THE HIGH COURT OF SINDH KARACHI

C.P. No. S-577 of 2020
[Moinuddin Paracha vs. Syed Iqbal Ali & another]

Petitioner	:	Moinuddin Paracha through his LRs through Mr. Zafar Iqbal, Advocate.
Respondent No.1	:	Syed Iqbal Ali through Mr. Asher Azeem, Advocate.

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Date of hearing	:	30.10.2026
Date of decision	:	05.11.2026

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O R D E R

Zulfiqar Ali Sangi J.– Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called into question the judgment dated 17.02.2020 passed by the learned Additional District Judge-VI/Model Civil Appellate Court (Extension), Karachi-Central, in First Rent Appeal No.23 of 2019, whereby the appeal preferred by respondent No.1 was allowed, the order dated 19.10.2018 passed by the learned Rent Controller, Karachi-Central, in Rent Case No.17 of 2013 was set aside, and consequently, the ejectment application filed by the petitioner was dismissed.

2. Briefly stated, the petitioner is the landlord, whereas respondent No.1 is the tenant in respect of Flat No. B-1, situated on the first floor of Azeem Market, constructed on Plot No.2-II-B, Nazimabad No.2, Karachi **(hereinafter referred to as "the demised premises")**, which was initially let out at a monthly rent of Rs.300/-. The petitioner instituted Rent Case No.374 of 2004 seeking fixation of fair rent at Rs.3,000/- per month. The learned Rent Controller, vide order dated 21.04.2008, fixed the fair rent at Rs.2,000/- per month with effect from July 2004, i.e., the date of institution of the rent case. Both parties challenged the said order by filing First Rent Appeals Nos.73 and 76 of 2008, which were dismissed through a consolidated judgment dated 04.11.2009, thereby maintaining the order of the learned Rent Controller. Respondent No.1 did not further challenge the said determination of fair rent. Subsequently,

the petitioner approached this Court through C.P. No. S-113 of 2010, seeking further enhancement of rent. This Court, vide order dated 12.04.2010, directed respondent No.1 to pay rent at the rate of Rs.2,500/- per month with effect from April 2010. The petitioner asserts that the aforesaid order did not disturb the earlier determination of fair rent at Rs.2,000/- per month with effect from July 2004, and that respondent No.1 remained liable to pay the difference of rent for the period from July 2004 to April 2008, which, calculated at the rate of Rs.1,700/- per month, amounted to Rs.78,200/-. According to the petitioner, respondent No.1 failed to discharge the said liability for several years and, therefore, committed willful default in payment of rent.

3. It further appears from the record that certain proceedings were initiated between the parties regarding the outstanding difference of rent. Eventually, respondent No.1 approached this Court through C.P. No. S-238 of 2016, which was disposed of vide consent order dated 31.10.2017. Through the said order, the earlier orders were set aside by consent, with a specific direction to respondent No.1 to deposit the arrears of rent/difference of monthly rent for the period commencing from July 2004 till April 2008 within one month. Significantly, this Court further observed that the petitioner/landlord would remain at liberty to pursue the ejectment application on the ground of default, allegedly committed by respondent No.1 by making payment of the arrears of rent belatedly, which was to be considered on its own merits in accordance with law. Thereafter, the parties led their respective evidence in Rent Case No.17 of 2013. The learned Rent Controller, after examining the documentary as well as oral evidence, particularly the earlier orders concerning fixation of fair rent and the admissions made by respondent No.1 during cross-examination, came to the conclusion that respondent No.1 had failed to pay the difference of rent for the period from July 2004 to April 2008 within the prescribed time and had, therefore, committed willful default. Consequently, vide order dated 19.10.2018, the ejectment application was allowed and respondent No.1 was directed to hand over vacant possession of the demised premises to the petitioner within sixty days. However, the learned Appellate Court, through the impugned judgment dated 17.02.2020, allowed the appeal filed by respondent No.1, set aside

the order of the learned Rent Controller and dismissed the ejectment application. Hence, this petition.

