

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. S-90 of 2023**

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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*For hearing of main case.*

**Date of hearing.**                    **25-09-2023.**

**Date of announcement**        **-12-2023.**

Mr. Abdullah Bhatti, advocate for the petitioner.

Mr. Ashok Kumar K. Jamba advocate for the respondents.

Mr. Karim Bux Kubar, Assistant, Advocate General, Sindh.

**J U D G E M E N T**

**KHADIM HUSSAIN SOOMRO, J;** This petition has been maintained by the petitioners under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, impugning a Judgement dated 11-04-2023, passed by the Additional District Judge Khairpure in F.R.A No. 02 of 2022, whereby ejection order dated 08-10-2022, passed by the Rent Controller Khairpure in Rent Case No. 01 of 2021, was set aside. The matter was remanded back to the rent controller, with a direction to provide an opportunity for the respondent's side to conduct the cross-examination of the petitioner.

2.        The precise facts of the present petition are that petitioners have filed an ejection application under section 15 of the Sindh Rented Premises Ordinance 1979. They assert that a rent agreement was executed on 28-03-2011, between MCB Bank and Nilofar Larik, the mother of the petitioners. The said agreement pertained to the Ground Floor of the plot bearing No. A/94-A/98, Mall Road, Khairpur, and was effective for six years commencing from 1-12-2010. The lease agreement was extended for a further three years with the stipulation that no further extensions of the rent agreement. The rent agreement lapsed on 30-11-2019. Notably, during the tenure of the rent agreement, the mother of the petitioners passed away on 8-03-2013. Subsequently, the petitioners obtained a succession certificate from the court and furnished it to the respondents to obtain the accumulated rent payments. The respondent then paid these

rent amounts to petitioner No. 6 into her bank account until July 2016. Subsequently, when the petitioners approached the respondents to collect the monthly rent, the respondents declined to make payments despite the petitioners giving a succession certificate issued in their favour by the competent court. Hence the respondents have defaulted on rent payments since August 2016, up to initiation of an ejectment proceedings. The respondents are legally bound to settle the rent for past years, along with the escalated rent. The petitioners have decided not to enter any further rent agreement with the respondents. This decision is based on the personal needs of the petitioners, as they require the rented premises for their personal use. Specifically, petitioner No. 2, who is a medical doctor, intends to open a hospital on the premises, and the earnings made from the hospital will be distributed among the other petitioners. The petitioners repeatedly requested the respondents, but they did not comply with her requests; resultantly, a legal notice dated 7.4.2018 was served on the respondents, but they did not respond; consequently, another legal notice was also sent on 13-1- 2021. However, the reply of the respondents was evasive. They have neither provided the rent to the petitioners nor deposited it with the court. This demonstrates their consistent default in payment of rent and warrants their eviction from the rented premises. The petitioner prayed that respondents be directed to deposit the arrears and future rents at the rate of Rs. 35000 per month, as per prevailing rent of other banks in the same area, and deposit the same before the Nazir of the Court.

3. The respondents filed their written reply stating that the petitioners filed an ejectment application as a general power of attorney to the rent controller in Khairpur. However, the G.P.A. did not contain a description of the subject matter. Instead, it only mentions the survey numbers of the agricultural property situated at Deh Chajjro, Tapo Ubhi, Taluka, and District Khairpur. The petitioners were not competent to file an ejectment application, and the respondents had not committed default in payment of rent, but they regularly fulfilled their obligation to remit rent to the deceased mother of the petitioners during her lifetime. Subsequent to her death in the year of 2013, respondent No. 2/Branch Manager has periodically requested the legal heirs deceased for the execution of a new rent agreement. However, the legal heirs/petitioners have not provided

any affirmative response to such requests. The respondents disbursed the total areas of rent in the sum of Rs.12,10,490/-and an additional amount of Rs.6,83,935/- to the legal heirs of the deceased on 09-08-2016, and the respondents deposited the rent amount in the account of the deceased on 18-12-2020, as Amanat. It was further mentioned in the written reply that petitioners approached the respondents to collect the rent without notice for a change of ownership by way of Foiti Khata Badal. Respondent No. 2 did not default in the timely remittance of the monthly rent amount, and they used to deposit the said rent amount into the account of the deceased. Further, they were not bound to pay the rent amount to the legal heirs.

