

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-1267/2023

Date

Order with signature of Judge

For hearing of main case.

11.09.2026

Syed Hassan advocate for petitioner.

Mr. Abdul Hameed Khan advocate for respondent No.1.

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ORDER

Nisar Ahmed Bhanbhro, J. This order will decide the fate of captioned petition which arises out of concurrent findings rendered vide order dated 27.10.2023 passed by the learned 9th Additional District Judge, Karachi West in First Rent Appeal No.22/2023 (Asma Yousuf through her son Muhammad Ali vs. Izhar Ali and another) and order dated 13.01.2023 passed by learned 14th Rent Controller, Karachi West in Rent Case No.157/2022 (Asma Yousuf through her son Muhammad Ali vs. Izhar Ali) whereby ejectment application filed by the petitioner was dismissed.

2. Learned counsel for the petitioner contends that the demised premises viz. House No.R-346, Sector No.6-C/2, Abdullah Banglows, Phase 3, KDA Schme No.41, Surjani Town, Karachi was owned by the landlady Asma Yousuf. During her lifetime she rented out the demised premises to respondent Izhar Ali against monthly rent of Rs.12,000/-. He submits that on death of original landlady, petitioner became landlord being her son, but respondent No.1 refused to pay rent, thereafter legal notice dated 08.05.2021 was issued to him for payment of rent but remained unnoticed therefore the rent case was instituted. He contended that respondent No.1 was required to pay rentals but he defaulted. He submits that the relationship of tenancy is admitted however the learned courts below dismissed the rent case

on the ground that the original tenancy agreement was not filed therefore the issue relating to the relationship between the parties was decided in negative. He submits that it was a case of default of rent and there is no dispute over the title therefore original copy of rent agreement had no consequence to non-suit the petitioner. He prays that default is admitted and petitioner has proved his case beyond doubt therefore the petition may be allowed and the concurrent findings may be set aside.

3. Learned counsel for respondent No.1 submits that respondent No.1 was the tenant of Asma Yousuf and on her death he continued the tenancy through Sarwat Bano who was the daughter of original owner Asma Yousuf. He submits that the petitioner was paying the rent to Sarwat Bano he therefore submits that there is no illegality in the concurrent findings by the courts below therefore no case of indulgence is made out hence prays for dismissal of petition.

4. Heard arguments and perused available record.

5. It transpires from the record that on institution of rent case the learned rent controller issued notice for service upon respondent No.1 which was duly served however he failed to appear and file written statement therefore matter was proceeded as exparte against him. The petitioner filed his affidavit in evidence and alongwith the said affidavit he produced photocopy of tenancy agreement, Family Registration Certificate and the legal notice. Learned trial court after hearing the learned counsel for the petitioner, dismissed the rent case and observed in paragraph No.8 of the judgment dated 13.01.2023 that the petitioner had failed to produce the original tenancy agreement and carbon copy thereof was produced therefore the

relationship of tenancy could not be established hence ejectment could not be ordered. For sake of conveyance paragraph No.8 of the judgment is reproduced as under:-

“8. In case in hand, the applicant submitted only the carbon copy of a tenancy agreement which was allegedly executed between her deceased mother and the opponent, and no cause was adduced by the applicant for non-production of original tenancy agreement. Per Article 75 of Qanun-e-Shahadat 1984, documents must be proved by primary evidence and per Article 73 of Qanun-e-Shahadat 1984, primary evidence means the document itself produced for the inspection of the Court. Hon’ble Supreme Court of Pakistan in the case reported as PLD 2002 Supreme Court 84 has observed that;

Arts. 75 & 76 – Document – Proof of – Tendering of photo copy of document – Failure to lead primary or secondary evidence to prove the document – Document was taken on the record subject to its admissibility because the witness tendered its photocopy – Later on no steps were taken by the party to prove the contents of that document by leading primary or secondary evidence in terms of Arts. 75 & 76 of the Qanun-e-Shahadat 1984 – Validity – Such document could not be taken into consideration – Merely by tendering a document in evidence, the same had no evidentiary value unless its contents were proved according to law’.

In the present case, photocopy of agreement as annexure “Mark-1”, which was not exhibited, but only taken on record as photocopy. Applicant neither produced such original agreement nor sought any permission to produce secondary evidence, therefore, the photocopy of agreement as annexure “Mark-1” submitted by applicant’s side can neither be taken into consideration nor have any evidentiary value in the eyes of law. It has been held in 2017 MLD 1737 that;

‘Art. 73 & 75 – Documentary Evidence – Production of secondary evidence – Procedure – Evidentiary value of documents produced during trial has to be seen in the light of Qanun-e-Shahadat 1984 – Duty has been imposed under Article 75 of Qanun-e-Shahadat 1984 upon court to exhibit those documents which are primary, and if original documents are not available during trial, documentary evidence was to be tendered through secondary mode after getting permission of court, failing which, document has no evidentiary value in eyes of law’.