4. Learned counsel for the petitioner contends that the impugned judgment is contrary to the material available on record and suffers from material irregularity, as the learned Appellate Court failed to appreciate that the order dated 21.04.2008, whereby fair rent was fixed at Rs.2,000/- per month with effect from July 2004, had attained finality. It is argued that respondent No.1 never challenged the said determination through an appeal of his own, and the subsequent order dated 12.04.2010 passed by this Court in C.P. No. S-113 of 2010 merely enhanced the rent to Rs.2,500/- per month with effect from April 2010 without setting aside or modifying the earlier determination. Learned counsel further submits that respondent No.1 admittedly deposited the difference of rent only pursuant to the subsequent consent order dated 31.10.2017 passed in C.P. No. S-238 of 2016, after an inordinate delay of several years. It is contended that the learned Appellate Court completely overlooked the legal effect of the said order, particularly the express liberty granted to the petitioner to pursue ejectment proceedings on the ground of belated payment of arrears of rent. It is, therefore, prayed that the impugned judgment be set aside and the order passed by the learned Rent Controller be restored.

5. Conversely, learned counsel for respondent No.1 supports the impugned judgment and contends that the order dated 12.04.2010 was passed with the consent of both parties, whereby respondent No.1 was directed to pay rent at the rate of Rs.2,500/- per month with effect from April 2010. It is argued that the petitioner had agreed to the said arrangement without raising any objection regarding previous arrears, and, therefore, the subsequent claim for recovery of difference of rent was misconceived. Learned counsel further submits that the amount in question was deposited pursuant to the order dated 31.10.2017 passed by this Court and, therefore, no default survived against respondent No.1. On these grounds, dismissal of the petition is sought.

6. I have heard the learned counsel for the parties and have examined the available record with their assistance. The controversy requiring determination is whether, in the facts and circumstances

of the case, the learned Appellate Court was justified in holding that the parties had settled their previous rent transactions through the consent order dated 12.04.2010 and, consequently, no liability survived against respondent No.1 in respect of the difference of rent for the period from July 2004 to April 2008.

7. It is an admitted position that the learned Rent Controller, vide order dated 21.04.2008 passed in Rent Case No.374 of 2004, fixed the fair rent of the demised premises at Rs.2,000/- per month with effect from July 2004. The said determination was maintained by the learned Appellate Court through its judgment dated 04.11.2009 in First Rent Appeals Nos.73 and 76 of 2008. Admittedly, respondent No.1 did not challenge the said determination, and no material has been brought on record to demonstrate that the order fixing fair rent at Rs.2,000/- per month with effect from July 2004 was ever set aside by a competent forum. The subsequent order dated 12.04.2010 passed by this Court in C.P. No. S-113 of 2010 is also relevant. A perusal thereof reflects that the parties agreed to the payment of rent at the rate of Rs.2,500/- per month with effect from April 2010. However, the said order does not expressly set aside the earlier determination of fair rent for the period commencing from July 2004, nor does it contain any specific direction extinguishing the liability, if any, arising out of the earlier determination. The direction for payment of enhanced rent with effect from April 2010, by itself, could not be construed as having nullified the subsisting determination of fair rent for the preceding period. More importantly, the subsequent order dated 31.10.2017 passed by this Court in C.P. No. S-238 of 2016 assumes considerable significance. The relevant portion of the said order reads as follows:

> "By consent these orders are set aside and the petition is disposed of a long-with listed applications by directing the petitioner to deposit the arrears of rent/difference of monthly rent w.e.f. July, 2004 till April, 2008 as above within a period of one month. The respondent may however pursue application for ejectment on the ground of default, which he claimed to have been committed by paying the arrears of rent w.e.f. July, 2004 belatedly. Which shall be considered on its own merits in accordance with law."

A plain reading of the above order makes it abundantly clear that the controversy concerning the difference of rent for the period from July 2004 to April 2008 was specifically addressed by this Court. Respondent No.1 was expressly directed to deposit the said amount within one month, while the petitioner was simultaneously permitted to pursue the ejectment proceedings on the ground that the arrears had been paid belatedly. Thus, the question of whether the belated payment constituted a default warranting ejectment was expressly left open for determination by the competent Rent Controller in accordance with law.

