

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C.P. No.S-1043 of 2017

Date	Order with signature of the Judge
------	-----------------------------------

1. For hearing of MA 5218/2017.
2. For hearing of main case

**13.12.2024**

Mr. Matloob Hussain, advocate for petitioner  
Mr. Akhtar Hakeem Baloch, advocate for respondent.

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Late Muhammad Ali Tahir, father of respondents No.2 to 5 filed an application u/s 15 (1) (2) (ii) of Sindh Rented Premises Ordinance, 1979 (SRPO) for ejectment against petitioner in respect of a house on plot No.172-N Block 2 PECHS, Tariq Road, Karachi. His case was based on a sale agreement dated 03.06.2002, whereby he had agreed to sell out subject premises to petitioner in the sum of Rs.60,00,000/-, out of which petitioner paid him Rs.400,000/- as advance and remaining amount was agreed to be paid by him in installments of Rs.60,000/- per month.

2. As per record, petitioner was paying Rs.2000/- per day to late Tahir Ali and in this regard he made a last payment on 20.02.2004. In all, he paid Rs.12,40,000/- in installments and Rs.400,000/- as advance, total Rs.16,40,000/- to late Muhammad Ali Tahir. Thereafter he stopped making any payment. Clause 3 of the sale agreement stipulates that "that in case purchaser makes any default in payment for two continuous installments then deed would be treated as cancelled and amount of Rs.400,000/- (Rupees four lacs) plus the amount paid in the installments will be adjusted towards rent of the said premises at Rs.32000/- (Rupees thirty two thousands) per month". It was on the basis of such clause, he filed the rent application against petitioner seeking the ejectment on the ground of default.

3. The ejectment application was however, dismissed by the Rent Controller vide judgment dated 09.01.2017 holding that there existed no relationship of landlord and tenant between the parties. The judgment was challenged by respondent in appeal which landed before IX-Additional District Judge, Karachi East, who through impugned order has allowed the application and has directed the petitioner to handover vacant physical possession of the premises to the respondents within 30 days. Hence this petition.

4. Learned counsel for petitioner has argued that there is no relationship of landlord and tenant between the parties, no rent agreement was ever executed between the parties, hence the very application under SRPO was not sustainable; the judgment rendered by learned Rent Controller was in accordance with law and based on proper appreciation of facts; learned appellate court has not considered the facts on record and has wrongly based its findings on clause "3" of the sale agreement. It is also argued by the counsel for petitioner that dispute between the parties is purely of civil nature and filing of rent application by the petitioner was not maintainable.

5. On the other hand, learned counsel for respondents has supported the impugned judgment.

6. I have considered submissions of the parties and perused material available on record. No doubt that the parties initially entered into a sale agreement regarding sale of the demised premises under certain terms and conditions which show that as an advance, petitioner paid Rs.400,000/- to the predecessor in interest of the respondents and agreed to pay installments of Rs.60,000/- per month. Instead of paying Rs.60,000/- per month to respondent's father, the petitioner started paying Rs.2000/- per day. That payment he continued to make till 20.02.2004 and thereafter as per his own admission in cross-examination, he did not make any further payment to father of respondents. The total amount which include advance and installments, he paid was to the tune of Rs.16,40,000/-. On his failure to make any further payment, respondent's father invoked clause 3 of the sale agreement and filed ejectment application against petitioner on the ground of default.

7. The execution of sale agreement is not disputed, on the contrary learned counsel for petitioner while arguing the case has heavily relied upon it to establish that relationship between the parties was of vendor and vendee ignoring the fact that those relationship was agreed by the parties to continue till continuous monthly installments of Rs.60,000/- by the petitioner to father of respondents. On default of two consecutive installments, that relationship was agreed by the parties to cease giving effect to relationship of tenant and landlord between the parties in terms of clause 3 of the agreement with further stipulation that rent of the demised premises would be considered Rs.32000/- per month and the amount paid in advance and in installments would be adjusted towards the rent. The petitioner not only failed to make any further payment after 20.02.2004 but failed to pay any rent thereafter to keep demised premises as a

tenant. The appellate court has discussed these points in detail in paras 11 and 12 in the impugned judgment which are reproduced hereunder:-