4. In the wake of a written reply filed by the respondent, the petitioner submitted an affidavit in evidence on 22.05.2021, but the respondent could not conduct the cross-examination of the petitioner, resulting on 30.11.2021, the respondent's side of cross-examination was closed. However, they filed an application for re-opening their side of cross-examination, which was allowed on 12.02.2022, but despite the cross-examination had not been conducted resultantly, the second-time their side cross-examination was closed, and after that, their evidence was recorded, and ultimately, the ejectment order was passed on 08.10.2022, against that order Rent Appeal No. 01 of 2023, was filed by the respondent which was allowed vide order dated 11.04.2023, whereby the appellate court remanded the case back to learned trial Court with directions to afford opportunity of cross examination to the respondents and thereafter to proceed with matter ahead on merits. Hence, this petition.

5. Learned counsel for the petitioners submits that the impugned order is against the law, fact and equity; that the lower appellate court has failed to address the matter adequately, departing from the applicable law and ignoring the evidence that came on record; that the court did not apply its judicial mind and, arrived at a decision in a precipitous and arbitrary manner, thereby violating and deviating from established judicial principles; that impugned order dated 11-04-2023, and its findings are repugnant to the provisions contained in the SRPO, 1979 as well as fundamental rights of the petitioners; that the appellate court in excess of

power and jurisdiction transgressing the limits which is not warranted by the law.

6. Conversely, the counsel for the respondent submits that the petitioner filed an ejectment application as a general power of attorney to the rent controller in Khairpur. However, the G.P.A. did not contain a description of the subject matter. Instead, it only mentions the survey numbers of the agricultural property situated at Deh Chajiro, Tapo Ubhi, Taluka, and District Khairpur; that the petitioners were not competent to file an ejectment application; that the respondents had not committed default in payment of rent, but they regularly fulfilled their obligation to remit rent to the deceased mother of the petitioners during her lifetime. Subsequent to her death in 2013, respondent No. 2/Branch Manager has periodically requested the legal heirs deceased for the execution of a new rent agreement. However, the legal heirs/petitioners have not provided any affirmative response to such requests; the legal heirs of the deceased duly presented the succession certificate; after that, the respondents disbursed areas of rent for a total sum of Rs.12,10,490/-, and an additional amount of Rs.6,83,935/- was provided to the legal heirs of the deceased on 09-08-2016; that the respondents deposited the rent amount in the account of deceased on dated 18-12-2020 as Amanat; that petitioners approached the respondents for collecting the rent without notice for change of ownership and Foiti Khata Badal; that respondent No. 2 did not default in the timely remittance of the monthly rent amount; that even otherwise the respondents are not bound to pay the rent amount to the legal heirs, but they deposited the rent amount in the deceased account as per law; that the petitioner was examined at Exh. A/1 and filed an affidavit in evidence at Exh. A/2 and sufficient opportunities were not provided to the respondent side, which is why they could not cross-examine the petitioner. Consequently, the respondents were debarred from crossing to the petitioner side; on 09-04-2022, the respondents could not appear before the learned trial Court due to the rush of traffic, the trial Court closed their side of cross-examination, and after that, they filed an application for recalling the said order, but the same was dismissed vide order dated 14-04-2022, and then the respondent filed Constitution Petition No. S-95 of 2022 before this Court, but that during the pendency of the petition, the learned rent controller allowed the ejectment application thereafter,

respondents No. 1 & 2 withdrew the Constitution petition from this Court on 28-10-2022; that petitioners filed an instant petition, which is misconceived same is liable to be dismissed. He relied upon the case reported as 2016 MLD 1490 Islamabad, PLD 1980 SC (A J & K) 60, 1995 CLC 1541, PLJ 2006 Lahore 180.

