

# IN THE HIGH COURT OF SINDH KARACHI

## CP No.S-447 of 2016

*(Victor Restaurant through its Partners v. Vth Additional District & Sessions Judge Karachi South and others)*

Petitioner : Victor Restaurant through its Partners  
through Mr. R.F Virjee, advocate

Respondents : Vth Additional District & Sessions Judge  
Karachi South and others through Mr.  
Mukesh Kumar Khatri, advocate

**Date of hearing and order: 21.11.2025**

### ORDER

**Nisar Ahmed Bhanbhro, J.** This case has a checkered history. Petitioner is under tenancy of tenement premises owned by Respondent State Life Insurance Corporation located in State Life Building No 7 G. Allana Road Karachi since last more than five decades. Earlier, the landlord filed an application under Section 8 of the SRPO for the fixation of the fair rent. The said proceedings culminated before Honorable Supreme Court vide an order dated 23<sup>rd</sup> December, 2009, whereby the monthly rent of the demised premises was enhanced and the tenant was directed to pay the enhanced rent along with the default amount in 06 equal enhancement from 01.02.2010.

2. During the pendency of earlier proceedings before Hon'ble Supreme Court of Pakistan, Rent Case No 2066 of 2007 (subject matter of the instant petition) under Section 15 was filed by the landlord on 14.12.2007 seeking ejection of the tenant on the ground of default.

3. The Rent Case proceeded on merits the parties recorded their evidence. Learned Trial Court granted the ejectment application, directing the petitioner to vacate the demised premises. In first Rent Appeal learned appellate Court vide judgment dated 12.02.2016 maintained the order of Trial Court and directed the Petitioner to vacate the tenement premises within 60 days, time.

4. Mr. R.F Virjee, learned counsel for the petitioner, submitted that the petitioner has never defaulted in payment of rent since 1996. The landlord was agonized against the petitioner and was by hook and crook intended to dispossess him from the demised premises. He further argued that initially an application for fixing the fair rent was filed, meaning thereby the petitioner was not a defaulter, but the rent earlier agreed by the parties should have been enhanced. He further argued that the said proceedings ended in the year 2009 before the Hon'ble Supreme Court of Pakistan, wherein the rent was enhanced to Rs. 65000/- per month. He argued that the petitioner paid rent regularly, but the landlord refused to receive the rent; therefore, it was sent to the landlord through money order, but that too was returned. Therefore, an application under Section 10(3) was filed before the Rent Controller, and the rent was deposited with the court. He argued that the landlord in the pleadings has asserted that the petitioner was a defaulter in payment of rent from 2003; however, the learned Courts below held that the petitioner was a defaulter from the month of March 2007 to December 2007, which belied the stance of the landlord. He argued that the petitioner is running a small business in the demised premises, and the ejectment application was moved to pressurize him to bow down before the landlord and to pay rent of choice. He prayed to allow the petition.

5. Mr. Mukesh Kumar Khatri, learned counsel for the respondent, submitted that the petitioner is a defaulter and he was required to pay the rent directly as agreed in the rent agreement and paying of rent through any other mode was not recognized under the law. He further argued that the default in payment of rent was established through evidence and findings of fact by the Courts below resolved the controversy in favor of the respondent. He lastly submitted that the petitioner had been a defaulter for a long time and never obligated the rent agreement executed between the parties. He placed reliance upon the cases of *Mohammad Asif Khan v. Sheikh Israr* (KLR 2009 Supreme Court 45), *Pakistan State Oil Company Ltd. Karachi v. Pirjee Muhammad Naqi* (2001 SCMR 1140),

*Sheikh Haneefur Rehman v. Muhammad Jalaluddin* (1987 MLD 1332) and *Abdul Malik v. Mrs. Qaisar Jehan* (1995 SCMR 204).

6. Heard arguments and perused the material available on record.

7. Admittedly, the rent of the demised premises was enhanced by the Hon'ble Supreme Court of Pakistan for Rs. 6500/- per month from Rs. 350/- as was earlier agreed by the parties. Section 15(2) of the Sindh Rented Premises Ordinance (SRPO), 1979, provides for the initiation of the ejectment proceedings in case tenant defaulted in payment of rent, which reads as below:

“15. (1) Where a landlord seeks to evict the tenant otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order, if he is satisfied that—

(i) .....

