

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-11 of 2023

[Muhammad Arshad Rafique vs. Aftab Ahmed & Others]

Petitioner Through Mirza Sarfaraz Ahmed, Advocate.
Respondents Through Mr. Muhammad Ramzan Tabbassum, Adv.
Date of Hearing: 18.08.2025.
Date of Order: 18.08.2025.

ARSHAD HUSSAIN KHAN, J.- Through this constitutional petition the petitioner [Muhammad Arshad Rafique] has assailed the order dated 02.12.2022, passed by the District Judge, Karachi [Malir] in First Rent Appeal No.46/2022, which was allowed by setting aside the eviction order dated **09.09.2022**, passed by the learned Rent Controller-III, Malir, Karachi, in Rent Case No.05 of 2019.

2. Briefly, before the learned Rent Controller, the petitioner / applicant filed ejectment application under Section 15 of the Sindh Rented Premises Ordinance, 1979, for ejectment of respondent No.1 Aftab Ahmed with the following prayers :

"It is therefore, prayed that this Court may be pleased to pass an order against the opponent and sub-lettee for ejectment from the demised Shop No.4, at Plot No.87, Quaidabad, Landhi, Karachi and hand over the physical possession thereof to applicant.

Cost of the case/application.

Any other relief / reliefs which this Court may deem fit and proper."

3. On the other hand, before the trial court, the respondent / opponent No.1 [Aftab Ahmed] had filed written statement denying the relationship of landlord and tenant and prayed for dismissal of the ejectment application. Thereafter, issues were framed in the matter; evidence of the parties was recorded; and the ejectment application was allowed as follows:

"12. In sequel to above discussion and reasoning on the foregoing points, I am of considered opinion that the applicant has successfully established the grounds of relationship, default, sub-letting and personal bona need. The application is allowed and the opponents are directed to deliver vacant and peaceful possession of subject premises to the applicant within 60 days from today."

4. Against the aforesaid judgment of the learned Rent Controller-III, Karachi, [Malir] the respondent/opponent has filed First Rent Appeal No.46/2022, before the Learned District Judge, Malir, Karachi, which was allowed through the impugned judgment with the following observations :

“13. For the reasons discussed hereinabove, I allow the instant appeal and in consequent thereof the judgment passed by Rent Controller-III, Malir, Karachi dated 09.09.2022 is hereby set-aside, and rent application filed by applicant/respondent No.1 is dismissed. No order as to cost.”

The petitioner herein filed the instant petition against the conflicting findings of the two courts below.

5. Learned counsel for the petitioner has contended that the impugned judgment is not only perverse and bad in law but also void having been rendered in consequence of an illegal and improper exercise of jurisdiction by the learned appellate court. It is contended that the petitioner is the lawful owner and landlord of the rented shops and is entitled to enjoy his property, a right guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. He has further contended that the impugned judgment is contrary to the fundamental rights of the petitioner, inconsistent with the facts, evidence, and settled law, therefore, not sustainable. It is also contended that the appellate court, without due appreciation of the evidence available on the record, proceeded to pass the impugned judgment, which suffers from material illegality. Moreover, the learned appellate court, without affording the petitioner a proper opportunity of hearing, set aside the well-reasoned judgment of the learned Rent Controller dated 09.09.2022. The said judgment thus is in contravention of the principles laid down by the superior courts. It is further contended that the respondents abstained from appearing before the learned Rent Controller for cross-examination on their affidavit-in-evidence, thereby admitting the evidence adduced by the petitioner. The learned appellate court either misread or failed to read the petitioner's title, despite the fact that respondents Nos. 1 to 3 had never disputed the same. The appellate court, in undue haste, wrongly set aside the Rent Controller's judgment. Such an approach demonstrates a failure to apply judicial mind to the material aspects of the case, resulting in grave miscarriage of justice. The learned counsel further submits that the petitioner had fully discharged the burden of proof before the Rent Controller, whereas the respondents have failed to adduce any evidence in

rebuttal. Consequently, the petitioner's evidence remained unrebutted and unchallenged. It is also urged that respondent No.1 committed default in payment of the monthly rent and unlawfully sublet the demised premises to respondents Nos. 2 and 3. Lastly, it is submitted that the impugned judgment is contrary to the record and law, it suffers from serious jurisdictional defects, therefore, the same is liable to be set aside.