7. I have heard the Counsel for the parties and have perused the record.

8. The petitioners have called in question the impugned order dated 11.04.2023, whereby the appellate Court set aside the ejectment order passed by the rent controller on 08.10.2022. The learned appellate Court, while upholding the fundamental right to a fair trial, set aside the impugned order and remanded it back to the trial court to provide a full opportunity to both parties to lead their respective evidence. The record reveals that petitioner No. 1, being general power of attorney for the rest of the petitioners, filed an affidavit in evidence on 22.05.2021, and a copy thereof was provided to the respondents for cross-examination. The respondents sought more than 10 adjournments despite the fact they could not conduct the cross-examination of the petitioner; however, on 30.11.2021, the respondent's side of the cross-examination was closed. However, the respondents filed an application for re-opening their side of cross-examination, which was allowed on 12.02.2022. However, again, ample opportunity was provided to the respondents to cross-examine the petitioner, but the respondent failed to do so the second time. In these circumstances, the learned rent controller was left with no other option except to close respondent's side of cross-examination second time on 09-04-2022. The respondent filed an application to recall the order 09.04.2022, which was also dismissed via an order dated 14-04-2022. It was need of time to uphold the trust of all parties involved in the legal proceedings and the presiding judicial officers. The opportunity for cross-examination was given, and the respondent was reminded to be cautious and aware of the consequences. This was not just a final chance for cross-examination, but a legally binding directive that assured the parties involved that no further delays would be allowed under any circumstances. The Court is duty-bound to enforce its order and fulfil its obligation as done by the learned rent controller. The record reveals that more than ten times,

opportunities were provided to the respondents to conduct the cross-examination of the petitioner, but they failed to do so. The recurrent practice of extending numerous opportunities for leniency, subsequently followed by additional opportunities for clemency, and persisting with further opportunities for leniency, erodes the integrity, credibility and trust of the judicial system. Such practices necessitate immediate cessation. In the case of *Maulvi Abdul Aziz Khan v. Mst. Shah Jahan Begum and 2 others* (PLD 1971 SC 434) the apex court of the country held that:

"It will be seen that this rule applies to a case where time has been granted to a party at his instance, to produce evidence, or to cause the attendance of witnesses or to perform any other act necessary for the progress of the suit and will not apply unless default has been committed by such party in doing the act for which the time was granted."

9. Another case of *MUHAMMAD SULEMAN SULFI V/S Mst. AZRA SHAMIM*, (1989 SCMR 1810) the august apex court of the country observed as under:-

" We on having perused the order-sheet, the reasons for closing the petitioner's case and the observations of the High Court with regard to conduct of the case from the petitioner's side, are satisfied that he was afforded enough and fair opportunity of substantiating his pleas. On merits also we agree with the High Court that the petitioner was liable to be evicted on ground of default in payment of rent. It may be mentioned here that when asked whether the petitioner would like to place before this Court any material which he might have desired to place before the learned Rent Controller and was unable to do, the learned counsel did not evince any interest in availing of this opportunity"

"After hearing the learned counsel at some length on all relevant aspects of the case we do not find any justification, for interference with the impugned judgment of the High Court. Leave to appeal, therefore, is refused."

10. Another aspect of the case is whether, in the present case, the right of the respondent's fair trial was infringed or not. It is a matter of fact and record that the respondents were allowed to file written replies through

which they put forward their defence; they were provided with full opportunity to conduct the cross-examination of the petitioner. Moreover, the respondents also brought their evidence on the record to establish their claim. The learned IInd Additional District Judge Khairpure had also observed the respondents were provided sufficient and ample opportunities to conduct the cross-examination, but the same was not availed. In light of the above facts and circumstances, I hold that no right of a fair trial was infringed, but the respondents could not avail opportunities of cross-examinations, despite repeated chances. Therefore, the learned rent controller rightly closed the respondent side of the cross-examination.

11. Another crucial facet of the case is that the petitioners filed an ejectment application on two grounds: one, the respondents' committed willful default in the payment of rent, and second, the rented premises are required to the petitioners for their personal bonafide use. The relationship of the landlord and tenant is admitted. There is no need to send the notice for the change of ownership to the respondent. Moreover, the respondent bank had also deposited the arrears of rent in the bank account of the petitioner no 1. It is a settled principle of law that once tenant is always a tenant. It is an admitted fact that the respondent bank committed willful default in the payment of rent. Thereupon, the petitioner sent a legal notice dated 17.04.2018, but the same was not replied to. Ultimately, the petitioner sent the second legal notice on 13.02.2021; thereafter, the petitioner filed an ejectment application against the respondent with a prayer of areas of rent from the year 2016 to 2021.