11. I have perused the record and found that no doubt the applicant Muhammad Ali Tahir (since deceased) had sold out the premises in question to the respondent No.1 in the lump Sum price of Rs.60,00,000/ and such agreement to sell (Ex.A/7) had been executed between the parties on 03.06.2002. Both appellant and respondent No.1 have admitted the contents of agreement to sell dated: 03.06.2002. There are 11 clauses of the agreement to sell. Clause No.1 of agreement to sell shows that the applicant Muhammad Ali Tahir (since deceased) had received an amount of Rs.4,00,000/- from the respondent No.1 on 01.06.2002 as advance. In clause No.2, it has been mentioned that balance payment of Rs.5,6000,00/- shall be paid by the vendee to the vendor @ monthly Installment of Rs. 60,000/-. The appellant has admitted that the respondent No.1 was paying the installments regularly on daily basis @ Rs.2000/- per day till 20th February 2004, which were received and separate receipts were issued at the end of the month, thereby the respondent No.1 paid Rs.12,40,000/- (Rupees twelve Lac forty thousand only) in installments and also paid Ra.4,00,000/- as advance, total amounting to Rs. 16,40,000/- (Rupees sixteen Lac forty thousand only) and thereafter stopped payment of installments since February, 2004. As pointed out hereinabove, it is the case of appellant that as per clause 3 of the agreement to sell that if the respondent No.1/opponent makes any default in payment of installments and remaining amount, he will become tenant and the deal would be treated as cancelled and the amount of Rs.4,00,000/- plus the amount paid in the installments will be adjusted towards rent of the premises @ Rs.32,000/- per month but the respondent No.1/opponent failed to pay the remaining amount of Rs.43,60,000 (Rupees forty three Lac and sixty thousands only) since 20th February 2004, as such, the amount of Rs. 16,40,000/- has been adjusted towards rent @ Rs. 32,000/- per month from June 2002 to June 2008. It is pertinent to mention here that the clause-3 of agreement to (Ex.A/7) was very much important, which is reproduced

"That in case the purchaser makes any default in payment for at least two continuous installments, then the deal would be treated as cancelled and the amount of Rs.400000 (Rupees Four Lacs Only) plus the amount paid in the installments will be adjusted towards rent of the said premises @ Rs.32,00.00 (Rupees Thirty Two Thousand Only) per month".

12. Now it has to been seen whether the respondent No.1 makes any default in payment for at least two continuous installment or not. In this regard, I have perused the cross- examination of the respondent No.1 and found that the respondent No.1 while replying to the suggestions/questions of learned counsel for the appellant has deposed as under:

"It is fact that clause 3 of such sale agreement shows that in case of any default in payment for atleast two continuous installment, then the deal will be treated as cancelled and the amount of Rs. 4,00,000/- plus the amount paid in installment will be adjusted towards rented of said premises at the rate of Rs. 32,000/- per

month as a tenant. It is fact that I did not pay any installment after the month of February 2004. It is fact that I did not file any suit for specific performance against the applicant. I do not know whether my suit No.1152/2005 for damages was dismissed or not".

8. The above discussion shows that learned appellate court has appreciated the evidence in a proper context and rightly concluded that on failure of petitioner to pay monthly installments of the premises, the sale agreement between the parties had come to an end and relationship between them were converted from vendor and vendee to landlord and tenant. The petitioner himself had agreed that on default for two consecutive installments, the premises would be considered to have been given to him on rent. Nothing has been brought on record in negation of clause 3 of the agreement executed between the parties. No justification has been given by the counsel for the petitioner that when admittedly the petitioner committed long and continuous default in payment of sale consideration and after cancellation of sale agreement, his default in making any monthly rent, under which title the petitioner was in possession of the demised premises. I, therefore, see no merits in this petition, agree with findings of the learned appellate court and dismiss this constitutional petition alongwith pending application.

The Cr. Appeal stands disposed of in the above terms.

**JUDGE**

AK