(ii) the tenant has failed to pay rent in respect of the premises in his possession within fifteen days after the expiry of the period fixed by mutual agreement between the tenant and landlord for payment of the rent, or in the absence of such agreement, within the sixty days after the rent has become due for payment.

provided that where the application made by the landlord is on the sole ground mentioned in this clause and the tenant on the first day of hearing admits his liability to pay the rent claimed from him, the Controller shall, if he is satisfied that the tenant has not made such default on any previous occasion and the default is not exceeding six months, direct the tenant to pay all the rent claimed from him on or before the date to be fixed for the purpose and upon such payment, he shall reject the application;”

8. From a perusal of the above provision of law, it is crystal clear that ejectment cannot be ordered where the tenant voluntarily pays the rent as claimed from him, and it is to the satisfaction of the Controller that no previous default was committed and that no default existed within the preceding six months. In such circumstances, the Rent Controller shall direct the tenant to pay all rent due on or before the date fixed for the purpose, and upon such payment, the Rent Controller shall, reject the ejectment application. It transpires from the record that on institution of the instant ejectment proceedings the Rent Controller did not require the tenant

to pay all required rents, on the contrary the tenant in its objection to the application stated that he had paid all the dues and sent the rent through money order to the landlord which were refused and thereafter an application under Section 10(3) of the SRPO was made and the rent was paid in the Court. This aspect of the case has not been denied by the landlord in its Affidavit-in-evidence or even the questions put during evidence to that effect have answered in affirmative.

9. SRPO, 1979, provides complete mechanism for payment of rent. Section 10 of SRPO requires the rent has to be paid to the landlord directly, on his refusal the same has to be sent through money order by postal service and if the rent is not received even through money order then tenant has to invoke jurisdiction of the Rent Controller for depositing the rent before the Court. Since there is no denial on the record that efforts were made by the tenant / petitioner to pay the rent to the respondent. Petitioner has placed on record the copies of money orders sent dating back to 1999 and the years thereafter. The record of the proceedings' prima facie speaks that the efforts were made by the tenant to pay all the dues but the landlord was not willing to accept the same.

10. Per Para-9 of the ejectment application, it was claimed by the landlord that the tenant was defaulter of the rent since 2003 and per concurrent findings of the Courts below, the tenant is defaulter in payment of the rent from March, 2007 to December, 2007. For the ease of convenience, finding of the appellate Court vide judgment dated 12.02.2016 on Point No.2 is reproduced below:

**“POINT NO.2:**

For the reasons assigned in above point as the default in payment of rent has been committed by the appellant for the months from March, 2007 to December, 2007 as such he is not entitled for the relief claimed. The appeal is therefore dismissed with no orders as to the costs. The appellant is directed to handover vacant possession of the demised premises to the respondent within period of 60 days after announcement of instant order.”

This aspect of the case also demonstrated that the default from year 2003 as claimed by the landlord was not established.

11. Perusal of the record reflects that the Petitioner paid the rent in terms of Section 10(3) of SRPO on refusal by the landlord. The ejectment petition under such scenario was bad under the law and liable to be dismissed. In this regard, reliance can be placed on the case law reported as *Pakistan State Oil Company Ltd. Karachi v. Pirjee Muhammad Naqi* (2001 SCMR 1140) wherein the Hon'ble Supreme Court has held as under:

“14. Syed Sharifuddin Pirzada is also right in contending that the case of Zehra Begum (supra) was distinguishable and the finding recorded by this Court in the cases of Alima Ahmed, Shezan Ltd., and Khalid Ghouri (supra) that default is a serious matter because it abridges the right of the landlord and to some extent it must be protected, is attracted here as well. The cases of Suleman, Haji Usman Bhai, Feroz Khan and Muhammad Yousaf (supra) are also instructive on the point. Also refer *Pakistan Food Manufacturers v. Sadiq Ishaque and others* 1992 CLC 482; *Munawar Hassan v. Badiul Hasan* 1992 CLC 2495; *Kala Khan through Legal Heirs v. Anjuman Musalmananne Mashriaqui Punjab, Karachi*. 1993 CLC 250 wherein it was held by the High Courts that in case a landlord refuses to accept rent, before a tenant could deposit rent in a Miscellaneous Rent case, it is mandatory for the tenant first to remit the rent through postal money order and if this is not done, deposit of rent in a Miscellaneous Rent case would not absolve the tenant from being a defaulter for the concerned period. The same view as taken by a two member Bench of this Court in unreported judgment in *Abdul Rasheed v. Mst. Shah Jahan Begum* Civil Appeal No. 1234 of 1999, decided on 28-2-2001 wherein one of us (Irshad Hasan Khan, C.J.) as authored the judgment. It is true that where the default is not deliberate or contumacious and is purely technical in nature and no mala fide has been attributed to the tenant, ejectment in such cases on ground of default is not warranted. Here the default is proved to have been wilful, deliberate, contumacious and not technical in nature.”

12. Since the case of the landlord is tenuous in nature and the petitioner/tenant has succeeded in proving his bonafide for depositing of rent in terms of Section 10(3), therefore, it cannot be safely held that the tenant was at default in payment of the rent.

13. For the aforementioned reasons, this petition is allowed. The impugned judgments and orders passed by the Courts below are set aside. The ejectment proceedings initiated by the respondent No.3 through Rent Case No 2066 of 2007 are dismissed. It is however made clear that if the tenant makes default in future payments of

rent, the respondent No.3 shall be at liberty to initiate fresh proceedings in accordance with the law.

**JUDGE**

Nadir/PS\*

Approved for reporting