12. Pursuant to the stipulation of sub-clause (2) of subsection (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979, it is a statutory duty imposed upon every tenant to remit rent to the landlord. The non-compliance with this obligation renders the tenant liable to eviction from the tenement, as prescribed under clause (2) of subsection (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. In instances where a stipulated time period is defined in the agreement, it becomes a statutory obligation for the tenant to remit rent to the landlord initially on the agreed-upon date mutually determined between both parties. Failure to tender such rent within 15 days from the due date

constitutes a default by the tenant in fulfilling the obligation to pay rent, rendering the tenant liable to eviction from the tenement. In the absence of a mutually agreed-upon date for rent payment, the tenant is under obligation to remit the rent to the landlord within a period of 60 days from the inception of the obligation to pay rent. Failure to adhere to this timeframe categorizes the tenant as having defaulted on the obligation to pay rent, consequently making the tenant susceptible to eviction from the tenement.

13. In response to the claim of default in rent payment made by the petitioners, the respondents upraised a definite defence, contending that the petitioner intentionally refrained from accepting rent payments from them. In the event the landlord refuses to receive the rent tendered by the tenant, a remedy is available to the tenant under Provision 10 of the Sindh Rented Premises Ordinance, 1979, the text of which is reproduced as follows:-

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.

14. It has been held by this court in various judgments that the primary duty of the landlord is to assert the tenant's default and pinpoint the said default, thereby fulfilling the initial burden. The petitioners discharged their burden of proof by producing evidence, which shifted



the burden upon the respondents to demonstrate that the tenant did not default in meeting its obligation to remit rent to them. However, on the one hand, the petitioner's evidence went un-rebutted; on the other hand, the respondent has failed to discharge its burden of proof. The reliance can be placed in the case of *Muhammad Riaz Shaikh v/s Iftikharuddin* (2014 CLC 1695). Any rent paid after that due date must be constituted as default. The reliance can be placed in the case of *Mumtaz Sultana v/s Ishrat Jehan* (1989 CLC 639). The issue at hand relates to the allocation of the burden of proving that the tenant defaulted on rent payment, thereby justifying the landlord's entitlement to evict the tenant under Clause 1(2) of Section 15 of the Sindh Rented Premises Ordinance, 1979. This question has been decisively addressed by the apex in the case of *Allahdino v/s Habib* (PLD 1982 Supreme Court 465). The relevant portion of the judgment is reproduced as follows:-

"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 13 (2) (i) 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".

15. The respondent-bank was under obligation to deposit the rent amount within the date fixed in the rented premises. The respondents admitted in the cross examination that that they did not pay rent to the petitioners.

16. As far as the personal bonafide need of the petitioner is concerned. It is established jurisprudence that if the evidence produced by the landlord aligns with the averments made in the ejectment application, and their evidence is consistent, coherent and unshaken, nothing anything brought on record to contradict her statement which is deemed sufficient for the grant of the ejectment application. The essential criterion for the

landlord is to demonstrate the bona fide and reasonable personal requirement of the rental premises. In the present case, petitioners have effectively discharged their burden by establishing their personal needs' reasonableness, genuineness, and bona fide nature. Conversely, the respondent failed to undermine or refute their claim. It is firmly established that a landlord possesses an unequivocal entitlement to acquire, manage, and retain ownership of their property in a manner deemed most advantageous to them. A tenant, correspondingly, lacks the prerogative to divest the landlord of this valuable right to acquire, manage, and possess their property, a right further safeguarded by Article 23 of the Constitution of the Islamic Republic of Pakistan 1973.

17. In view of the facts, circumstances and case law discussed above, the impugned order 11.04.2023, passed by the Additional District Judge Khairpure in F.R.A No. 02 of 2022, is set aside, and the ejectment order dated 08.10.2022, passed by the Rent Controller Khairpure in Rent Case No. 01 of 2021 is hereby maintained.

***JUDGE***

thereafter the respondent bank filed an affidavit in evidence of through their manager namely Mansoor Khan Dharejo on 26-04-2022, he was cross-examined on 03.06.2022, and thereafter the learned rent controller allowed the ejection application after hearing both the counsel for the parties.