of clause (ii) subsection (2) of section 15 of the Ordinance if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant. The new owner's obligation is to ensure that information of change of ownership is received to tenant so that he is aware that after such notice, tenant has to make payment to new owner. In short, this is a protection to the tenant only for clause (ii) of subsection (2) of section 15 of the Ordinance.

Now keeping in view such provision, the question of payment of monthly rent for the month of November, 2010 is to be considered for which, the respondent/tenant has produced a Money Order Coupon (Exh.O/11) and it would be appropriate to reproduce the Money Order by scanning it as follows:

بازاری کرنے کی کاپی

24/11/10

3032/10

K.C.H.S. UNION P.O.  
(K.P.-803) KARACHI-75350

رقم منی آرڈر (ہندسوں اور عبارت میں) } مبلغ

Re. Three thousand three hundred } وصول کرنے والے کا نام

00 } معروضہ

تاریخ

منی آرڈر

پہنچنے والے کا

نام اور پتہ

North Kapani Road Karachi

نوٹ: رقم وصول کرنے سے پہلے وصول کرنے والے کو منی آرڈر اور روڈوں رسیدوں پر دستخط کرنے چاہئیں۔

(پوسٹ کوڈ)

پاکستان پوسٹ

منی آرڈر پیجے والے کے لیے رسید

3032/10

منی آرڈر پیجے والے کا نام

اور کھل پتہ

North Kapani Road Karachi

(پوسٹ کوڈ)

کو پین: منی آرڈر پیجے والا اس جگہ پر منی آرڈر وصول کرنے والے کو رقم روپیہ 3032/10 پر

چاہے تو کو کھلے اور پتہ پر اپنا نام اور پتہ درج کر سکتا ہے۔

Monthly rent for the month of November 10 @ 3032/10 R.

Post Office Foundation Press

قیمت ایک روپیہ دوکان منی آرڈر پیجے سے منہا نہیں ہوگی

EXO/12

11. On bare perusal of the Money Order, it transpires that name of landlord/petitioner as well as his address is not mentioned over the said Coupon. Even, it does not bear signature with regard receipt of the



money order by the petitioner so also endorsement of refusal of the post man in case the money order was refused by the petitioner is not available. To consider the contention raised by learned counsel for the respondent on the fact that money order has been dispatched then inference is that it would have been delivered to the petitioner. It is observed that mere dispatch of a Money Order for the purpose of tendering the monthly rent is not sufficient but the Money Order in case of refusal or receipt in case of acceptance which should be in possession of the respondent was not produced in this case. The Rent Controller and the appellate court both failed to take notice of such important fact of tendering the rent by Money Order. In such circumstances the respondent was under obligation to have examined the postal authorities in order to establish the remittance, delivery and acceptance or refusal of such amount by the petitioner. Thus the authenticity of the money order coupon becomes doubtful as held in the case of Muhammad Sulleman vs. Messrs Alvi Brothers [1991 CLC 1068] as under:

“In cases where payment by money order is disputed it is proper to examine the postal authorities to establish remittance, delivery and acceptance or refusal of such amount. Furthermore, the procedure prevalent for remitting money order requires that the money order is tendered with a form by the postman and if it is accepted a receipt is given by the payee and if it is refused then the same is returned to the remitter with all endorsement of refusal. In case of acceptance the receipt is delivered to the remitter. Therefore, where such an authentic procedure has been provided mere receipt for remittance of money order, photo copy of which has been riled, cannot be treated as an authentic document to prove that the money order was remitted.

12. Since the petitioner during his cross examination specifically denied that respondent No.1 had sent a money order to him, hence the burden to prove the remittance had shifted upon the respondent No.1, who failed to discharge the burden. It is also held in the case of Muhammad Suleman v. Messrs Alvi Brothers (1991 CLC 1068) as under:

"In cases where payment by money order is disputed it is proper to examine the postal authorities to establish remittance, delivery and acceptance or refusal of such amount. Furthermore, the procedure prevalent for remitting money order requires that the money order is tendered with a form by the postman and if it is accepted a receipt is given by the payee and if it is refused then the same is returned to the remitter with an endorsement of

refusal. In case of acceptance the receipt is delivered to the remitter. Therefore, where such an authentic procedure has been provided mere receipt for remittance of money order, photocopy of which has been filed, cannot be treated as an authentic document to prove that the money order was remitted."

13. In the circumstances discussed above, the facts of the case law relied upon by learned counsel for the respondent are quite distinguishable. Superior courts have held time and again that it is mandatory for a tenant to adduce sufficient and reliable evidence on record that the landlord had refused to accept the rent. Thus, the respondent without proving the refusal on the part of the petitioner would not absolve himself from default in payment of rent. The reliance in this regard is placed on the case of Muhammad Asif Khan vs. Shaikh Israr , 2006 SCMR 1872 and Abdul Malik vs. Mrs. Qaiser Jahan 1995 SCMR 204 referred in the case of Haji Umar vs. Muhammad Farooque Motan (2022 CLC 1936) [Sindh] as under:

“In the above context, I may refer to Muhammad Asif Khan v. Sheikh Israr, 2006 SCMR 1872, wherein the Hon'ble Supreme Court was pleased to hold, inter alia, that there was no evidence in the cited case with regard to refusal of the landlord to accept the rent so as to provide authority or justification to the tenant to deposit the rent in Court, and there being no evidence to that effect, the tenant could not absolve himself from being a defaulter for the relevant period ; and, it was mandatory for the tenant to bring sufficient and reliable evidence on record that the landlord had refused to accept the rent so as to entitle him for deposit of rent in Court. I may also refer to Abdul Malik v. Mrs. Qaiser Jahan, 1995 SCMR 204, wherein it was held, inter alia, by the Hon'ble Supreme Court that it has to be seen that while depositing the rent in Court, there has been refusal or avoidance on the part of the landlord, and further that the conduct of the tenant is not contumacious or mala fide to harass the landlord”.

14. In the light of above discussion it is held that the respondent inspite receiving notice under section 18 of the Ordinance failed to prove that Money Order dated 24.11.2010 was remitted the petitioner has therefore, succeeded in establishing the default in payment of rent.

15. The second ground agitated by the petitioner is that he required the premises for his personal requirement. This has been contested by the respondent that the demised premises is a residence and the petitioner admittedly resides in the apartment as mentioned in the memo of this petition. It is observed that the petitioner is already under occupation of his apartment mentioned in the eviction application and the demised

premises is also a residential premises. The petitioner failed to establish unsuitability of premise under his occupation. In this regard facts of the case of Abdul Majeed Memon Vs. Mst. Attiya Rehman ( 1993 C L C 1350 ) are relevant here. Thereby, the findings of lower courts on the point of requirement of the demised premises on the ground of personal bona fide need are upheld.

16. The epitome of above discussion is that I partly accept this appeal and allow the ejectment on the ground of default and dismiss the same on the ground of personal bona fide need. The respondents shall handover vacant and peace full possession of the premises to the petitioner on or before expiry of four months provided the respondents continues to pay the rent to the petitioner for such period.

**JUDGE**

*Hanif/ps*