Hon’ble High Court of Sindh in another case reported as 2016 CLC 1372 has observed that

‘Trial Court while dismissing application for adjournment to file written statement ordered for ex parte proceedings and on the basis of affidavit in ex parte proof decreed the suit – Validity – Trial Court had decreed the suit without examining the plaintiff on oath – Original documents were never filed by the plaintiff with his affidavit in ex-parte proof – Mere filing of an ex parte proof by an affidavit was not production of evidence – Only photocopies had been produced as evidence, which were not admissible in evidence – Trial Court was bound to examine the correctness, veracity and truth of the claim of plaintiff set out in the plaint – Parties approaching the court should succeed on the merits of their own case and not on account of weakness of other side’.

Since the applicant failed to produce any tenancy agreement and there is no admission of tenancy by the side of opponent; further, no other material is on record which could show that there was relation of land lord and tenant between deceased and the opponent and after her death the said relation devolved to her successor/ applicant; thus it cannot be considered that the deceased mother of applicant was the landlord of the demised premises and the opponent was inducted as the tenant.”

6. Learned appellate court while dealing with the first rent appeal also concurred with the findings of the learned rent controller and held that the relationship was not duly established as no tenancy agreement was produced on record. It further transpires from the record that respondent No.1 affected his appearance before the appellate court and he was heard. It transpires from the record that on the death of Asma Yousuf, the respondent No.1 had filed a miscellaneous rent case No.85/2021 before the 12th rent controller, Karachi West, wherein he impleaded the petitioner Muhammad Ali and one Sarwat Bano as the landlords. He sought permission of the court to deposit the rent. Memo of application available at page 101 of the file reveals that in paragraph No.3 of the said application the respondent No.1 has contended that Muhammad Ali was son of the original owner whereas the original owner was also survived by daughter Sarwat Bano and on death of original landlady, rent

agreement was executed by the respondent No.1 with said Sarwat Bano. It is further the case of respondent No.1 that he was paying the rent to said Sarwat Bano.

7. Since the relationship of the petitioner has not been denied with Asma Yousuf and being her legal heir he falls within the definition of landlord and the tenancy between the parties continued on the death of the original owner. Though section 5 of the Sindh Rented Premises Ordinance 1979 provides for a manner for execution of the rent agreements, however non-production of the rent agreement in original by no means will non-suit the owner from claiming ejectment on any of the grounds enumerated under section 15 of the Sindh Rented Premises Ordinance 1979. Mere non-production of the original tenancy agreement was no ground to hold that the relationship of tenancy did not exist between the parties.

8. It further transpires from the record that the learned rent controller while deciding the fate of rent application deviated from the procedure of deciding the rent cases envisaged under section 19 of the Sindh Rented Premises Ordinance 1979 which is reproduced as under:-

“19. (1) Where an application other than the application under section 14 has been made to the Controller under this Ordinance, he shall, unless the application is summarily dismissed by him for reasons to be recorded, issue a notice to the respondent to file written reply, if any, within such period not exceeding fifteen days of the receipt of the notice.

(2) Where on the day fixed in the notice for the respondent to file written reply, it is found that the notice has been served but the respondent has failed to file his reply without any reasonable excuse, the Controller may, proceed to make an ex parte order and after such order has been made the Controller shall have no power to rescind such order.

(3) Where the respondent has filed the written reply, the Controller shall proceed to receive evidence first of the

applicant and his witnesses and then of the respondent and his witnesses.

(4) A party to a case under this Ordinance shall prove the evidence of his witness by producing the affidavit of such witness a copy of which shall simultaneously be supplied to the other party and such other party shall have the right to cross examine the witness on such affidavit and if the witness has been cross examined the party producing the witness may reexamine him.

(5) The Controller shall, instead of formally framing issues arising between the parties, state them briefly in the judgment and shall record findings on each such issue separately.”

9. From the perusal of the above provisions of law it is clear that the court has to frame a point for determination which was not framed in the instant case by the learned rent controller, might be for the reason that respondent No.1 was proceeded ex parte, however before the learned appellate court respondent No.1 appeared and he filed objections whereby he contended that the original owner Asma Yousuf was survived by two legal heirs viz. Muhammad Ali and Sarwat Bano. In the fitness of the things it was obligated that the appellate court ought to have remanded the matter back to the rent controller for deciding afresh on merits after framing of issues with regard to the legal heirs of the original owner Asma Yousuf and the payment of rent by respondent No.1 to Mst. Sarwat Bano. Though petitioner denies any other siblings of Asma Yousuf and placed on record FRC available at page 159 of court file which revealed that Asma Yousuf was survived by the petitioner only. Since the relationship between the parties as to the landlord and tenant has been proved from the evidence available therefore the findings of the courts below in this regard are perverse and result of misreading and non-reading of the evidence calling for interference by this court in extraordinary jurisdiction conferred under article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

10. In view of above the orders dated 27.10.2023 and 13.01.2023 passed by the courts below are hereby set aside. The matter is remanded back to the learned rent controller for deciding afresh on merits after framing the points of determination as to the legal heirship of the deceased Asma Yousuf and default in payment of rent if any made by the respondent No.1. The respondent No.1 shall be allowed to contest the case by filing written statement and leading evidence.

11. Since this is an old rent case of 2022 early decision in the matter shall be highly appreciated. Let parties appear before the learned rent controller on 05.10.2026. Office is directed to send copy of this order to the learned rent controller. Learned MIT-II shall ensure compliance.

J U D G E

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Approved for reporting.