8. In such circumstances, the learned Appellate Court fell into error in construing the earlier order dated 12.04.2010 as having conclusively settled all previous transactions between the parties and extinguished the petitioner's claim in respect of the outstanding difference of rent. Such interpretation is not only inconsistent with the subsequent order dated 31.10.2017 but also defeats the express liberty granted therein to the petitioner to pursue ejectment proceedings on the ground of belated payment. Once this Court had specifically permitted the petitioner to agitate the question of default arising from delayed payment of arrears, the learned Appellate Court was required to examine the matter in the light of the said direction rather than treating the previous transaction as having been finally closed.

9. It is further evident from the cross-examination of respondent No.1 before the learned Rent Controller that he admitted the fixation of fair rent at Rs.2,000/- per month with effect from July 2004 and also acknowledged that he had not preferred any appeal against the order dated 21.04.2008. He further admitted that, pursuant to the order dated 31.10.2017 passed in C.P. No. S-238 of 2016, he deposited the difference of rent for the period from July 2004 to April 2008. Although he disputed the liability on the basis of his own interpretation of the earlier order dated 12.04.2010, the said explanation could not, in the circumstances, absolve him of the consequences of delayed compliance with the determination of fair rent, particularly when the subsequent order dated 31.10.2017 expressly preserved the petitioner's right to pursue the ejectment proceedings on that very ground.

10. The learned Appellate Court, while discussing the order dated 12.04.2010, failed to advert to the legal effect of the subsequent order dated 31.10.2017 and the specific liberty granted therein. The learned Appellate Court was required to examine the evidence, including the admissions of respondent No.1, the Nazir's report and the circumstances in which the difference of rent was ultimately deposited. Instead, it proceeded on the assumption that the consent order dated 12.04.2010 had brought the previous rent transactions to an end. Such an approach reflects misreading and non-reading of material evidence and has resulted in an erroneous conclusion. It is settled that the mere subsequent deposit of outstanding arrears does not, in every circumstance, obliterate the consequences of an already committed default. The relevant question is whether the tenant had failed to discharge his obligation to pay rent within the time prescribed by law and whether such failure attracted the consequences contemplated under the Sindh Rented Premises Ordinance, 1979. In the present case, the difference of rent had been determined by a competent Rent Controller with retrospective effect from July 2004, the said determination had attained finality, and the amount was admittedly deposited only after the lapse of several years and pursuant to the specific direction of this Court dated 31.10.2017. The subsequent deposit, therefore, could not, by itself, render the petitioner's claim for ejectment infructuous, particularly when the order dated 31.10.2017 had expressly preserved his right to pursue the same.

11. In view of the foregoing discussion, I am of the considered view that the learned Appellate Court failed to properly appreciate the effect of the orders dated 21.04.2008, 12.04.2010 and, more particularly, 31.10.2017, as well as the admissions made by respondent No.1 during his cross-examination. The impugned judgment, therefore, suffers from misreading and non-reading of material evidence and material irregularity in the exercise of appellate jurisdiction, warranting interference by this Court in its constitutional jurisdiction.

12. Consequently, this constitutional petition is allowed. The impugned judgment dated 17.02.2020 passed by the learned Additional District Judge-VI/Model Civil Appellate Court (Extension), Karachi-Central, in First Rent Appeal No.23 of 2019 is

hereby set aside, and the order dated 19.10.2018 passed by the learned Rent Controller, Karachi-Central, in Rent Case No.17 of 2013 is restored. Respondent No.1 is accordingly directed to hand over vacant and peaceful possession of the demised premises, namely Flat No. B-1, situated on the first floor of Azeem Market, constructed on Plot No.2-II-B, Nazimabad No.2, Karachi, to the petitioner, in accordance with law. The parties shall bear their own costs.

JUDGE