6. Learned counsel for the respondents has argued that the alleged agreements relied upon by the petitioner are fake, fabricated, and do not bear any genuine signatures. All such documents are forged, prepared in the same handwriting, therefore, the burden lies upon the petitioner to prove his authenticity. It is submitted that the purported agreements are not, in fact, rent agreements but rather in the nature of affidavits or undertakings. It has further been contended that the father of the petitioner had sold shop No. 4 during his lifetime in the year 2001, and until his death he never raised any claim or dispute over the said property. It was only after his demise that the legal heirs started making dishonest claims. The allegation of subletting is specifically denied. It is submitted that both the petitioner and the other legal heirs were fully aware that the shop had been sold out by their father, Muhammad Rafique, in the year 2001. Consequently, the present claim is misconceived as no relationship of landlord and tenant ever existed. It is further argued that the petitioner and other legal heirs, by way of misrepresentation and fraud, managed to have the entire property transferred in the names of Shahida Rafique and Amjad Rafique, with the collusion of officials of the Katchi Abadi, without adhering to due process and despite knowing that part of the property had already been sold out to the father of Respondent No. 1. Hence, the petitioner has no lawful right or title over the shop and is under a legal as well as moral obligation to transfer the portion of the property in favour of the legal heirs of the deceased Aftab Hussain. Lastly, learned counsel has prayed for dismissal of the petition as the appellate court has already examined every aspect of the matter in detail and rightly passed the impugned judgment, which calls for no interference by this Court.

7. Heard learned counsel for the parties, perused the record and the relevant law.

From perusal of the record, it transpires that in order to establish his case before the learned Rent Controller, the petitioner/applicant filed his affidavit-in-evidence at Ex.A-1/1. Along with the same, he produced

seven (07) tenancy agreements, a death certificate, and documents pertaining to leasehold rights for regularization, marked as Ex.A-1/2 to Ex.A-1/10. He further placed on record a copy of the notice under Section 18 of the Sindh Rented Premises Ordinance (SRPO) as Annexure “A,” courier receipt as Ex.A-1/11, copy of delivery confirmation receipt as Annexure “B,” notice dated 15.01.2019 as Annexure “C,” courier receipt as Ex.A-1/12, delivery confirmation receipt as Annexure “D,” another notice as Annexure “E,” courier receipt as Ex.A-1/13, and confirmation receipt also marked as Annexure “E.” The petitioner/applicant also examined one witness namely; Muhammad Haroon, who filed his affidavit-in-evidence at Ex.A-2 in support of the petitioner’s claim. **Conversely**, Respondent/Opponent No. 1 filed his affidavit-in-evidence, however, despite being granted sufficient opportunities, he failed to appear in the witness box to lead his evidence. Consequently, his affidavit-in-evidence was discarded, and his side of the evidence was closed. Moreover, even before the learned Rent Controller, counsel for the respondents/opponents abstained from advancing arguments in the matter.

8. From perusal of the record, it is manifest that the petitioner adduced ample documentary evidence in support of his claim, including duly executed tenancy agreements and statutory notices, and further fortified his stance by examining himself as well as an independent witness. Conversely, although Respondent No. 1 filed an affidavit-in-evidence, he failed to step into the witness box for cross-examination despite being afforded repeated opportunities. Consequently, his evidence was lawfully closed and his affidavit, in the eyes of law, stood discarded. It is a trite principle of law that an affidavit, unless tested through cross-examination, carries no evidentiary value. Failure of a party subject himself to cross-examination renders the affidavit a mere piece of paper and disentitles such a party from drawing any legal benefit therefrom.¹ It may also be observed that where a witness avoids cross-examination, his testimony cannot be considered and would amount to abandonment of evidence. Thus, in the present case, the petitioner’s evidence stands unrebutted and unchallenged, and the findings are bound to be drawn in his favour in accordance with the settled principles of law.

¹ *Mumtaz Ahmed v. Naheed Akhtar* [2018 YLR 1262]; *Muhammad Abid v. Mst. Nasreen Yousuf and another* [2004 YLR 1999].

9. The learned Rent Controller, upon framing the requisite issues and undertaking a comprehensive appraisal of the evidence on record, rendered categorical findings to the effect that: (i) the relationship of landlord and tenant stood conclusively established, (ii) default in the payment of rent was duly proved, (iii) the allegation of sub-letting was substantiated, and (iv) the premises were required by the petitioner for his bona fide personal use. These findings are firmly grounded in the material produced during the trial and are in consonance with the settled principles of law. It is trite principle of law that the findings of fact, if based on proper appreciation of evidence, carry sanctity in the eyes of law, cannot be interfered with by an appellate forum.²

10. The learned appellate court, however, while setting aside the judgment and decree of the learned Rent Controller, neither assigned cogent or convincing reasons nor undertook a proper appreciation of the evidence available on the record. Its conclusions rest upon misreading and non-reading of material evidence and are, therefore, perverse and unsustainable in law. It may be observed that where the findings of the trial court are anchored in evidence and supported by reasoning, the appellate court is not justified in substituting its own view in absence of the patent illegality, jurisdictional defect, or perversity.

11. It is a well-settled principle of law that where a tenant sets up a plea of ownership over the demised premises, the legally mandated course is that he must first vacate the premises, pursue his civil remedy before the competent court, and, upon obtaining a favourable judgment, regain possession in accordance with the law. In the present case, the respondent, while asserting ownership, neither vacated the premises before instituting the civil suit nor succeeded in establishing his claim therein³.

12. It is equally a settled proposition that a person who is in possession or occupation of the premises belonging to another, even if he does not expressly agree to pay rent, is bound in law to pay rent as consideration for such occupation. Such a person is deemed a tenant within the meaning of the Sindh Rented Premises Ordinance, 1979.⁴ Likewise, any person

² *Farhan Farooq v. Salma Mahmood* (2022 YLR 638),

³ *Muhammad Nisar v. Izhar Ahmed Shaikh and others* [PLD 2014 SC 347] *Nasir Khan v. Nadia Ali Butt and others*, [2024 SCMR 452].

⁴ *Muhammad Shabbir v. Hamed Begum* [1992 MLD 323]

who occupies premises without setting up a legally adverse title is, by fiction of law, treated as a tenant.⁵ Furthermore, it is a cardinal rule that a tenant has no locus standi to dispute or challenge the change of ownership of the rented property. Once a notice under Section 18 of the Ordinance is duly served, the tenant is bound to honour his statutory obligations and cannot question the mode of transfer, whether by sale, gift, inheritance, or any other legally recognized means.

13. In light of the foregoing, I am of the considered view that the learned Rent Controller has rightly allowed the ejectment application, whereas the appellate court has committed a material illegality in reversing the well-reasoned judgment without due consideration of evidence available on the record. Consequently, the impugned judgment dated **02.12.2022**, passed in FRA No.46/2022 by the District Judge, Karachi (Malir) is set aside, and the judgment dated **09.09.2022**, passed by the learned Rent Controller-III, Malir, Karachi in Rent Case No.05 of 2019 stands maintained. Resultantly, the constitutional petition is allowed in the terms set forth hereinabove.

The above are the reasons for my short order dated 18.08.2025.

JUDGE

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⁵ *Saifullah and another v. Chaudhry Ghulam Ghous* [2000 CLC 1841]